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DATE: MAY 2, 2012

FROM: OFFICE OF THE CITY ATTORNEY

SUBJECT: RESOLUTION NO. _____ APPROVING FIFTH AMENDMENT TO AGREEMENT NO. 2441 BETWEEN THE CITY OF LOS ANGELES AND CASTELLON AND FUNDERBURK LLP FOR LEGAL SERVICES

SUMMARY:

The City Attorney requests approval of a Fifth Amendment to Agreement No. 2441 (Agreement No. 2441) for legal services between the City of Los Angeles and Castellon & Funderburk LLP. The Amendment extends the contract by eighteen months to a total of eight and one-half years, with no additional appropriation. Castellon and Funderburk was retained to provide legal services and this extension is made necessary by the fact that a trial date has still not been set in the case of *City v. Kinder Morgan Liquids Terminals LLC*, a case that was filed in 2005 over remediation of the former marine terminal at Berths 171-173.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve the Fifth Amendment to Agreement No. 2441 with Castellon & Funderburk LLP in the form attached as Transmittal 1;
2. Authorize the Executive Director to execute and the Board Secretary to attest to the Fifth Amendment to Agreement No. 2441;
3. Authorize and direct the Board Secretary to forward the Fifth Amendment to Agreement No. 2441 to the City Council for its approval pursuant to Section 373 of the City Charter and Los Angeles Administration Code section 10.5 (a);
4. Adopt Resolution No. _____.

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SUBJECT: FIFTH AMENDMENT TO AGREEMENT NO. 2441 WITH CASTELLON AND FUNDERBURK

DISCUSSION:

The City of Los Angeles entered into Agreement No. 2441 with Castellon & Funderburk LLP, for legal services commencing on September 1, 2005, for the purpose of assisting the City Attorney in the environmental cost recovery action *City v. Kinder Morgan Liquids Terminals LLC et al.* pertaining to the site of the former marine terminal at Berths 171-173. The agreement was last amended in October 2011, extending its term until August 31, 2012.

The proposed Fifth Amendment is made necessary by the fact that a trial date has still not been set. The case, filed in July 2005, is currently under a litigation stay pending resolution of Kinder Morgan and Texaco's dispute with the Regional Water Quality Control Board over soil and groundwater cleanup standards that will be applied at the site. The standards set by the Regional Board were appealed to the State Water Resources Control Board which has yet to consider this appeal.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of an amendment to an agreement with Castellon and Funderburk LLP which would extend the contract by eighteen months. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

ECONOMIC IMPACT:

This Board action will have no employment effect.

FINANCIAL IMPACT:

The Fifth Amendment to Agreement No. 2441 extends the term of the Agreement by eighteen months, but does not increase or modify the total compensation payable under Agreement No. 2441, which is \$ 1,230,000. A total of \$ 901,633 has been spent to date and the remaining amount (\$328,367) is adequate to cover trial preparation and trial of the cost recovery case.

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SUBJECT: FIFTH AMENDMENT TO AGREEMENT NO. 2441 WITH CASTELLON AND FUNDERBURK

the FY 2012-2013 Budget, within the Harbor Department City Attorney's Office Account No. 54410, Division No. 0120 and Program No. 000. Funding for future fiscal years if necessary, will be requested to be budgeted as part of the annual budget adoption process, upon Board approval. The Agreement includes a Funding Out Clause.

CITY ATTORNEY:

The Office of the City Attorney has prepared the Fifth Amendment to Agreement No. 2441 and approved it as to form and legality.

TRANSMITTAL:

1. Proposed Fifth Amendment to Agreement No. 2441

FIS Approval: KP (initials)

CA Approval: TM (initials)



KENNETH F. MATTFELD
Deputy City Attorney

APPROVED:

By


THOMAS A. RUSSELL,
General Counsel, Harbor Department