

TRANSMITTAL

0150-10640-0001

TO Eugene D. Seroka, Executive Director Harbor Director	DATE 3/26/19	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 15	

**PROPOSED SECOND AMENDMENT TO AGREEMENT NO. 13-3109 BETWEEN
THE HARBOR DEPARTMENT AND BROWN & WINTERS**

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



(Ana Guerrero) for

MAYOR

RHL:ABN:101900951

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: March 22, 2019

CAO File No. 0150-10640-0001

Council File No.

Council District: 15

To: The Mayor

From: Richard H. Llewellyn, Jr., City Administrative Officer



Reference: Correspondence from the Harbor Department dated March 4, 2019; referred by the Mayor for report March 6, 2019

Subject: **PROPOSED SECOND AMENDMENT TO AGREEMENT NO. 13-3109 BETWEEN THE HARBOR DEPARTMENT AND BROWN & WINTERS**

RECOMMENDATION

That the Mayor:

1. Approve Harbor Department (Port) Resolution No. 19-8429 authorizing a proposed Second Amendment to extend Agreement No. 13-3109 with the Brown & Winters law firm to continue assisting the Office of City Attorney and the Port with efforts for environmental investigation and recovery of clean-up expenses from certain tenants' past insurance policies; and,
2. Return the document to the Port for further processing, including Council consideration.

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 19-8429 to authorize a proposed Second Amendment (Amendment) to extend Agreement No. 13-3109 (Agreement) with the Brown & Winters' law firm. The proposed Amendment will extend the term of the Agreement by 18 months, from March 2019 to August 2020, for a total contract term of 7.5 years. The Amendment will allow Brown & Winters to continue assisting the Office of the City Attorney (City Attorney) and the Port with efforts for environmental investigation and recovery of clean-up expenses from historic or past tenant insurance policies with the Port of Los Angeles (POLA). The Port states that the proposed Amendment will not alter the current compensation amount or contingency fee pay schedule and Brown & Winters' fees will continue to be paid from recoveries made during the contract period. The Port will continue to remain financially responsible for payment and reimbursement of associated, supportive litigation costs and expenses up to the maximum contract amount of \$105,000.

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 Port states that Brown & Winters has been successful in its efforts to identify, review and obtain cost recovery from past insurance profiles and policies.

BACKGROUND

In 2013, the Board approved a three-year Agreement for outside legal counsel with Brown & Winters through a competitive bid 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. The Port states that it selected Brown & Winters based on its expertise in the field, experience with municipalities and harbor environments, and willingness to undertake the Agreement on a contingency fee. 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 publicly owned, commercial ports. Brown & Winters is located in Cardiff-by-the Sea, California.

In 2009, the Port stated that the Governmental Accounting Standards Board instructed municipalities to recognize the liabilities associated with properties that are environmentally impaired as a result of legacy (or past) operations. 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 entities. The Port expects its tenants' insurance to provide indemnity for any cleanup liability that may be assessed against the POLA and City.

PROPOSED SECOND AMENDMENT

The City Attorney, in cooperation with Port staff, continues to pursue environmental cost recovery from past and ongoing insurance policies and companies, because of the disputes with insurance companies and tenants in pursuing coverage of City insurance claims. The City Attorney retained Brown & Winters through a competitive bid process as Outside Counsel to assist in providing professional legal services for the City concerning insurance claims for the costs of investigating, monitoring, mitigating and remediating contaminated properties. Brown & Winters works under the direction of the City Attorney and Port. The City Attorney will be involved in the oversight of all claims and will have the final say on decisions relating to the disposition of claims, cases and potential settlements. The City Attorney will work with any litigation initiated by Outside Counsel. The Agreement with Brown & Winters does not cover the appeal of any favorable awards or judgments that the City determines are unsatisfactory and the defense of any appeal of favorable awards or judgments.

The First Amendment extended the Agreement 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. In the previous Board report, the City Attorney states that the 33 percent is typical for contingency fee legal work. The Port maintained that undertaking the work on a contingency fee basis was the most effective way to ensure their efforts would be cost effective. The City Attorney and Brown & Winters have recovered settlements from insurance policies of more than \$8 million dollars and are currently involved in additional insurance recovery investigations, negotiations and litigation claims.

The Port states that extending the Agreement 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 proposed Amendment has been reviewed and approved by the City Attorney as to form and legality. The proposed Agreement is in compliance with all applicable provisions of the 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 investigation, monitoring and remediating past Port and tenant insurance policies in the POLA. The City Attorney has the authority in the oversight and ultimate disposition of all claims and assets. The Port has determined that the proposed Amendment is an administrative activity and therefore exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f), of the City of Los Angeles CEQA Guidelines.

FISCAL IMPACT STATEMENT

Approval of the Harbor Department (Port) proposed Second Amendment with Brown & Winters will extend the Agreement for 18 months, from March 2019 to August 2020, for a total contract term of 7.5 years. The proposed Amendment will include no additional increase in the compensation amount or contingency fee payment provisions. The compensation will remain a total amount of \$105,000 and the contingency fee payment approximately 33 percent of any funds recovered from insurance policies.

RHL:ABN:10190095