

HARBOR DIVISION

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HELEN J. SOK

DATE: APRIL 28, 2020

FROM: OFFICE OF THE CITY ATTORNEY

SUBJECT: RESOLUTION NO. _____ - APPROVAL OF LEGAL SERVICES AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND CROWELL & MORING LLP

SUMMARY:

The Office of the City Attorney (Office) requests approval of a legal services agreement between the City Los Angeles Harbor Department (Harbor Department) and Crowell & Moring LLP (Crowell), for advice and representation in a federal court lawsuit entitled *Harbor Performance Enhancement Center, LLC v. City of Los Angeles Harbor Department, et al.*, USDC Case No. 2:20-cv-03251. The proposed Agreement is for a term of three years with compensation authority of \$300,000. This is the only firm on retainer for antitrust matters. The Harbor Department is financially responsible for payment for legal services rendered under the proposed Agreement.

RECOMMENDATION:

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

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;

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2. Find in accordance to Charter Section 1022 that the scope of work of the proposed Agreements can be more economically and feasibly provided by an independent contractor than by City employees;
3. Approve a Legal Services Agreement with Crowell & Moring LLP in the amount of \$300,000 for a three-year term;
4. Authorize the Executive Director and Board Secretary to execute and attest to the Agreement; and
5. Adopt Resolution No. _____.

DISCUSSION:

Background – In accordance with Charter Section 275, the Office has determined that it requires outside legal counsel to assist it in the provision of specialized advice and representation in antitrust litigation and related complex business litigation.

Need For Counsel And Scope Of Work – A federal court lawsuit entitled *Harbor Performance Enhancement Center, LLC v. City of Los Angeles Harbor Department, et al.*, USDC Case No. 2:20-cv-03251 was filed against the City, Executive Director Seroka and the ILWU on April 7, 2020. The filing of this lawsuit followed the Harbor Performance Enhancement Center's (HPEC's) earlier filing of writ proceedings in state court, which proceedings have been dismissed. The current federal court lawsuit, while based on the same general facts underlying the earlier state court proceedings, is based on a new theory of antitrust. To obtain expertise in this specialized area of the law, the Office conducted a Request For Proposal (RFP).

Competitive Counsel Selection Process – On April 15, 2020, the Harbor Division published an RFP for outside counsel for antitrust litigation and related complex business litigation matters. Based on the review of the four written proposals submitted, the Harbor Division determined that Crowell was the most knowledgeable, experienced, and responsive firm in the area of antitrust litigation. The distinguishing feature of Crowell's proposal submission was the incorporated flat fee schedule. The flat rates detailed below will apply through resolution of any motion:

- \$150,000 through motion to dismiss (one round briefing and argument)
- Additional \$75,000 for second round of briefing and argument (if required)

In the RFP process Crowell identified two conflicts of interest in its proposal. One involves an unrelated real estate title clearance in which Crowell represents Asian Americans

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Advancing Justice (AAAJ). This matter is not active. The second involves representation of the National Rural Electric Cooperative Association's (NRECA) intervention in support of the Environmental Protection Agency's affordable clean energy rule. Crowell has obtained reciprocal waivers from AAAJ and NRECA to allow Crowell to represent the City in the HPEC matter as long as it is allowed to continue to represent those two parties in their matters. Both matters are completely unrelated to the HPEC allegations, and under a separate Board Report the Office recommends approval of both conflict waivers to allow Crowell to represent the City and Mr. Seroka in the HPEC matter.

Proposed Agreement Terms – The Agreement terms are as follows:

- **Term:** Three years effective May 7, 2020
- **Contract Authority:** Maximum amount not to exceed \$300,000 and incorporating a flat fee schedule applicable through resolution off any motion
- **Scope of Work:** advice and representation in a federal court lawsuit entitled *Harbor Performance Enhancement Center, LLC v. City of Los Angeles Harbor Department, et al.*, USDC Case No. 2:20-cv-03251
- **Standard City and Harbor Department Agreement provisions**

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of an Agreement with Crowell for professional legal services for antitrust matters, 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 for the approval of an Agreement for legal services for advice and representation in antitrust matters for a three-year term and compensation authority of \$300,000. The Harbor Department is financially responsible for payment for professional services rendered under the proposed Agreement. Funding in the amount of \$100,000 has been included in the approved FY 2019-20 Operating Budget within the Harbor Department City Attorney's Office Account No. 54410 (Legal Fees and Services), Division No. 120 and Program No. 000. Funding in the amount of \$150,000 will be requested as part of the annual budget adoption process in FY 2020-21 within the Harbor Department City Attorney's Office Account No. 54410, Division No. 120 and Program No. 000. Funding for future years, if necessary, will be requested as part of the annual budget

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adoption process. A funding out clause is included in the Agreement. This clause stipulates that if, in any subsequent fiscal year, funds are not appropriated by the City for the work required by the Agreement, then the Agreement shall be terminated. However, the termination would not relieve the parties of liability for any obligation previously incurred.

The proposed appropriation for Crowell is detailed below:

Law Firm	FY 19/20	FY 20/21	FY 21/22	TOTAL
Crowell	\$100,000	\$150,000	\$50,000	\$300,000

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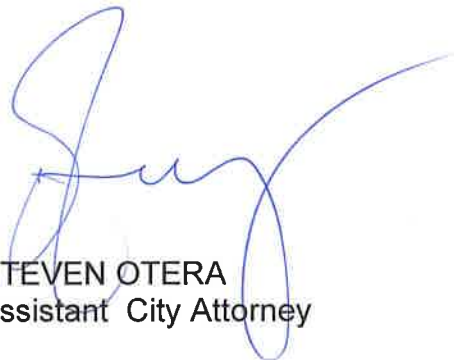
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CITY ATTORNEY:

The Office of the City Attorney has prepared and approved the proposed Agreement as to form and legality.

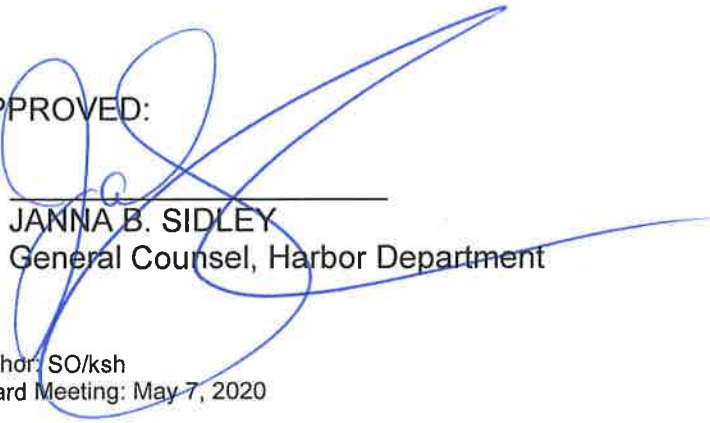
TRANSMITTALS:

1. Agreement with Crowell & Moring LLP



STEVEN OTERA
Assistant City Attorney

FIS Approval: 
CA Approval: 

APPROVED: 

By _____
JANNA B. SIDLEY
General Counsel, Harbor Department

Author: SO/ksh
Board Meeting: May 7, 2020

APPROVED: 

By _____
EUGENE D. SEROKA
Executive Director