

TRANSMITTAL		0150-11050-0002
TO Eugene D. Seroka, Executive Director Harbor Department		DATE 09/28/2023
FROM The Mayor		COUNCIL FILE NO. COUNCIL DISTRICT 15
<p>RESOLUTION NO. 23-10182 AND PROPOSED THIRD AMENDMENT TO LEGAL SERVICES AGREEMENT NO. 15-3308 WITH MEYERS NAVE RIBACK SILVER AND WILSON APC FOR CHINA SHIPPING LITIGATION</p> <p>Approved and transmitted for further processing including Council consideration. See the City Administrative Officer report attached.</p> <div style="text-align: center;">  MAYOR (Chris Thompson for) </div>		
Attachment MWS/PJH/JVW:SHF:10240032t		

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: August 28, 2023

CAO File No. 0150-11050-0002

Council File No.

Council District: 15

To: The Mayor

From: Matthew W. Szabo, City Administrative Officer

Reference: Correspondence from Los Angeles Board of Harbor Commissioners (Board) dated June 13, 2023 regarding May 25, 2023 Board Resolution; referred by the Mayor for report on June 20, 2023

Subject: **RESOLUTION NO. 23-10182 AND PROPOSED THIRD AMENDMENT TO LEGAL SERVICES AGREEMENT NO. 15-3308 WITH MEYERS NAVE RIBACK SILVER AND WILSON APC FOR CHINA SHIPPING LITIGATION**

RECOMMENDATIONS

That the Mayor:

1. Approve Los Angeles Harbor Department (Port) Resolution No. 23-10182 which authorizes the proposed Third Amendment to Agreement No. 15-3308 with Meyer Nave Riback Silver and Wilson APC, to increase the not-to-exceed contract authority by \$623,500, from \$4,084,242 to \$4,707,742, to continue to provide legal services with respect to the China Shipping litigation, with no change in the term of 11 years;
2. Adopt the May 25, 2023 Board of Harbor Commissioners findings that:
 - a. the proposed action is administratively exempt from the requirements of California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines; and
 - b. in accordance with the City Charter Section 1022, the services required can be performed more feasibly by an outside contractor than by City employees; and
3. Authorize the Port Executive Director, or designee, to execute the proposed amendment, already approved as to form by the City Attorney, and return the Resolution to the Port for further processing, including Council consideration.

SUMMARY

The Los Angeles Board of Harbor Commissioners (Board) requested approval of its May 25, 2023 Resolution No. 23-10182 which authorizes the proposed Third Amendment (Amendment) to Agreement No. 15-3308 with Meyers Nave Riback Silver and Wilson APC (Meyers Nave) to

increase the not-to-exceed contract authority by \$623,500 from \$4,084,242 to \$4,707,742. There is no change in the term of 11 years which expires on February 28, 2026. The additional funding will allow Meyers Nave to continue to represent the Port of Los Angeles in the defense of various claims of violations of the law and improper actions with respect to the China Shipping Terminal.

The proposed Amendment has been reviewed and approved as to form by the City Attorney. Pursuant to Charter Section 373 and Los Angeles Administrative Code Section 10.5, Council approval is required because the cumulative contract term exceeds three years. Our Office has reviewed the request and recommends approval.

BACKGROUND

In accordance with Charter Section 275, the Office of the City Attorney (City Attorney) has determined that it requires outside legal counsel to provide legal services for environmental matters affecting the Port and its operations. Because of the substantial nature and complexity of the POLA's terminal and infrastructure projects, the environmental impact reports (EIRs) under the California Environmental Quality Act (CEQA) and the environmental impact statements (EISs) under the National Environmental Policy Act (NEPA), and other environmental matters require specialized expertise and resources that exceed City staff resources.

Original Agreement – On February 5, 2015, the Board approved, as recommended by the City Attorney, the Agreement between the City of Los Angeles, acting by and through the Board, and Meyers Nave to assist the City Attorney in POLA's environmental matters. Meyers Nave was selected through a competitive selection process lead by the City Attorney. The Agreement was for a term of three years expiring on February 28, 2018 and a not-to-exceed contract amount of \$1,640,000.

First Amendment – The First Amendment was approved by the Board on October 6, 2017 and by Council on January 26, 2018 (C.F. 18-0018) to increase the term by three years for a total term of three years expiring on February 28, 2021, and increase the contract amount by \$1,400,000 for a total not-to-exceed amount of \$3,040,000, to support ongoing EIR, Supplemental EIR, pre-litigation, and compliance efforts.

Second Amendment – The Second Amendment was approved by the Board on November 5, 2020 and Council on May 11, 2021 (C.F. 18-0018) to increase the term by five years for a total term of 11 years expiring on February 28, 2026, and increase the contract amount by 1,044,242 for a total not-to-exceed amount of \$4,084,242, to continue environmental litigation and legal services.

Current Proposed Third Amendment – The proposed Amendment will increase the not-to-exceed contract authority by \$623,500, from \$4,084,242 to \$4,707,742, with no change in the term. The additional funding will allow Meyers Nave to continue to represent the Port in the defense of various claims of violations of the law and improper actions with respect to the China Shipping Terminal located at Berths 97-104 brought by the South Coast Air Quality Management District,

the State Attorney General, the California Air Resources Board, and Natural Resources Defense Council.

Actual and Projected Spending – The Port will continue to be financially responsible for expenses incurred under the Agreement. Meyers Nave has spent \$3,814,473 as of February 28, 2023, with a remaining balance of \$269,769 under the current contract authority. The actual spending through fiscal year (FY) 2021-22 and projected spending by fiscal year are as follows:

	Actual Spending	Projected Spending by Fiscal Year (FY)				
FY	FYs 2015 – 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Amount	\$3,646,770	\$269,769	\$492,317	\$201,116	\$97,770	\$4,707,742

CITY COMPLIANCE

On May 25, 2023 the Board approved the Port's finding that in accordance with the City Charter Section 1022, the services required can be performed more feasibly by an outside contractor than by City employees.

California Environmental Quality Act (CEQA) – On May 25, 2023, the Board determined that the proposed action is administratively exempt from requirements of CEQA pursuant to Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

The City Attorney has reviewed and approved the proposed Amendment as to form. Pursuant to Charter Section 373 and Los Angeles Administrative Code Section 10.5, Council approval is required because the cumulative contract term exceeds three years.

FISCAL IMPACT STATEMENT

Funding in the amount of \$623,500 for the proposed Third Amendment with Meyers Nave is expected to be utilized in three fiscal years. Fiscal Year (FY) 2023-24 funding in the amount of \$492,317 is provided from and budgeted within the Port's operating budget, Office of the City Attorney, Legal Fees and Services Account (No. 54410). Funding for future FYs will be contingent upon approval of funds by the Board as part of the annual budget adoption process. If any subsequent FY funds for work required by the Agreement are not appropriated by the Board, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligations previously incurred. The recommendations in this report and proposed actions comply with the Port's Financial Policies. There is no impact on the City's General Fund.

Attachment 1 – May 25, 2023 Harbor Board report, Resolution 23-10182

CITY OF LOS ANGELES

INTER-DEPARTMENTAL CORRESPONDENCE

DATE: June 13, 2023

TO: The Honorable Karen Bass, Mayor
City of Los Angeles

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

SUBJECT: **CHARTER SECTION 373** – RESOLUTION NO. 23-10182 - THIRD
AMENDMENT TO LEGAL SERVICES AGREEMENT NO. 15-3308 WITH
MEYERS NAVE FOR CHINA SHIPPING LITIGATION

In accordance with Executive Directive No. 4, attached for your review is Resolution No. 23-10183 authorizing the approval of Third Amendment Agreement 23-3308-C with Meyers Nave; which was approved at the Board of Harbor Commissioners Meeting on May 25, 2023.

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

cc: Heleen Ramirez, Mayor's Office
David Ou, Mayor's Office
Erick Martell, Mayor's Office
Jacqueline Wagner, CAO Office
Sondra Fu, CAO Office
Stephanie Magnien, Harbor Representative
City Attorney

AK/EV

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

HYDEE FELDSTEIN SOTO
CITY ATTORNEY

**RECOMMENDATION APPROVED;
RESOLUTION 23-10182 ADOPTED AND;
AGREEMENT 23-3308-C APPROVED
BY THE BOARD OF HARBOR COMMISSIONERS**

May 25, 2023
AM KLESGES
AMBER M. KLESGES
Board Secretary

STEVEN Y. OTERA
GENERAL COUNSEL
JOY M. CROSE
ASSISTANT GENERAL COUNSEL

ESTELLE M. BRAAF
CARL CHEA
BRIAN DALUIO
DEBORAH DORNY
JOHN T. DRISCOLL
JUSTIN HOUTERMAN
JANET KARKANEN
KENNETH F. MATTFELD
HEATHER M. MCCLOSKEY
MINAH PARK
HELEN J. SOK
NEILL T. TSENG

5/25/23
#1

DATE: MAY 16, 2023

FROM: OFFICE OF THE CITY ATTORNEY

SUBJECT: RESOLUTION NO. 23-10182 - THIRD AMENDMENT TO LEGAL SERVICES AGREEMENT NO. 15-3308 WITH MEYERS NAVE FOR CHINA SHIPPING LITIGATION

SUMMARY:

The Office of the City Attorney (Office) at the City of Los Angeles Harbor Department (Harbor Department) requests approval of a Third Amendment to Agreement No. 15-3308 (Third Amendment) between the Harbor Department and Meyers Nave Riback Silver and Wilson APC (Meyers Nave). The proposed Third Amendment increases the Agreement authority by \$623,500. The current eleven-year Agreement expires on February 28, 2026, and there is no term extension requested. The current Agreement authority is \$4,084,242 and the proposed Amendment would add \$623,500 and increase the authority to \$4,707,742.

The additional funding will allow Meyers Nave to continue to represent the Port of Los Angeles in the defense of various claims of violations of the law and improper actions with respect to the China Shipping Terminal located at Berths 97-104 brought by the South Coast Air Quality Management District, the State Attorney General, the California Air Resources Board and the Natural Resources Defense Council (NRDC). The Harbor Department will continue to be financially responsible for payment of expenses incurred under the proposed Amendment.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

DATE: MAY 16, 2023

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**SUBJECT: THIRD AMENDMENT TO LEGAL SERVICES AGREEMENT NO. 15-3308
WITH MEYERS NAVE**

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;
2. Find in accordance to Charter Section 1022 that the scope of work of the proposed Agreement can be more economically and feasibly provided by an independent contractor than by City employees;
3. Approve the Third Amendment to Agreement No. 15-3308 with Meyers Nave, to increase the agreement authority by \$623,500 from \$4,084,242 to \$4,707,742;
4. Authorize the Executive Director and Board Secretary to execute and attest to the Third Amendment; and
5. Adopt Resolution No. 23-10182.

6/12/23: Los Angeles City Charter Section 373 was inadvertently omitted from the above recommendation.
Note "Agreement No. 15-3308 C" does require City Council consideration.
See attached "Info Only- No Action Required Errata Memo" transmitted by the City Attorney's Office.

DISCUSSION:

Background – In accordance with Charter Section 275, the Office has determined that it requires outside legal counsel to perform litigation support services for environmental matters including laws, rules and regulations affecting the Harbor Department and their operations, which include but are not limited to CEQA and National Environmental Policy Act (NEPA). Following a competitive Request for Proposals process in 2015, Meyers Nave was retained under Agreement No. 15-3308 (Transmittal 1). The initial term was for three years and the original compensation authority was \$1,640,000 with an expiration date of February 28, 2018.

First Amendment – On October 6, 2017, the Office requested, and the Board approved, a First Amendment to Agreement No. 15-3308 with Meyers Nave (Transmittal 2). The First Amendment extended the term by three-years and increased compensation authority by \$1,400,000 from \$1,640,000 to \$3,040,000. The First Amendment funding supported ongoing work for the Environmental Impact Report (EIR), Supplemental Environmental Impact Report (SEIR), pre-litigation and compliance efforts.

Second Amendment – On November 5, 2020, the Office requested, and the Board approved, a Second Amendment (Transmittal 3) extending the term of the Agreement by five years, to February 28, 2026 and increasing the authority from \$3,040,000 to \$4,084,242. City Council approved the Second Amendment on May 4, 2021. The Second Amendment provided funds for multiple CEQA challenges to the final SEIR, an Amended Stipulated Judgment Claim by the NRDC and Appeals.

DATE: MAY 16, 2023

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**SUBJECT: THIRD AMENDMENT TO LEGAL SERVICES AGREEMENT NO. 15-3308
WITH MEYERS NAVE**

Proposed Third Amendment – The firm's involvement with the EIR, SEIR, pre-litigation, compliance efforts and anticipated challenges make it difficult and impractical to engage new counsel at this time. Increasing the authority of Agreement 15-3308 will allow Meyers Nave to continue to assist with the aforementioned litigation.

The current authority is \$4,084,242. Through February 28, 2023, the firm has spent \$3,814,473 and the Agreement has a remaining authority of \$269,769. To fully defend the Port of Los Angeles and the City of Los Angeles from claims of violations of the law and improper actions with respect to China Shipping, the Agreement authority needs to be increased by \$623,500. Continued retention of Meyers Nave is preferred. The level of knowledge the firm has developed regarding the legal and operational issues concerning the CEQA issues in play is significant and the firm's work has been excellent.

Continuing work under the proposed Third Amendment includes negotiations with petitioners, developing a potential settlement agreement, potential mediation, negotiations with the Port's tenant, concurrent activity involving the appeal and potential post-judgment matters before the San Diego County Superior Court.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a Third Amendment to Agreement No. 15-3308 between the Harbor Department and Meyers Nave, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The proposed action is approval of the proposed Third Amendment to Agreement No. 15-3308 to increase the compensation authority. The current Agreement authority is \$4,084,242 and the Third Amendment would add \$623,500 and increase the authority to \$4,707,742. To date, \$3,814,473 in spending has been incurred under the Agreement and a balance of \$269,769 will be spent by June 30, 2023.

Fiscal year (FY) 2022-23 funding in the amount of \$269,769 has been budgeted, and FY 2023-24 funding in the amount of \$492,317 has been requested to be budgeted within the Harbor Department's Operating Budget, Center 0120 (Office of the City Attorney), Program 000, Account 54410 (Legal Fees & Services). Funding for future years, if necessary, will be requested as part of the annual budget adoption process. A funding

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**SUBJECT: THIRD AMENDMENT TO LEGAL SERVICES AGREEMENT NO. 15-3308
WITH MEYERS NAVE**

out clause is included in the Agreement. Spending under Agreement No. 15-3308 has occurred and is anticipated to occur as follows:

Fiscal Year	\$ Amount
2014-15	\$49,057
2015-16	\$332,207
2016-17	\$311,413
2017-18	\$235,099
2018-19	\$226,952
2019-20	\$459,830
2020-21	\$1,255,126
2021-22	\$777,086
2022-23	\$269,769
2023-24	\$492,317
2024-25	\$201,116
2025-26	\$97,770
TOTAL	\$4,707,742

DATE: MAY 16, 2023

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SUBJECT: THIRD AMENDMENT TO LEGAL SERVICES AGREEMENT NO. 15-3308
WITH MEYERS NAVE

CITY ATTORNEY:


The Office of the City Attorney has reviewed and approved the proposed Third Amendment as to form and legality.

TRANSMITTALS:

1. Agreement No. 15-3308 with Meyers Nave
2. First Amendment to Agreement No. 15-3308
3. Second Amendment to Agreement No. 15-3308
4. Proposed Third Amendment to Agreement No. 15-3308

FIS Approval: MB

CA Approval: sc


JOHN DRISCOLL
Deputy City Attorney

APPROVED:

By 
STEVEN YOTERA
General Counsel, Harbor Department

APPROVED:

By 
EUGENE D. SEROKA
Executive Director

Board Meeting: May 25, 2023

THIRD AMENDMENT TO AGREEMENT NO. 15-3308
BETWEEN THE CITY OF LOS ANGELES AND
MEYERS NAVE RIBACK SILVER & WILSON (MEYERS NAVE)

This Third Amendment to Agreement No. 15-3308 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 Meyers Nave ("Consultant").

WHEREAS, the City entered into Agreement No. 15-3308 with Meyers Nave, for professional legal services for environmental matters; and

WHEREAS, the compensation of the Agreement was \$4,084,242 and additional funds are needed; and

WHEREAS, the requested work has been ongoing and the City desires to increase the compensation of the Agreement from \$4,084,242 to \$4,707,742.

NOW, THEREFORE, the parties agree that:

Section V. "Appropriation of Funds" is replaced by the following:

This Board has appropriated \$4,707,742 for this Agreement to cover legal services paid for at hourly rates set forth on Exhibit B. Outside Counsel's work pursuant to this Agreement for specific services shall not exceed this amount without the prior written approval of the City Attorney. The City is not obligated to pay Outside Counsel for any work done and/or costs incurred in excess of the appropriated amount unless additional appropriations are made and a written amendment to this Agreement is executed by the parties.

Except as provided herein, all other terms and conditions of Agreement No. 15-3308 shall remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment to Agreement No. 15-3308 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

THE CITY OF LOS ANGELES,
A municipal Corporation

Date: _____

By _____
KATHLEEN KENEALY
Chief Deputy City Attorney

MEYERS NAVE

Date: May 9, 2023

By  _____
Amrit Kulkarni, Partner

APPROVED AS TO FORM

 _____, 2023
HYDEE FELDSTEIN SOTO, City Attorney

By  _____
STEVEN OTERA, General Counsel

Account#	54410	W.O. #	000
Ctr/Div#	120	Job Fac.#	000
Proj/Prog#	000		
Budget FY:		Amount:	
2014-15		\$49,057	
2015-16		\$332,207	
2016-17		\$311,413	
2017-18		\$235,099	
2018-19		\$226,952	
2019-20		\$459,830	
2020-21		\$1,255,126	
2021-22		\$777,086	
2022-23		\$269,769	
2023-24		\$492,317	
2024-25		\$201,116	
2025-26		\$97,770	
TOTAL		\$4,707,742	
For Acct/Budget Div. Use Only			
Verified by:	<i>Melody M. Ugablu</i> Melody M. Ugablu 2023.05.09 12:00:59 -0700		
Verified Funds Available:	<i>Falka</i> Digitally signed by Falka Date: 2023.05.09 12:52:55 -0700		
Date Approved:	5/9/23		