



Los Angeles
Department of
Water & Power

RESOLUTION NO. _____

BOARD LETTER APPROVAL

JOSEPH A. BRAJEVICH
General Counsel Water and Power

DAVID WRIGHT
General Manager

DATE: June 1, 2017

SUBJECT: Fifth Amendment to Agreement No. 47259-5 Between the City of Los Angeles, Acting By and Through the Department of Water and Power and Liner LLP

SUMMARY

The Office of the City Attorney (City Attorney) is transmitting for your approval a proposed Fifth Amendment (Amendment) to Agreement No. 47259-5 (Agreement) between the City of Los Angeles (City) acting by and through the Los Angeles Department of Water and Power (Department) and Liner LLP (Outside Counsel), to provide the Department legal advice and representation on multiple class action claims and lawsuits.

The current Agreement is set to expire this month and has \$1,420,789 remaining of the \$4,800,000 approved budget as of April 1, 2017. The recommended Fifth Amendment also seeks to extend the term of the Agreement for two years, to June 14, 2019, and for an additional \$1,622,200 in budget, for a total budget of \$ 6,422,200.

Prior Amendments: The original appropriation of the Agreement was in the total amount of \$500,000 and was related to one (1) class action lawsuit against the Department of Water and Power involving billing overcharges related to the Department's Solar Incentive Program. Five (5) additional billing class action lawsuits were then filed against the Department and an additional \$4,300,000 was appropriated to defend the lawsuits and pay expenses related to electronic discovery obligations. In addition, there have been a significant increase in the number of billing matter inquiries and class action related claims for damage.

Outside Counsel is necessary to assist the City Attorney's Office and the proposed Amendment increase of \$1,622,200 is based on projected need to defend the cases through final approval and through the subsequent implementation of the settlement, including associated expert fees and costs. A detailed projected budget is provided under separate cover pursuant to the attorney-client privilege and attorney work product doctrine.

Outside Counsel shall submit task-based budgets to the City Attorney's Office. Outside Counsel's work shall not exceed that amount without prior written approval of the City Attorney's Office and approval by the Board. The Amendment will not change the scope of legal services provided by Outside Counsel. The Amendment will, however, change the term of the Agreement, extending it by two years to June 14, 2019. It will also change the *Keyman Provision* of the Agreement from Liner, LLP partner Angela Agrusa to Liner, LLP partner Maribeth Annaguey.

City Council approval is required for the subject Fifth Amendment.

BACKGROUND

Initially, the Department was defending one (1) class action lawsuit entitled *Yaar Kimhi v. City of Los Angeles, Los Angeles Superior Court Case No. BC536272*, related to the Department's Solar Incentive Program (SIP). Since the receipt of the *Kimhi* case, the Department has been served with five (5) additional class action cases all related to the Department's billing practices. In addition to the *Kimhi* solar class action case, the other class actions are: *Sharon Bransford, Steven Shrager, and Rachel Tash vs. City of Los Angeles*, BC565618; *Daniel Morski, et. al. vs. LADWP*, BC568722; *Hayley Fontaine, et. al., vs. LADWP*, BC 571664; *Antwon Jones vs. City of Los Angeles*, BC577267; and *Debra Macias vs. LADWP*, BC594049. There is currently a pending settlement with the Court of four (4) of the billing class action cases and the Final Approval hearing is set for July 7, 2017. Class discovery is well underway in the other two (2) unsettled class action lawsuits, and the parties are working on a briefing schedule for class certification and dispositive motions which will be presented to the Court.

As to the four (4) class action lawsuits which are subject to the pending settlement, there are several law firms challenging the settlement and there are expected to be multiple objectors. Outside Counsel is ensuring that the process for claims intake and determinations is completed within the claims period set by the Court. During this period of time, there will be strict oversight of the settlement by the independent Court Monitor who will provide the Court with quarterly reports. In addition, once the Court orders final approval of the settlement, Outside Counsel will assist the Department in the implementation and compliance with thirteen performance metrics which will require additional reporting to the Court, and will be overseen by an independent Court Monitor over eighteen months.

It is necessary to continue to retain Outside Counsel with specific expertise in class action litigation on behalf of the Department. The law firm of Liner LLP was selected by the City Attorney through a competitive selection process based upon its extensive experience and expertise in class action litigation. Outside Counsel's services in the class action billing case have been exemplary.

Los Angeles City Charter §1022 applies to this situation because the law firm of Liner LLP will bring unique skills, abilities, resources and knowledge to their representation of the City and LADWP on legal issues necessary to defend the Department . It is, therefore, more economical and feasible for this firm to provide such representation.

RECOMMENDATION

It is recommended that the Board of Water and Power Commissioners adopt the attached Resolution authorizing execution of the Amendment. City Council approval will be required for the subject Fifth Amendment.

ENVIRONMENTAL DETERMINATION

In accordance with the California Environmental Quality Act (CEQA), it has been determined that this Agreement is exempt pursuant to the General Exemption described in CEQA Guidelines Section 15061 (b)(3). General Exemptions apply in situations where it can be seen with reasonable certainty that there is no possibility that the activity in question may have a significant effect on the environment.

CITY ATTORNEY

The Office of the City Attorney reviewed and approved the Agreement and Resolution as to form and legality.

ATTACHMENTS

- Resolution
- Agreement