

0150-10640-0000

**TRANSMITTAL**

TO  
Eugene D. Seroka, Executive Director  
Harbor Department

DATE  
APR 04 2016

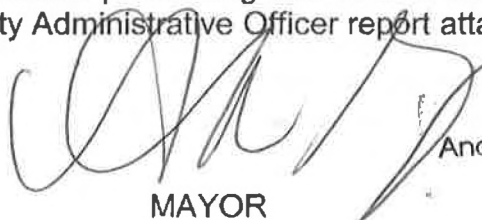
COUNCIL FILE NO.

FROM  
The Mayor

COUNCIL DISTRICT  
15

**PROPOSED FIRST AMENDMENT TO AGREEMENT NO.3109 BETWEEN  
HARBOR DEPARTMENT AND BROWN & WINTERS**

Transmitted for further processing and Council consideration.  
See the City Administrative Officer report attached.

  
Ana Guerrero  
MAYOR

MAS:ABN:10160075t

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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Date: March 31, 2016

CAO File No. 0150-10640-0000  
Council File No. .  
Council District: 15

To: The Mayor

From: Miguel A. Santana, City Administrative Officer 

Reference: Correspondence from the Harbor Department dated February 19, 2016; referred by the Mayor for report February 23, 2016

Subject: **PROPOSED FIRST AMENDMENT TO AGREEMENT NO.3109 BETWEEN HARBOR DEPARTMENT AND BROWN & WINTERS**

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### SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 16-7902 to authorize a proposed First Amendment (Amendment) to extend Agreement No. 3109 (Agreement) with the law firm of Brown & Winters. The proposed Amendment will allow Brown & Winters to continue assisting the Office of City Attorney (City Attorney) with efforts to recover environmental investigation and cleanup expenses from historic or past tenant insurance policies with the Port of Los Angeles (POLA). Brown & Winters will continue to assist the City Attorney and Port staff with legal services related to the preparation, filing, negotiation, and litigation of insurance claims and the recovery of costs and expenses through investigating, monitoring, mitigating and remediating contaminated properties. The proposed Amendment will extend the Agreement by three years, from March 2016 to February 2019, with no additional increase in compensation. Brown & Winters will continue to receive a contingency fee payment schedule of approximately 33 percent of any funds recovered from insurance policies. The Port will continue to remain financially responsible for payment and reimbursement of associated, supportive litigation costs and expenses up to \$35,000 per year and approximately \$105,000 for three years.

### BACKGROUND

In 2013, the Board approved a three-year Agreement for outside legal counsel with Brown & Winters through a Request for Proposal (RFP) process to assist the City Attorney and Port staff to discover policies and pursue old insurance claims as a means of recovering the cost of investigating, monitoring and remediating contaminated properties. According to the Port, the efforts required special expertise in the areas of insurance claims and coverage analysis of environmental claims between the POLA and current and past tenants. The Port received 16 proposals that included the following criteria: 1) quality and responsiveness; 2) expertise in areas of insurance coverage for expenses associated with contaminated properties; and 3) general experience representing and advising municipal entities. The Port selected Brown & Winters law firm based on its expertise in the field, experience with municipalities and harbor environments, and willingness to undertake the work on a contingent fee basis. Brown & Winters is located in Cardiff-by-the-Sea, California.

The City Attorney, in cooperation with Port staff, decided to pursue environmental cost recovery from past and ongoing insurance policies and companies. The City Attorney had disputes with insurance companies and tenants in pursuing coverage of the City's insurance claims. As a result, the City Attorney decided to retain Outside Counsel through a RFP to assist in providing professional legal services for the City concerning insurance claims for the costs of investigating, monitoring, mitigating and/or remediating contaminated properties. Outside Counsel will always work under the direction of the City Attorney. The City Attorney will be involved in the oversight of all claims and will have the final say as to decisions relating to the disposition of any claims, cases and potential settlements. The City Attorney will work with any litigation initiated by Outside Counsel. The Agreement does not cover: 1) the appeal of any favorable awards or judgments that the City determines are unsatisfactory and 2) the defense of any appeal of favorable awards or judgments.

### **PROPOSED FIRST AMENDMENT**

The Port states that Brown & Winters has been successful in its efforts to identify and review past insurance profiles and policies. In 2009, the Port stated that the Governmental Accounting Standards Board instructed municipalities to recognize the liabilities associated with properties that environmentally impaired as a result of legacy (or past) operations. According to the Port, Brown & Winters is familiar with historic insurance policies procured through the California Association of Port Authorities (CAPA), insurance underwriters, and environmental issues that are unique to harbor environments and contaminated sediments. The CAPA is comprised of the state's 11 publicly-owned, commercial ports and is dedicated to maintaining a vital port industry in California.

Brown & Winters, in cooperation with the City Attorney and the Port's Environmental Management Division staff, has performed the following activities: providing potential coverage of the environmental expenses associated with legacy contamination; identifying insurance policies and conducting coverage analysis; preparing and processing the submission of claims; and, identifying policies that cover pollution liability and may not require litigation to activate coverage. The Port states that primary insurance is typically provided by Port tenants, whose policies name the POLA and City of Los Angeles (City) as additional insured. The Port expects its tenants' insurance to provide indemnity for any cleanup liability that may be assessed against the POLA and City. Brown & Winters, as outside counsel, has been involved in claim negotiations and arbitration. The Port states that this firm has successfully obtained cost recovery from several of these policies and is seeking reimbursement of coverage for administrative orders issued at several additional sites in the POLA.

The Port states that Brown & Winters was the only firm in the RFP process willing to undertake the project on a contingent fee basis. The Port maintained that undertaking the work on a contingent fee basis was the most effective way to ensure their efforts would be cost effective. Under the three-year agreement, the Port and Brown & Winters agreed on a contingent fee of approximately one-third or 33 percent of all funds recovered, whether through negotiations and settlement of claims, litigation or arbitration. According to the City Attorneys representing the Port, the 33 percent is typical for contingent fee legal work. The Agreement does not cover the appeal of judgments or arbitration awards that the Port finds unsatisfactory or the defense of appeals. The Port and Brown & Winters have recovered settlements from insurance policies of more than \$4 million dollars and are involved in additional insurance recovery investigations, negotiations and litigation claims.

The Port is to reimburse Brown & Winters for associated costs and expenses up to \$35,000 per contract year and \$105,000 for the three-year contract term. The reimbursed expense includes transcripts, telephone, expert witness fees, travel and other costs. All reimbursed costs and expenses must be approved by the Port. According to the Port, Brown & Winters has successfully done similar work with the Port of San Diego.

The Port states that extending the Agreement with Brown & Winters would be in the best interest of the POLA because of ongoing litigation and administrative matters designated by the City Attorney and Port staff. The proposed Amendment will extend the contract terms only and compensation will remain at the contingency fees negotiated in the initial Agreement. Services performed under this Agreement may be terminated or suspended at any time by the City Attorney upon written notice. Due to the perceived and potential confidentiality of the ongoing insurance claims and litigations, this Office recommends that any questions on specific claims be directed to the City Attorney.

The above referenced Resolution 16-7902 authorizing the proposed First Amendment and this report incorporate revised information received from the Port subsequent to the initial request submittal.

### **CITY COMPLIANCE ISSUES**

The proposed Amendment has been reviewed and approved by the City Attorney as to form. The proposed Agreement is in compliance with all applicable provisions of City Ordinances and contracting requirements. In accordance with Charter Section 275, "Employment of Other Legal Counsel," the City Attorney determined that it required outside legal counsel to assist in an effort to recover the costs of investigating, monitoring, and remediating contaminated properties from past Port and tenant insurance policies in the POLA. The City Attorney has the authority and will be involved in the oversight and ultimate disposition of all claims and cases. The proposed Agreement is subject to the Living Wage, Services Workers Retention, Equal Benefits, Affirmative action and Minority, Women, Other Business Enterprises and Very Small Business Enterprises (VSBE) and compliances. Brown & Winters is classified as a VSBE.

The Port Director of Environmental Management has determined that the proposed Amendment is an administrative activity that will extend the Agreement by three-years and is therefore 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.

### **RECOMMENDATION**

That the Mayor approve Harbor Department (Port) Board of Harbor Commissioners Resolution No. 16-7902 to authorize a proposed First Amendment (Amendment) to extend Agreement No. 3109 with the law firm of Brown & Winters to continue assisting the Office of City Attorney (City Attorney) and the Port with efforts to recover environmental investigation and cleanup expenses from historic or past insurance policies within the Port of Los Angeles by three years, from March 2016 to February 2019, with no additional increase in compensation, and return the document to the Port for further processing, including Council consideration.



## **FISCAL IMPACT STATEMENT**

Approval of the Harbor Department (Port) proposed First Amendment to extend Agreement No. 3109 with the law firm of Brown & Winters for three years and a contingency fee payment agreement for approximately one-third or 33 percent of all funds recovered from insurance policies, whether through negotiations and settlement of claims, litigation or arbitration. The Port states that the Agreement does not cover the appeal of judgments or arbitration awards that the Port finds unsatisfactory or the defense of appeals. The Port is to reimburse Brown & Winters for associated costs and expenses up to \$35,000 per contract year and \$105,000 for the three-year contract term.

## **TIME LIMIT FOR COUNCIL ACTION**

Pursuant to Charter Section 373, "Long Term Contracts Approved by Council," and the Los Angeles Administrative Code Section 10.5, "Limitation and Power to Make Contracts," unless the Council takes actions disapproving a contract that is longer than three years within 60 days after submission to Council, the contract will be deemed approved.

*MAS:ABN:10160075*

CITY OF LOS ANGELES

INTER-DEPARTMENTAL CORRESPONDENCE

DATE: February 19, 2016

TO: The Honorable Eric Garcetti, Mayor  
City of Los Angeles

FROM: Amber M. Klesges, Commission Secretary  
Harbor Department / Mail Stop 260

SUBJECT: **CHARTER SECTION 373** – FIRST AMENDMENT TO AGREEMENT NO.  
3109 BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT  
AND BROWN & WINTERS

*AMK*

OFFICE OF THE MAYOR  
RECEIVED  
2016 FEB 23 AM 9:40  
CITY OF LOS ANGELES

In accordance with Executive Directive No. 4, attached for your review is a copy of the report recommending approval of Agreement No.16-3109-A between the City of Los Angeles Harbor Department and Brown & Winters, which was approved by the Board of Harbor Commissioners on February 4, 2016.

It is respectfully recommended for the City Administrative Office to review, report, and return to the Harbor Department for further processing to City Council for final consideration.

Please feel free to contact me for any inquiries regarding the transmitted documents at (310) 732-2642 or [aklesges@portla.org](mailto:aklesges@portla.org)

cc: Mandy Morales, Mayor's office (3 encs.)  
David Reich, Mayor's Office  
Erick Martell, Harbor Representative  
City Attorney

2016 FEB 23 PM 2:30  
CITY OF LOS ANGELES

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

**RECOMMENDATION APPROVED;  
RESOLUTION NO. 16-7902 ADOPTED; AND  
AGREEMENT NO. 16-3109-A APPROVED  
BY THE BOARD OF HARBOR COMMISSIONERS**

February 4, 2016

AMBER M. KLESGES  
Board Secretary

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. 16-7902 - 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;

DATE: JANUARY 19, 2016

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

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. 16-7902.

**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

DATE: JANUARY 19, 2016

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

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.

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



DATE: JANUARY 19, 2016

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

**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

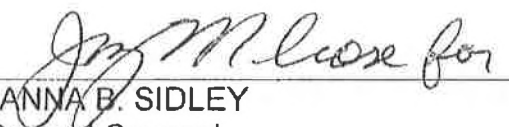
FIS Approval: MB (initials)

CA Approval: [Signature] (initials)



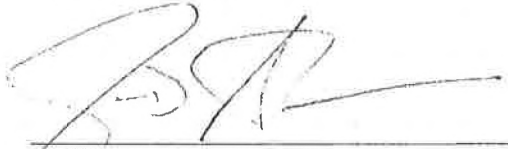
KENNETH F. MATTFELD  
Deputy City Attorney

APPROVED:



JANNA B. SIDLEY  
General Counsel

APPROVED:



EUGENE D. SEROKA  
Executive Director

FIRST AMENDMENT TO AGREEMENT NO. 3109  
BETWEEN THE CITY OF LOS ANGELES AND  
BROWN & WINTERS

This First Amendment to Agreement No. 3109 is made and entered into by the City of Los Angeles, a municipal corporation, acting by and through its Board of Harbor Commissioners ("the City"), and Brown & Winters ("Consultant").

WHEREAS, the City entered into Agreement No.3109 with Brown & Winters, for professional legal services related to the preparation, filing, negotiation, and litigation of insurance claims for the cost of investigating, monitoring, mitigating and remediating contaminated properties; and

WHEREAS, the term of the one-year Agreement commenced on March 1, 2013 and will be terminating on February 28, 2016; and

WHEREAS, 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 and the City desires to extend the term of the Agreement from three years to six years.

NOW, THEREFORE, the parties agree that:

Section IV. "TERM AND TERMINATION" is replaced by the following:

This Agreement shall begin on March 1, 2013 and shall continue until February 28, 2019 unless terminated earlier under the provisions of this Agreement. Due to the need for the Consultant's services to be provided expeditiously, Consultant may have provided services prior to the execution of this First Amendment. To the extent that Consultant's services were performed in accordance with the terms and conditions of the Agreement, those services are hereby ratified.

Except as provided herein, all other terms and conditions of Agreement No. 3109 shall remain the same.

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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Agreement No. 3109 on the date to the left of their signatures.

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

Date: \_\_\_\_\_

By \_\_\_\_\_  
EUGENE D. SEROKA  
Executive Director

Attest: \_\_\_\_\_  
Board Secretary

BROWN & WINTERS

Date: January 25, 2016

By Wentzelee Botha  
WENTZELEE BOTHA  
Partner

Attest: Scott E. Patterson  
NAME/TITLE SCOTT E. PATTERSON  
Partner

APPROVED AS TO FORM

February 11, 2016  
MICHAEL N. FEUER, City Attorney

By Kenneth F. Mattfeld  
KENNETH F. MATTFELD, Deputy

KFM/ksh  
1/13/16

Account#	54410	W.O. #	000
Ctr/Div#	120	Job Fac.#	000
Proj/Prog#	000		
Budget FY:		Amount:	
2015-16		\$35,000	
2016-17		\$35,000	
2017-18		\$21,000	
2018-19		\$14,000	
TOTAL		\$105,000	
For Acct/Budget Div. Use Only			
Verified by:	<u>[Signature]</u>		
Verified Funds Available:	<u>7000</u>		
Date Approved:	<u>2/5/16</u>		