

TRANSMITTAL

0150-10640-0002

TO
Eugene D. Seroka, Executive Director
Harbor Department

DATE
04/08/21

COUNCIL FILE NO.
16-0399

FROM
The Mayor

COUNCIL DISTRICT
15

**PROPOSED THIRD AMENDMENT TO AGREEMENT NO. 13-3109 WITH BROWN & WINTERS
FOR INSURANCE POLICY RECOVERY AND LEGAL SUPPORT SERVICES**

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



MAYOR

(Ana Guerrero for)

RHL:JCY:10210091t

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: March 15, 2021

CAO File No. 0150-10640-0002

Council File No. 16-0399

Council District: 15

To: The Mayor

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

Reference: Correspondence from the Harbor Department dated August 20, 2020; referred by the Mayor for report September 22, 2020

Subject: **PROPOSED THIRD AMENDMENT TO AGREEMENT NO. 13-3109 WITH BROWN & WINTERS FOR INSURANCE POLICY RECOVERY AND LEGAL SUPPORT SERVICES**

RECOMMENDATIONS

Approve Harbor Department (Port) Resolution No. 20-9687 authorizing a proposed Third Amendment to Agreement No. 13-3109 with Brown & Winters to continue insurance policy recovery and legal support services for an additional 18 months at an increased cost not to exceed \$95,000; and, return the Resolution document to the Port for further processing, including Council consideration.

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) and the City Attorney request approval of Resolution No. 20-9687 authorizing a proposed Third Amendment (Amendment) to Agreement No. 13-3109 (Agreement) with Brown & Winters to continue insurance policy recovery and legal support services. The proposed Amendment extends the Agreement with Brown & Winters for an additional 18 months, through February 28, 2022, at an increased cost of \$95,000 and total nine-year Agreement cost not to exceed \$200,000. The Amendment additionally restates that payment of recovered funds to Brown & Winters under contingent fees owed is only obligated within the duration of the Agreement. All other terms and conditions of the Agreement shall remain the same. The Port is financially responsible for payment of expenses under the proposed Amendment.

The Port states that it spends several million dollars annually to remediate environmentally impaired Port of Los Angeles (POLA) properties, mostly due to contamination by legacy operations from 20 or more years ago. Some of the cost of this work is potentially recoverable under historical City or tenant insurance policies. Brown & Winters currently serves as outside legal counsel to the City Attorney in accordance with Charter Section 275, providing insurance recovery legal services

support to the City Attorney on behalf of the City and the Port, including the preparation, filing, negotiation, and litigation of insurance claims to recover any eligible costs of investigating, monitoring, mitigating and remediating contaminated POLA properties. The proposed Amendment extends the Agreement with Brown & Winters in consideration of the ongoing nature of legal support services required. If approved, the Amendment would extend the Agreement to nine years. The proposed additional funding of \$95,000 represents only the additional estimated cost for ancillary litigation costs related to existing cases. The City Attorney and the Port continue to target issuing new requests for proposals (RFPs) to retain outside counsel every three years. Further, the Amendment restates the limitation first added in the Second Amendment to the Agreement that contingency fees payable to Brown & Winters from any recovered funds are only owed from recoveries received while the Agreement is in effect. Under the current Agreement, Brown & Winters retains 33 percent of any funds recovered from insurance policies on a contingent fee basis.

Brown & Winters is a California environmental law firm founded in 2008, with headquarters in Cardiff-by-the-Sea. The Port reports that it selected Brown & Winters for the current Agreement in 2013 following a competitive RFP for outside counsel with demonstrated legal expertise in the field of historical insurance research, genealogy, and recovery. The original Agreement with Brown & Winters was for a term of three years at a cost not to exceed \$105,000. The First Amendment to the Agreement, approved by the Council in May 2016, extended the term of the Agreement by three years to February 28, 2019, due to the need for ongoing litigation support and administrative case matters (C.F. 16-0399). The Second Amendment to the Agreement, approved by the Council in April 2019, extended the term of the Agreement by 18 months to August 31, 2020.

The Port reports that funding of \$30,000 is budgeted and available for ancillary litigation services under the Agreement in 2020-21. The Port will request any required future funding as part of the annual budget process. The City Attorney has reviewed the proposed Amendment and Agreement as to form and legality. The proposed Amendment and Agreement comply with all applicable provisions of City Ordinances and contracting requirements. In accordance with Charter Section 373, the Amendment and Agreement require Council approval because the total term of the Agreement exceeds three years. The Port reports that the proposed action is an administrative activity and has therefore determined that it is administratively exempt from the requirements of CEQA under Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

FISCAL IMPACT STATEMENT

The proposed Third Amendment to Harbor Department (Port) Agreement No. 13-3109 authorizes continued insurance policy recovery and legal support services from Brown & Winters for 18 months, through February 28, 2022 at an increased cost of \$95,000 and a total nine-year Agreement cost not to exceed \$200,000, with an average annual cost of \$22,222. Funding of \$30,000 is included in the Port 2020-21 Budget from the Harbor Revenue Fund. Future funding is subject to the Port annual budget process. There is no impact on the City General Fund.