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DATE: OCTOBER 23, 2024

FROM: OFFICE OF THE CITY ATTORNEY

SUBJECT: RESOLUTION NO. _____ WAIVING THE POTENTIAL CONFLICT FOR THOMPSON COBURN LLP'S REPRESENTATION OF WESTERN METALS CORPORATION AND ABB, INC.

SUMMARY:

The Office of the City Attorney (Office) requests approval of a waiver (Waiver) of a potential conflict-of-interest with the law firm Thompson Coburn LLP (Thompson) which will allow Thompson to represent Western Metals Corporation and ABB, Inc. in Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) litigation matters concerning the BKK Landfill case in which the City of Los Angeles (City) is also a party, while continuing the firm's assistance to the Office with legal services for the City of Los Angeles Harbor Department's (Harbor Department) Clean Air Action Plan (CAAP) and Federal Clean Air Act (FCAA) regulatory and litigation matters. Approval of the proposed waiver is not anticipated to have a financial impact on the Harbor Department.

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

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Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;

2. Formally waive any potential conflicts that might arise from Thompson Coburn LLP's representation of Western Metals Corporation and ABB, Inc. in CERCLA litigation concerning the BKK Landfill in which the City of Los Angeles is a party, while continuing its representation of the Harbor Department in CAAP and FCAA regulatory and litigation matters;
3. Authorize the Office of the City Attorney to execute a written conflict waiver; and
4. Adopt this Resolution No. _____.

DISCUSSION:

Thompson's Harbor Department Matters - Thompson represents the Harbor Department concerning CAAP and FCAA regulation and litigation matters. Currently, CAAP work is unrelated to the defense of Western Metals Corporation and ABB, Inc. in BKK landfill CERCLA case, and Thompson does not anticipate there being any direct conflict resulting from Thompson's simultaneous representation of the Harbor Department in CAAP work and Western Metals Corporation and ABB, Inc. in BKK Landfill CERCLA litigation.

City's BKK Landfill Litigation Background – BKK landfill located in West Covina, California, was operated between the early 1960s and 1987 and received numerous hazardous wastes which have now contaminated the surrounding properties and groundwater. In the early 2000s the State of California initiated a cleanup action against several of the largest generators of waste to the landfill, including the City. The State alleged that the City, through its Department of Water and Power and other City departments, arranged for the disposal of hazardous substances at the BKK landfill.

The waste generators then formed a joint-defense group named the BKK Working Group (BKK Group), which consists of 40+ members, including the City and other Thompson clients. The BKK group entered into a number of consent decrees with the State to perform certain cleanup activities at the BKK site and have incurred approximately \$250 million in costs doing so. In 2018, the BKK Group filed two lawsuits in the Central District of California to recover cost contributions under CERCLA from other generators of waste to the landfill. Those cases were stayed while the State sought settlements from the thousands of other generators to the site. Thompson's client, ABB, Inc., received three of these settlement demands from the State in 2022 (for former ABB, Inc. entities) and since that time Thompson has represented ABB, Inc. in negotiations with the State of

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California. Last summer, the Central District of California ruled that it would not stay the federal cases beyond July of 2024. In anticipation of the stay expiring, the BKK Group prepared a 6th Amended Complaint to add more parties to the two cases, including Western Metals.

Thompson's Conflict Waiver Request - Thompson has requested approval of a waiver of the potential conflict of interest with respect to Thompson's representation of Western Metals Corporation and ABB, Inc. in CERCLA litigation concerning the BKK Landfill in which the City of Los Angeles is also a party, while continuing the firm's assistance to our Office with legal services for the Harbor Department's CAAP and FCAA regulatory and litigation matters.

CERCLA litigation was brought by the BKK Working Group pending in the Central District of California to recover cost contributions under CERCLA from other generators of waste to the landfill. The City of Los Angeles is one of 40+ plaintiffs represented by the BKK Group; Western Metals and ABB, Inc. are two of several hundred defendants in the matter. Thompson requests that the Board waive any potential conflict under the following conditions:

1. No confidential City information will be shared with Western Metals Corporation and ABB, Inc. or vice versa;
2. In the unlikely event that individualized claims or discovery (either written discovery or depositions) are pursued in the BKK Landfill case between Western Metals Corporation and/or ABB, Inc. and City, any such claims or discovery will not be handled by Thompson; and
3. Neither Western Metals Corporation and/or ABB, Inc. nor the City will seek to disqualify Thompson from its representation of the City in any unrelated matter or of Western Metals Corporation and/or ABB, Inc. in the BKK Landfill case.

The Office has reviewed the requested waiver and recommends its approval by the Board. The proposed matter in which Thompson would represent Western Metals Corporation and ABB, Inc. in BKK Landfill CERCLA litigation and the Harbor Department's CAAP work are unrelated and will be handled by different attorneys in different practice groups within the firm. In addition, the City's confidential information will not be transmitted to Western Metals Corporation and ABB, Inc. or the firm's lawyers who are involved in the representation of Western Metals Corporation and ABB, Inc.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a proposed waiver of any potential conflict that might arise from Thompson and its representation of Western Metals Corporation and

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ABB, Inc. in CERCLA litigation concerning the BKK Landfill in which the City is also a party, while continuing the firm's assistance to the Office with legal services for the Harbor Department's CAAP and FCAA regulatory and litigation 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 a conflict waiver that might arise from Thompson and its representation of Western Metals Corporation and ABB, Inc. in CERCLA litigation concerning the BKK Landfill in which the City is also a party, while continuing the firm's assistance to the Office with legal services for the Harbor Department's CAAP and FCAA regulatory and litigation matters. Approval of the proposed resolution will not have a financial impact on the Harbor Department.

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CITY ATTORNEY:

The Office has reviewed Thompson's request for waiver of potential conflict of interest and finds the Board can make the decision for the firm's proposed representation of Western Metals Corporation and ABB, Inc. in CERCLA litigation concerning the BKK Landfill in which the City is also a party, while continuing the firm's assistance to the Office with legal services for the Harbor Department's CAAP and FCAA regulatory and litigation matters.

TRANSMITTAL:

1 Conflict Waiver Request

FIS Approval: JS
CA Approval: JC


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Assistant General Counsel

APPROVED:

By SM Crose for
STEVEN OTERA
General Counsel, Harbor Department

APPROVED:

By Erica M. Calhoun for
EUGENE D. SEROKA
Executive Director