THE HONORABLE BOARD OF HARBOR COMMISSIONERS

SUBJECT: RESOLUTION NO. __________ - THIRD AMENDMENT TO AGREEMENT NO. 2441 WITH STANZLER, FUNDERBURK & CASTELLON LLP FOR LEGAL SERVICES RELATING TO CITY OF LOS ANGELES V. KINDER MORGAN ENERGY PARTNERS, L.P., ET AL., LASC CASE NO. NC 041463

HONORABLE MEMBERS:

SUMMARY:

The City Attorney requests authority to execute an 18-month extension to the Agreement with outside counsel and to make an additional $80,000 appropriation to cover trial delays.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners resolves as follows:

1. Approve, and authorize the Executive Director to execute, the Third Amendment to Agreement No. 2441 between the City of Los Angeles and Stanzler, Funderburk & Castellon LLP extending the term from four to five and one-half years;

2. Adopt this Board Report as the Resolution extending the term of Agreement No. 2441 from four to five and one-half years; and

3. Direct the Board Secretary to transmit the Third Amendment to Agreement No. 2441 to the City Council for its approval pursuant to Section 373 of the Charter.
DISCUSSION:

Stanzler Funderburk & Castellon LLP and its subcontractor, Opper & Varco, were retained through an RFP process in August 2005 for the purpose of prosecuting the City's claims for environmental remediation and rent at the former Los Angeles Marine Terminal at Berths 171-173. The Agreement, as amended, expires on August 31, 2009.

Prior to its demolition in 2003, the site contained 19 above-ground storage tanks, truck loading racks, pumping stations, a wharf with loading booms, utility sheds and an office building. Over the course of its 75-year history, the terminal became heavily oiled, primarily as a result of tank leaks. The complaint was filed in July 2005 and names Kinder Morgan Liquids Terminals (the successor of GATX), which operated the terminal from 1982 to 1999, ConocoPhillips, which operated the terminal from 1968 to 1982, and Texaco which operated the terminal from 1923 to 1968. Kinder Morgan is represented by Luce Forward Hamilton & Scripps. ConocoPhillips is represented by Hunton & Williams. Texaco is represented by Pillsbury Winthrop.

In addition to the cleanup case, a cause of action to recover rent was asserted against Kinder Morgan. The rent case settled in November 2007, just weeks before trial, and the City recovered $3.25 million.

Subsequently, settlements were concluded with Texaco and ConocoPhillips wherein they have agreed to reimburse 25% and 15%, respectively, of the City's costs to investigate, monitor, and remediate the marine terminal, subject only to a ten-year calendar limit.

On February 7, 2008, the Board approved a first amendment to Agreement No. 2441 increasing the Agreement appropriation by $400,000 to prepare for, and conduct, the contamination trial then set in May 2008.

On May 15, 2008, the Board approved a second amendment to Agreement No. 2441 extending the term of the Agreement for one year with no additional appropriation. At the time, the Superior Court had postponed the trial date from May 2008 to September 2008 and then to March 2009.

In January 2009, the Superior Court vacated the trial date and issued a stay order halting all litigation because the Regional Water Quality Control Board has yet to approve a remedial action plan. The City proposed an initial plan in July of 2006 and submitted a revised plan in January 2009 with the endorsement of both Texaco and ConocoPhillips.

Kinder Morgan continues to contest the need to conduct a full-scale remediation of the property and last month filed suit against the Regional Water Quality Control Board challenging the soil and water cleanup goals set by the agency.
The Agreement extension and additional appropriation is needed to cover the continued trial delays. A discussion of recent litigation developments is the subject of a confidential letter that will be discussed in closed session.

ENVIRONMENTAL ASSESSMENT:

The proposed action is a one and one-half year Agreement extension with outside counsel to cover trial delays. As an administrative action, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section 2(f) of the Los Angeles City CEQA guidelines.

ECONOMIC BENEFITS:

Continued prosecution of this action is necessary to recover the cost of environmental remediation. The Harbor Department Division of Planning and Research has found no direct employment effects but estimates that the requested $80,000 appropriation will result in $159,000 of total output increase in 2006 dollars for the five-county region of Southern California.

FINANCIAL IMPACT:

Funds for this amendment are being requested in the 2009-2010 budget.

TRANSMITTALS:

1. Proposed Third Amendment to Agreement No. 2441

Very truly yours,

KENNETH F. MATTFELD
Deputy City Attorney

KFM/dls

CONCURRED:

By

THOMAS A. RUSSELL
General Counsel