

HARBOR DIVISION

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DATE: MAY 16, 2023

FROM: OFFICE OF THE CITY ATTORNEY

SUBJECT: RESOLUTION NO. _____ - THIRD AMENDMENT TO LEGAL SERVICES AGREEMENT NO. 15-3308 WITH MEYERS NAVE FOR CHINA SHIPPING LITIGATION

SUMMARY:

The Office of the City Attorney (Office) at the City of Los Angeles Harbor Department (Harbor Department) requests approval of a Third Amendment to Agreement No. 15-3308 (Third Amendment) between the Harbor Department and Meyers Nave Riback Silver and Wilson APC (Meyers Nave). The proposed Third Amendment increases the Agreement authority by \$623,500. The current eleven-year Agreement expires on February 28, 2026, and there is no term extension requested. The current Agreement authority is \$4,084,242 and the proposed Amendment would add \$623,500 and increase the authority to \$4,707,742.

The additional funding will allow Meyers Nave to continue to represent the Port of Los Angeles in the defense of various claims of violations of the law and improper actions with respect to the China Shipping Terminal located at Berths 97-104 brought by the South Coast Air Quality Management District, the State Attorney General, the California Air Resources Board and the Natural Resources Defense Council (NRDC). The Harbor Department will continue to be financially responsible for payment of expenses incurred under the proposed Amendment.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

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1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;
2. Find in accordance to Charter Section 1022 that the scope of work of the proposed Agreement can be more economically and feasibly provided by an independent contractor than by City employees;
3. Approve the Third Amendment to Agreement No. 15-3308 with Meyers Nave, to increase the agreement authority by \$623,500 from \$4,084,242 to \$4,707,742;
4. Authorize the Executive Director and Board Secretary to execute and attest to the Third Amendment; and
5. Adopt Resolution No. _____.

DISCUSSION:

Background – In accordance with Charter Section 275, the Office has determined that it requires outside legal counsel to perform litigation support services for environmental matters including laws, rules and regulations affecting the Harbor Department and their operations, which include but are not limited to CEQA and National Environmental Policy Act (NEPA). Following a competitive Request for Proposals process in 2015, Meyers Nave was retained under Agreement No. 15-3308 (Transmittal 1). The initial term was for three years and the original compensation authority was \$1,640,000 with an expiration date of February 28, 2018.

First Amendment – On October 6, 2017, the Office requested, and the Board approved, a First Amendment to Agreement No. 15-3308 with Meyers Nave (Transmittal 2). The First Amendment extended the term by three-years and increased compensation authority by \$1,400,000 from \$1,640,000 to \$3,040,000. The First Amendment funding supported ongoing work for the Environmental Impact Report (EIR), Supplemental Environmental Impact Report (SEIR), pre-litigation and compliance efforts.

Second Amendment – On November 5, 2020, the Office requested, and the Board approved, a Second Amendment (Transmittal 3) extending the term of the Agreement by five years, to February 28, 2026 and increasing the authority from \$3,040,000 to \$4,084,242. City Council approved the Second Amendment on May 4, 2021. The Second Amendment provided funds for multiple CEQA challenges to the final SEIR, an Amended Stipulated Judgment Claim by the NRDC and Appeals.

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Proposed Third Amendment – The firm's involvement with the EIR, SEIR, pre-litigation, compliance efforts and anticipated challenges make it difficult and impractical to engage new counsel at this time. Increasing the authority of Agreement 15-3308 will allow Meyers Nave to continue to assist with the aforementioned litigation.

The current authority is \$4,084,242. Through February 28, 2023, the firm has spent \$3,814,473 and the Agreement has a remaining authority of \$269,769. To fully defend the Port of Los Angeles and the City of Los Angeles from claims of violations of the law and improper actions with respect to China Shipping, the Agreement authority needs to be increased by \$623,500. Continued retention of Meyers Nave is preferred. The level of knowledge the firm has developed regarding the legal and operational issues concerning the CEQA issues in play is significant and the firm's work has been excellent.

Continuing work under the proposed Third Amendment includes negotiations with petitioners, developing a potential settlement agreement, potential mediation, negotiations with the Port's tenant, concurrent activity involving the appeal and potential post-judgment matters before the San Diego County Superior Court.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a Third Amendment to Agreement No. 15-3308 between the Harbor Department and Meyers Nave, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The proposed action is approval of the proposed Third Amendment to Agreement No. 15-3308 to increase the compensation authority. The current Agreement authority is \$4,084,242 and the Third Amendment would add \$623,500 and increase the authority to \$4,707,742. To date, \$3,814,473 in spending has been incurred under the Agreement and a balance of \$269,769 will be spent by June 30, 2023.

Fiscal year (FY) 2022-23 funding in the amount of \$269,769 has been budgeted, and FY 2023-24 funding in the amount of \$492,317 has been requested to be budgeted within the Harbor Department's Operating Budget, Center 0120 (Office of the City Attorney), Program 000, Account 54410 (Legal Fees & Services). Funding for future years, if necessary, will be requested as part of the annual budget adoption process. A funding

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out clause is included in the Agreement. Spending under Agreement No. 15-3308 has occurred and is anticipated to occur as follows:

Fiscal Year	\$ Amount
2014-15	\$49,057
2015-16	\$332,207
2016-17	\$311,413
2017-18	\$235,099
2018-19	\$226,952
2019-20	\$459,830
2020-21	\$1,255,126
2021-22	\$777,086
2022-23	\$269,769
2023-24	\$492,317
2024-25	\$201,116
2025-26	\$97,770
TOTAL	\$4,707,742

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CITY ATTORNEY:


The Office of the City Attorney has reviewed and approved the proposed Third Amendment as to form and legality.

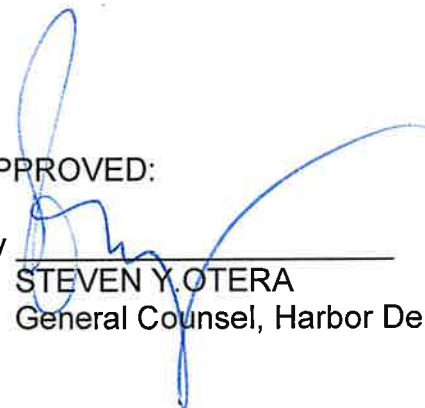
TRANSMITTALS:

1. Agreement No. 15-3308 with Meyers Nave
2. First Amendment to Agreement No. 15-3308
3. Second Amendment to Agreement No. 15-3308
4. Proposed Third Amendment to Agreement No. 15-3308

FIS Approval: MB

CA Approval: So


JOHN DRISCOLL
Deputy City Attorney

APPROVED:
By 
STEVEN YOTERA
General Counsel, Harbor Department

APPROVED:
By Marla Bleavins
EUGENE D. SEROKA
Executive Director