



Item Number  
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## Report to the BOARD OF AIRPORT COMMISSIONERS

Approver:

Tim Dazé, Assistant General Counsel  
City Attorney's Office

Reviewer:

Brian C. Ostler, City Attorney

  
Justin Erbacci (Mar 10, 2023 13:48 PST)

Justin Erbacci, Chief Executive Officer

### Meeting Date

3/16/2023

Needs Council Approval:  Y

Reviewed for/by	Date	Approval Status	By
Finance	3/3/2023	<input checked="" type="checkbox"/> Y <input type="checkbox"/> NA	JS
CEQA	2/27/2023	<input checked="" type="checkbox"/> Y	bms
Procurement	3/1/2023	<input checked="" type="checkbox"/> Y <input type="checkbox"/> Cond	BG
Guest Experience	3/2/2023	<input checked="" type="checkbox"/> Y	TB
Strategic Planning	3/2/2023	<input checked="" type="checkbox"/> Y	BNZ

### SUBJECT

Request to approve the First Amendment to Contract DA-5464 with the law firm of Kaplan Kirsch & Rockwell LLP to assist the Los Angeles World Airports and the City Attorney with legal services pertaining to the Landside Access Modernization Program public contracting, advisory and claims work, and other Landside Access Modernization Program-related services. The First Amendment will increase the contract by \$550,000 to a total of \$750,000, and add two additional years to the term.

### RECOMMENDATIONS

Management RECOMMENDS that the Board of Airport Commissioners:

- ADOPT the Staff Report.
- DETERMINE that this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Article II, Section 2.i of the Los Angeles City CEQA Guidelines.
- FIND that the work can be performed more economically or feasibly by an independent contractor than by City employees.
- APPROVE the First Amendment to Contract DA-5464 with the law firm of Kaplan Kirsch & Rockwell LLP to assist the Los Angeles World Airports and the City Attorney with legal services pertaining to the Landside Access Modernization Program public contracting, advisory and claims work, and other Landside Access Modernization Program-related

services. The First Amendment will increase the contract by \$550,000 to a total of \$750,000 and add two additional years to the term.

5. AUTHORIZE the Chief Executive Officer, or designee, to execute the above-referenced amendment upon approval as to form by the City Attorney and approval by the Los Angeles City Council.

## **DISCUSSION**

### **1. Purpose**

The proposed First Amendment to Contract DA-5464 with the law firm of Kaplan Kirsch & Rockwell LLP (Kaplan Kirsch, Firm) is to continue the assistance provided to the Los Angeles World Airports (LAWA) and the City Attorney for legal services pertaining to the Landside Access Modernization Program (LAMP) public contracting, advisory and claims work, and other LAMP-related services. The First Amendment will increase the contract by \$550,000 to a total of \$750,000, and add two additional years to the current three-year term.

### **2. Prior Related Actions/History of Board Actions**

- **October 1, 2020 – Resolution No. 27114 (DA-5464)**

The Board of Airport Commissioners authorized the Chief Executive Officer and the City Attorney's Office to enter into a three-year legal services agreement with the law firm of Kaplan Kirsch. The initial contract amount was for \$200,000. The contract called for work to be paid on an hourly basis.

### **3. Current Action/Rationale**

Legal support during contract implementation involves advising LAWA on assessing availability payment deductions and non-compliance point deductions for failure to meet certain contract requirements, assessing claims, and advising on potential change orders for the Consolidated Rental Car Project (ConRAC). Commencing in 2021, the number of claims and contract disputes between LAWA and the Developer, LA Gateway Partners (LAGP), increased significantly, thereby increasing the need for Kaplan Kirsch's specialized legal services to support the ConRAC team and the City Attorney's Office. The numerous disputes have resulted in counsel engaging in regular meetings with the LAWA ConRAC Project team to address and evaluate the various claims being submitted by LAGP. Moreover, legal support has been needed during a series of lengthy negotiations between the parties that did not resolve disputes pertaining to some of the larger claims. Additionally, legal support has been necessary to support the project team during the formal Project Neutral hearings, including formal legal briefings, in-person meetings and presentations to the Project Neutral. As a result of these negotiations and technically complex and highly involved dispute proceedings, Kaplan Kirsch has almost expended the not-to-exceed amount budgeted under the contract.

While many of these claims have been resolved, LAWA staff and the City Attorney's Office believe that it would be both cost effective and advantageous for the City to have Kaplan Kirsch continue providing legal support and assisting the ConRAC Project team and the City Attorney until the construction phase is complete.

#### **4. Selection Process**

The City Attorney's Office issued a Request for Proposals for LAMP public contracting, advisory and claims work, and other LAMP-related services counsel for LAWA. After reviewing the proposals submitted, the City Attorney's Office determined that Kaplan Kirsch was one of the most qualified firms.

#### **5. Fiscal Impact**

This contract is still within the term of three years; however, an additional two years is being requested, as well as an additional appropriation of \$550,00 for a not-to-exceed amount of \$750,000, to finance the additional services needed to support the City Attorney's Office.

#### **6. Alternatives Considered**

- ***Take No Action***

Presently, the City Attorney's Office does not have sufficient expertise or personnel to address the vast array of complex and multifaceted construction transactions and disputes in which LAWA is engaged or will be engaged in during the next few years. Furthermore, the legal expertise for these tasks is temporary and occasional in nature, and thus, the employment of permanent public contracting/construction litigation counsel is not justified. To provide the necessary support to LAWA for these services, the City Attorney is recommending the continued assistance of outside counsel.

### **APPROPRIATIONS**

Funds for this contract are available in the Fiscal Year 2022-2023 Los Angeles World Airports Operating Budget in Cost center 1110004 – Legal Services Division, Commitment Item 520 – Contractual Services. Funding for subsequent years will be requested as part of the annual budget process.

### **STANDARD PROVISIONS**

1. Any activity (approval of bids, execution of contracts, allocation of funds, etc.) for which the underlying project has previously been evaluated for environmental significance and processed according to the requirements of the California Environmental Quality Act (CEQA) is exempt from further review pursuant to Article II, Section 2.i of the Los Angeles City CEQA Guidelines. The Landside Access Modernization Program Environmental Impact Report (EIR) was certified by the Board of Airport Commissioners for this project on March 2, 2017 (Resolution 26185).
2. The proposed document(s) is/are subject to approval as to form by the City Attorney.
3. Actions taken on this item by the Board of Airport Commissioners will become final pursuant to the provisions of Los Angeles City Charter Section 373.
4. Kaplan Kirsch & Rockwell LLP will be required to comply with the provisions of City Charter Section 609(e) and related ordinances.

5. Kaplan Kirsch & Rockwell LLP is required by contract to comply with the provisions of the Living Wage Ordinance.
6. This item is not subject to the provisions of the SBE/LBE/DVBE Program.
7. Kaplan Kirsch & Rockwell LLP is required by contract to comply with the provisions of the Affirmative Action Program.
8. Kaplan Kirsch & Rockwell LLP has been assigned Business Tax Registration Certificate No. 0002939999-0001-9.
9. Kaplan Kirsch & Rockwell LLP is required by contract to comply with the provisions of the Child Support Obligations Ordinance.
10. Kaplan Kirsch & Rockwell LLP has approved insurance documents, in the terms and amounts required, on file with Los Angeles World Airports.
11. Pursuant to Charter Section 1022, staff determined that the work specified in this contract can be performed more feasibly and economically by independent contractors than by City employees.
12. Kaplan Kirsch & Rockwell LLP has submitted the Contractor Responsibility Program Pledge of Compliance and will comply with the provisions of the Contractor Responsibility Program.
13. Kaplan Kirsch & Rockwell LLP has been determined by Public Works, Office of Contract Compliance, to be in compliance with the provisions of the Equal Benefits Ordinance.
14. Kaplan Kirsch & Rockwell LLP will be required to comply with the provisions of the First Source Hiring Program for all non-trade LAX Airport jobs.
15. Kaplan Kirsch & Rockwell LLP has submitted the MLO Bidder Certification CEC Form 50 and Bidder Contributions CEC Form 55 and will comply with their provisions.
16. This action is not subject to the Iran Contracting Act of 2010.

**FIRST AMENDMENT  
TO PROFESSIONAL SERVICES CONTRACT NUMBER DA-5464  
BETWEEN  
THE CITY OF LOS ANGELES  
AND  
KAPLAN KIRSCH & ROCKWELL LLP**

**THIS FIRST AMENDMENT** to Contract Number **DA-5464** is made and entered into by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as the "City"), and its Board of Airport Commissioners (hereinafter referred to as the "Board"), acting through the Office of the City Attorney (hereinafter referred to as "City Attorney"), and KAPLAN KIRSCH & ROCKWELL LLP (hereinafter referred to as "Outside Counsel").

**WITNESSETH**

**WHEREAS**, the City and the Outside Counsel entered into a contract wherein Outside Counsel agreed to assist the City Attorney and LAWA with legal representation pertaining to the Landside Access Modernization Program (LAMP) public contracting, advisory and claims work and other LAMP related services, said Contract effective October 1, 2020, which hereinafter shall be referred to as the Contract; and

**WHEREAS**, the Contract provides for amendments; and

**WHEREAS**, the City and Outside Counsel are desirous of amending the Contract for the purposes of adding the sum of Five Hundred and Fifty Thousand Dollars (\$550,000), thereby increasing the total contract amount not to exceed Seven Hundred and Fifty Thousand Dollars (\$750,000) and add two years to the contract; and

**WHEREAS**, the amendment is necessary and proper to continue or complete certain activities authorized under the Contract;

**NOW, THEREFORE**, the City and Outside Counsel agree that the Contract be amended as follows:

**AMENDMENT**

1. Section V, paragraph A, Appropriation of Funds, is amended to add the sum of Five Hundred and Fifty Thousand Dollars (\$550,000) and to read as follows:

The Airport Board of Commissioners has appropriated Seven Hundred and Fifty Thousand Dollars (\$750,000) for this Contract. The City will not pay Outside Counsel for any work done or costs incurred in excess of the appropriated amount unless additional

appropriations are made by Airport Board of Commissioners and an amendment to this Contract is executed by the parties.

2. Section II, paragraph A, Period of Performance, is amended to extend the contract by two years as follows:

This Agreement shall begin on October 1, 2020 and shall continue until September 30, 2025, unless terminated earlier under the provisions of this Agreement.

3. Except as herein amended, all other terms and conditions shall remain in full force and effect.

4. This amendment is executed in two (2) duplicate originals, each of which is deemed to be an original. This amendment consists of three (3) pages.

5. This agreement and any other document necessary for the consummation of the transaction contemplated by this agreement may be executed in counterparts, including counterparts that are manually executed and counterparts that are in the form of electronic records and are electronically executed. An electronic signature means a signature that is executed by symbol attached to or logically associated with a record and adopted by a party with the intent to sign such record, including facsimile or e-mail signatures. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this agreement and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called PDF format shall be legal and binding and shall have the same full force and effect as if a paper original of this agreement had been delivered that had been signed using a handwritten signature. All parties to this agreement (i) agree that an electronic signature, whether digital or encrypted, of a party to this agreement is intended to authenticate this writing and to have the same force and effect as a manual signature; (ii) intended to be bound by the signatures (whether original, faxed, or electronic) on any document sent or delivered by facsimile or electronic mail or other electronic means; (iii) are aware that the other party(ies) will rely on such signatures; and, (iv) hereby waive any defenses to the enforcement of the terms of this agreement based on the foregoing forms of signature. If this agreement has been executed by electronic signature, all parties executing this document are expressly consenting, under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 ("E-SIGN") and the California Uniform Electronic Transactions Act ("UETA") (California Civil Code §1633.1 et seq.), that a signature by fax, e-mail, or other electronic means shall constitute an Electronic Signature to an Electronic Record under both E-SIGN and UETA with respect to this specific transaction.

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**IN WITNESS THEREOF**, the parties hereto have executed this Agreement on the date indicated.

THE CITY OF LOS ANGELES,  
DEPARTMENT OF AIRPORTS  
OF THE CITY OF LOS ANGELES

By \_\_\_\_\_  
Justin Erbacci  
Chief Executive Officer  
Department of Airports

By \_\_\_\_\_  
Tatiana Starostina  
Chief Financial Officer  
Department of Airports

Date \_\_\_\_\_

Date \_\_\_\_\_

THE CITY OF LOS ANGELES,  
HYDEE FELDSTEIN SOTO, City Attorney

By \_\_\_\_\_  
Kathleen Kenealy  
Chief Deputy City Attorney

Date \_\_\_\_\_

KAPLAN KIRSCH & ROCKWELL LLP

By  \_\_\_\_\_  
Brent E. Butcher, Partner

Date 3/2/2023

APPROVED AS TO FORM  
HYDEE FELDSTEIN SOTO, City Attorney

By  \_\_\_\_\_  
Anne Haley  
Assistant City Attorney

Date 3/6/2023

City Business License Number: \_\_\_\_\_  
Internal Revenue Service ID Number: \_\_\_\_\_  
Board Resolution Number: \_\_\_\_\_  
Contract Number: \_\_\_\_\_