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**DATE: APRIL 18, 2012**

**FROM: OFFICE OF THE CITY ATTORNEY**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - SEVENTH AMENDMENT TO AGREEMENT FOR PROFESSIONAL LEGAL SERVICES BETWEEN THE CITY OF LOS ANGELES AND KAYE SCHOLER, LLP**

**SUMMARY:**

The Office of the City Attorney requests approval of a Seventh Amendment (Seventh Amendment) to Agreement for Professional Legal Services No. 2519 (Agreement No. 2519) between the City of Los Angeles (City) and Kaye Scholer LLP (Kaye Scholer), increasing the term by one year to January 3, 2014 and increasing the compensation by \$288,000 to an amount not to exceed \$8,041,679.

**RECOMMENDATION:**

It is respectfully recommended that the Board of Harbor Commissioners:

1. Approve the Seventh Amendment to Agreement No. 2519 with Kaye Scholer in the form attached as Transmittal 1, increasing the term by one year to January 3, 2014 and increasing the compensation by \$288,000 to an amount not to exceed \$8,041,679;
2. Authorize the Executive Director to execute and the Board Secretary to attest to the Seventh Amendment to Agreement No. 2519;
3. Authorize and direct the Board Secretary to forward the Seventh Amendment to Agreement No. 2519 to the City Council for its approval pursuant to Section 373 of the City Charter and Section 10.5(a) of the Los Angeles Administrative Code;
4. Adopt Resolution No. \_\_\_\_\_.

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SUBJECT: SEVENTH AMENDMENT TO AGREEMENT NO. 2519 – KAYE SCHOLER

**DISCUSSION:**

**Background**

On January 4, 2007, the Board of Harbor Commissioners (Board) authorized Agreement No. 2519 (Agreement No. 2519), a three-party Professional Legal Services Agreement between and among the City of Los Angeles and the City of Long Beach (collectively referred to as Cities) and Kaye Scholer LLP, for a term of three years, from January 4, 2007 through January 3, 2010, at a not-to-exceed amount of \$500,000. The scope of work was for joint Cities' work to support the Clean Air Action Plan (CAAP) including the Clean Trucks Program, Ocean Vessels measures, Rail measures, defense of legal challenges to the CAAP, and the Federal Maritime Commission legal work required in order to implement the CAAP.

Agreement No. 2519 also included an approved subcontractor law firm, Troutman Sanders. Kaye Scholer and its subcontractor, Troutman Sanders, were selected following a competitive process through an RFP issued in 2006. Kaye Scholer was selected because of its legal expertise in federal constitutional and preemption issues, litigation abilities, and work with the Environmental Protection Agency, Port Authorities of New York and New Jersey, California Air Resources Board, and other agencies regulating air quality. Under Agreement 2519, the Cities shared the costs of both the Kaye Scholer and Troutman Sanders outside counsel firms for shared legal services relating to the Clean Air Action Plan, with services for each port only paid solely by the applicable port. Agreement No. 2519 was amended six times to extend the term to six years, which expires on January 3, 2013, and increase compensation to an amount not to exceed \$7,753,679. Through March 2012, the total amount spent by both Cities collectively for a broad scope of shared services under Agreement No. 2519 (described below), is \$7,689,279 and the total remaining contract authority is \$64,400, which is expected to be expended through the remainder of FY 2011-2012.

Kaye Scholer and subcontractor Troutman Sanders represented both Cities under the three-party Agreement No. 2519 to provide legal advice on CAAP and CTP program development, FMC regulatory work and defense of several challenges to the CAAP, including representation in the *American Trucking Associations (ATA) vs. City of Los Angeles et al.* litigation case (ATA Case). Two previous legal challenges by the Federal Maritime Commission for which services were delivered under Agreement No. 2519 have been dismissed. Long Beach settled its case with the ATA in October 2009 and is no longer actively involved in the ATA Case, and terminated its participation in Agreement No. 2519 in October, 2010 as there was no further need for joint legal work for both Cities by the Kaye Scholer law firm. Previous attorneys at the Troutman Sanders subcontractor law firm have left that firm and no further joint Cities work is needed from Troutman Sanders.

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SUBJECT: SEVENTH AMENDMENT TO AGREEMENT NO. 2519 – KAYE SCHOLER

### Seventh Amendment

The Office of the City Attorney requests approval of a Seventh Amendment between the City and the Kaye Scholer law firm, to increase compensation by \$288,000 to an amount not to exceed \$8,041,679. The scope of work under the Seventh Amendment is to assist the Office of the City Attorney with future tasks in Fiscal Year 2012-13 for the pending case before the U.S. Supreme Court.

The City went to trial in the ATA Case in April, 2010. On August 26, 2010, the U.S. District Court issued a decision with final judgment entered on September 15, 2010, granting judgment for City and finding the City's concession agreement enforceable. The ATA appealed the final judgment to the U.S. Court of Appeals for the Ninth Circuit, which on September 26, 2011 issued a decision upholding the concession except for one provision, the employee requirement, which was held to be federally preempted. The ATA filed a petition for writ of certiorari with the U.S. Supreme Court and the City has filed its brief in opposition to the petition, but did not appeal the ruling on the employee requirement.

On March 26, 2011, the Supreme Court invited the Solicitor General to submit a brief in the case, which may warrant a responsive brief by the City. After the Solicitor General briefing, the Supreme Court will make a decision whether to grant certiorari in the case. If the Supreme Court agrees to hear the case, additional briefing and argument on the merits case will be required. The previous contract authority covered tasks and budget during the FY 2011-2012, only through the filing of opposition to the ATA's petition, and did not include within its scope of work, tasks of the Solicitor General briefing or the handling of the merits case before the Supreme Court. In the event that the Supreme Court grants certiorari to hear the case on the merits, the schedule may go beyond the current Agreement expiration date of January 3, 2013. Therefore, our Office requests to extend the term by one year to January 3, 2014 and to increase compensation by \$288,000 to cover all potential activities concerning the Supreme Court, which would occur during the next fiscal year 2012-2013. The Office of the City Attorney recommends that the City retain the same outside legal counsel that assisted our Office in obtaining a favorable outcome at trial and the appeal to represent the City in these additional proceedings.

Because of the length of contract term being six years with a request to extend to a seventh year, Agreement No. 2519 has been approved by City Council pursuant to Los Angeles City Charter Section 373 and Los Angeles Administrative Code Section 10.5, and will require the City Council's approval of the Seventh Amendment.

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SUBJECT: SEVENTH AMENDMENT TO AGREEMENT NO. 2519 – KAYE SCHOLER

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of an amendment to Agreement No. 2519 with Kaye Scholer law firm to increase compensation and add one additional year to the term. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from 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 amendment to agreement with Kaye Scholer adds one additional year to the term and increases compensation by \$288,000 to an amount not to exceed \$8,041,679. There is currently \$64,400 remaining contract authority under Agreement No. 2519, which is expected to be expended in the remainder of FY 2011-12 budget. Funding for Agreement No. 2519 has been budgeted in the amount of \$300,000 in the FY 2011-2012 Operating Budget, within the Harbor Department City Attorney's Office Account No. 54410, Center No. 0120, Program No. 000, with the balance of \$64,400 remaining in the account.

It is anticipated that the new funds requested under the Seventh Amendment in the amount of \$288,000 will be expended within Fiscal Year 2012-2013. A Fiscal Year 2012-2013 budget request in the amount of \$200,000 for Agreement No. 2519 and \$88,000 for litigation contingency has been submitted to Accounting and is pending approval through the Harbor Department's FY 2012-2013 annual budget adoption process in Account No. 54410, Center No. 0120, Program No. 000. In the event the budget for the Seventh Amendment is not approved, a provision for Termination Due to Non-Appropriation of Funds (funding out clause) is in the existing Agreement.

**ECONOMIC BENEFITS:**

This Board action will have no employment impact in the five-county region.

**CITY ATTORNEY:**

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

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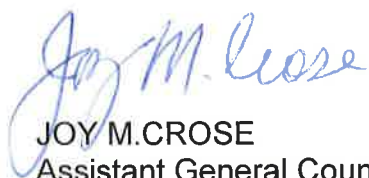
SUBJECT: SEVENTH AMENDMENT TO AGREEMENT NO. 2519 – KAYE SCHOLER

**TRANSMITTAL:**

1. Seventh Amendment to Agreement for Professional Legal Services with Kaye Scholer LLP

FIS Approval:   *ref*   (Initials)

CA Approval:   *↑*   (Initials)

  
JOY M. CROSE  
Assistant General Counsel

APPROVED:

By   *TRM*    
THOMAS A. RUSSELL  
General Counsel, Harbor Department

CONCURRED:

By   *Geraldine Knatz*    
GERALDINE KNATZ, Ph.D.  
Executive Director

Author: Joy Crose  
Board meeting: 5/3/2012