

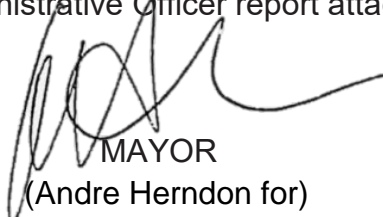
0150-12006-0000

TRANSMITTAL

TO Justin Erbacci, Chief Executive Officer Department of Airports	DATE 03/01/2022	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 6, 11	

**Proposed Second Amendment with Hunt Ortmann Palffy Nieves Darling & Mah, Inc., for
Legal Services and Construction Litigation Support**

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


MAYOR
(Andre Herndon for)

MWS:DG:10220061t

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: February 17, 2022

CAO File No. 0150-12006-0000

Council File No.

Council District: 6, 11

To: The Mayor

From: Matthew W. Szabo,  City Administrative Officer

Reference: Communication from the Los Angeles World Airports dated November 19, 2021; referred by the Mayor for a report on November 19, 2021

Subject: **REQUEST TO EXECUTE THE PROPOSED SECOND AMENDMENT TO HUNT ORTMANN PALFFY NIEVES DARLING & MAH, INC. FOR LEGAL SERVICES WITH PUBLIC CONTRACTING, CONSTRUCTION LITIGATION SUPPORT, AND ASSOCIATED LEGAL SERVICES AT THE LOS ANGELES INTERNATIONAL AIRPORT AND VAN NUYS AIRPORT**

RECOMMENDATION

That the Mayor:

1. Approve a proposed Second Amendment with Hunt Ortmann Palffy Nieves Darling & Mah, Inc. to extend the term by two years, and increase the contract authority by \$1,165,000, for legal services related to the Midfield Satellite Concourse Project North, and associated legal services involving public contracting, subject to City Attorney approval as to form and compliance with the City's Standard Provisions, including: Charter Section 609(e); Living Wage Ordinance, Affirmative Action Program, Business Tax Registration Certification, Child Support Obligations Ordinance, Contractor Responsibility Program, First Source Hiring Program, and Bidder Contributions City Ethics Commission Form 55;
2. Authorize the Chief Executive Officer to execute the proposed Second Amendment to Contract No. DA-5336, upon approval by the Los Angeles City Council, and prior to the execution of the Second Amendment, Hunt Ortmann Palffy Nieves Darling & Mah, Inc. must:
 - a. Have approved insurance documents, in the terms and amounts required, on file with the Los Angeles World Airports; and
 - b. Be determined by Public Works, Office of Contract Compliance to be in full compliance with the provisions of the Equal Benefits Ordinance; and
3. Return the request to the Los Angeles World Airports for further processing, including Council consideration.

SUMMARY

The Executive Director of the Los Angeles World Airports (LAWA; Department) requests approval to execute the proposed Second Amendment (Amendment) to Contract No. DA-5336 (Contract) with Hunt Ortmann Palffy Nieves Darling & Mah, Inc. (Hunt Ortmann; Law Firm) to: 1) extend the term by two years; 2) increase the contract authority by \$1,165,000, for a total not-to-exceed \$2,015,000; 3) resolve construction litigation issues, and 4) advise on public contracting. The contract expired on December 19, 2021. Approval of the proposed Amendment will allow LAWA to retain the Law Firm's services through December 19, 2023.

Pursuant to City Charter Sections 272(c) and 275, proprietary City departments, through their Boards, and with written consent of the City Attorney, may contract with attorneys outside of the City Attorney's Office to assist the City Attorney in providing legal services to the proprietary department. LAWA has, with authorization from the City Attorney, elected to contract with Hunt Ortmann for specialized litigation services related to public contracting and matters that compromise the MSC North Project, such as various legal claims made by the prime contractor, Turner-PCL, Joint Venture (Turner-PCL).

As reported by LAWA staff, the Contract became effective on December 20, 2018. Initially, there was no immediate need for Hunt Ortmann's services, however, an apparent need developed with the Cargo Request for Proposal and the Northside Development Project. The legal matters that materialized exceeded LAWA's projections and were more costly than anticipated. These developments lead to the First Amendment to add more funds to the contract. Thereafter, the Law Firms began providing their legal expertise on more complex assignments, such as projects that are encompassed in the Landside Access Modernization Program.

According to the Department, large construction projects, specifically, the Midfield Satellite Concourse (MSC) North Project, can result in lawsuits involving multi-layer chains of subcontractors and suppliers. As such, it is important to have a legal team in place to enable LAWA and its legal advisors to quickly analyze and address any claim, or litigation issue to avoid construction delays. The City Attorney's Office does not have a sufficient number of in-house staff that has the required subject matter knowledge, necessary experience, or bandwidth to sufficiently represent the Department. Hunt Ortmann has the legal expertise and adequate staffing levels to accommodate LAWA's legal affairs.

Hunt Ortmann has exhausted several hours working with LAWA attorneys and project staff to help evaluate the validity of the allegations and provide recommendations on various claims produced by contractors. Currently, the Law Firm is defending LAWA against claims and litigation brought by Turner-PCL which involves disputed change orders, labor inefficiency, and delay claims. Turner-PCL seeks damages over \$198 million. Given the nature of the dispute, and many factors that affect litigation, it would be largely inefficient for the City to hire a new law firm and familiarize them with the vast number of legal claims associated with the MSC North Project. Hiring a new contractor at this time will be counterproductive to LAWA because of the considerable amount of time that would be required to familiarize a new law firm with LAWA's legal matters. As a result of the Law Firm's experience and familiarity with the Department's ongoing litigation claims, it is imperative to

preserve the services of Hunt Ortmann to defend LAWA’s legal position, primarily with the MSC North Project.

During the extended term of the Contract, the legal services provided by Hunt Ortmann are necessary to assist the City Attorney and LAWA staff with project-specific counsel. A multitude of complex factors affects the Department’s legal matters, specifically claims and litigation brought by Turner-PCL. The legal services that will be provided include, but is not limited to the following activities:

- Factual investigation and witness interviews;
- Preparation of issue and witness files;
- Analysis of delay and extra work claims;
- Document organization and analysis of Project records from LAWA, the Contractor, and third party sources;
- Coordination of expert witness activities;
- Preparation for depositions and other written discovery;
- Law and motion practice; and
- Representing LAWA in arbitration, mediation, and general litigation activities.

Funding allocated for the award of the Contract and the First Amendment totaled \$850,000. Of that amount, approximately \$11 remains. The table below demonstrates the expenditures LAWA distributed to Hunt Ortmann for legal service support over the previous three years.

Yearly Expenditures	
2019	\$497,512
2020	\$131,334
2021	\$221,143
Total	\$849,989

The amended dollar amount of \$1,165,000 will only cover LAWA’s legal expenses through the end of the first year. If the claims for the MSC North Project have not been resolved by the end of December 2022, LAWA staff will seek funding from the Board of Airport Commissioners to carry the contract through its expiration date.

The BOAC approved the Proposed Second Amendment at its meeting on November 18, 2021. Actions taken on this item by the BOAC will become final pursuant to the provisions of the Los Angeles City Charter Section 373, “Long Term Contracts Approved by Council,” which requires Council approval because the cumulative term of the contract will exceed three years.

FISCAL IMPACT STATEMENT

Approval of the proposed Second Amendment with Hunt Ortmann Palffy Nieves Darling & Mah, Inc., for legal services, to assist the Los Angeles World Airports, and the City Attorney with public contracting, construction litigation issues, and other related legal matters will have no impact on

the General Fund. Funds for the proposed Contract are available in the Fiscal Year 2021-2022 LAWA Operating Budget in the Cost Center 1110004 – Legal Services Division, Commitment Item 520 – Contractual Services. Funds for subsequent years will be requested as part of the annual budget process. This project complies with the Department of Airports' adopted Financial Policies.

MWS:DG:10220061