

HARBOR DIVISION

425 S. PALOS VERDES ST.

P.O. BOX 151

SAN PEDRO, CA 90733-0151

FACSIMILE

(310) 831-9778

(310) 732-3750



OFFICE OF THE CITY ATTORNEY

MICHAEL N. FEUER
CITY ATTORNEY

JANNA B. SIDLEY
GENERAL COUNSEL

JOY M. CROSE
ASSISTANT GENERAL COUNSEL

CHRISTOPHER B. BOBO
ESTELLE M. BRAAF
JOHN T. DRISCOLL
JUSTIN HOUTERMAN
JANET KARKANEN
KENNETH F. MATTFELD
HEATHER M. McCLOSKEY
ESTHER S. OLSEN
STEVEN Y. OTERA
MINAH PARK
HELEN J. SOK

DATE: JANUARY 19, 2016

FROM: OFFICE OF THE CITY ATTORNEY

SUBJECT: RESOLUTION NO. _____ - APPROVE FIRST AMENDMENT TO AGREEMENT NO. 3109 BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND BROWN & WINTERS

SUMMARY:

The Office of the City Attorney requests that the Board of Harbor Commissioners extend Agreement No. 3109 with the law firm of Brown & Winters for three years. The current three-year agreement expires on February 28, 2016. The extension will allow Brown & Winters to continue to assist the City Attorney with efforts to recover environmental investigation and cleanup expenses from historic insurance policies. The Amendment extends the term only and does not alter the contingent fee payment schedule. The Harbor Department remains financially responsible for payment of ancillary litigation costs and expenses not to exceed \$35,000 per year, under the 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 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. Approve the First Amendment to Agreement No. 3109 with Brown & Winters, extending the term to a total of six years from March 1, 2013 through February 28, 2019;
3. Authorize and direct the Board Secretary to forward the First Amendment to the Los Angeles City Council for its approval pursuant to Section 373 of the Los Angeles City Charter;
4. Authorize the Executive Director and Board Secretary to execute and attest to the said First Amendment for and on behalf of the Board of Harbor Commissioners; and
5. Adopt Resolution No. _____.

DISCUSSION:

Brown & Winters was retained in 2013 following a Request for Proposals (RFP) process seeking legal services to perform insurance archeology and to subsequently pursue historic insurance policies for reimbursement of the cost of investigating, monitoring and remediating legacy contamination of Harbor Department properties. Brown & Winters was chosen based on their success with similar endeavors for the Port of San Diego and their willingness to undertake the task on a contingent fee basis.

The archeology effort has been successful. An insurance profile of previously unknown primary and excess insurance dating back into the 1950's has been created, despite the fact that the Harbor Department destroyed its old policies. Cost recovery was obtained from several of these policies in the *City v. San Pedro Boat Works* litigation. Cost recovery efforts continue on several fronts. In *City v. Certain Underwriters at Lloyds* the Department is seeking coverage for administrative orders issued at several sites around the harbor including the TraPac terminal, Front Street and landside work at San Pedro Boat Works. In *City v BAE Systems San Diego Ship Repair et al.* the Department expects its insurance to provide indemnity for any cleanup liability that may be assessed against the City for the Southwest Marine shipyard site. Insurance is the sole source of available recovery in *City v. Colonial Yacht Anchorage* and *City v. Wilmington Marine Services*.

At this time a competitive bid would not be advantageous and it is in the City's best interest to allow Brown & Winters to continue their current work. Extending Agreement No. 3109 will allow Brown & Winters to continue to assist with the aforementioned litigation matters as well as any others designated by the City Attorney. The

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amendment changes the term only. Compensation will remain at a contingency fee of one-third of the amount of successful recoveries. The Harbor Department is responsible for ancillary litigation costs and expenses (e.g. research experts) associated with the effort not to exceed \$35,000 per year. For the first three years \$8,997 was spent for policy research in London.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a First Amendment to Agreement No. 3109 with Brown & Winters to extend the term of the Agreement for three years, which is an administrative activity. As such, 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.

FINANCIAL IMPACT:

The proposed First Amendment continues to provide for legal services on a contingent fee basis. The law firm will retain 33% of any funds recovered from insurance policies. The law firm will be reimbursed for associated actual costs and expenses up to \$35,000 per year. The Environmental Management Division will continue to support the initiative using in-house staff and no budget impact is anticipated.

Funding for the current year FY 2015-16 is available in the operating budget, within the Harbor Department City Attorney's Office Account No. 54410, Division No. 0120, and Program No. 000. Funding for the First Amendment has been proposed to be budgeted, upon Board approval as part of the annual budget adoption process in the amount of \$35,000 in the FY 2016-17 Operating 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. A funding out clause was included in the original Agreement.

Firm	FY 15/16	FY16/17	FY17/18	FY18/19	TOTAL
Brown & Winters	\$35,000	\$35,000	\$21,000	\$14,000	\$105,000

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CITY ATTORNEY:

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

TRANSMITTAL:

1. First Amendment to Agreement No. 3109 extending its term from three to six years

FIS Approval: MB (initials)

CA Approval: [Signature] (initials)




KENNETH F. MATTFELD
Deputy City Attorney

APPROVED:



JANNA B. SIDLEY
General Counsel

APPROVED:



EUGENE D. SEROKA
Executive Director