



Council Agenda Report

Special Meeting
12-09-20

**Item
2.A.**

To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: Patrick Donegan, Deputy City Attorney

Date prepared: December 2, 2020 Meeting date: December 9, 2020

Subject: Amendment to Agreement for Special Legal Services with Leech, Tishman, Fuscado & Lampl, Inc. to Address Aviation Noise Generated from Changes to Los Angeles International Airport Flight Paths

RECOMMENDED ACTION: Authorize the Mayor to execute an amendment to the Agreement for Legal Services with Leech, Tishman, Fuscado & Lampl, Inc. and Steven Taber of the firm ("Taber").

FISCAL IMPACT: This amendment adds up to \$15,000 to an existing contract. Services will be provided at an hourly rate per the scope of work, not to exceed \$65,000 without further authorization from the City. The existing contract is for a not-to-exceed amount of \$50,000, the additional \$15,000 would bring the total to \$65,000. No payment above \$62,000 is due until the Petition for Rulemaking is completed by Taber. There is sufficient funding for this amendment in the Adopted Budget for Fiscal Year 2020-2021.

DISCUSSION: On December 4, 2018, the City Council entered into an agreement for special legal services with Taber in order to address an increase in aviation noise experienced by City residents due to the implementation of new flight paths at Los Angeles International Airport (LAX) as part of the Federal Aviation Administration's (FAA) implementation of its "next generation" (NextGen) program. Challenging these flight paths and pursuing options to reduce the noise generated requires specialized knowledge and experience.

Attorney Steven Taber has spent the last two years working to gain relief from the increased aviation noise. This has included investigating flight routes over Malibu and the impacts these routes have, filing Freedom of Information Act requests with the FAA for documents related to these issues, analyzing the environmental review undertaken by the FAA, monitoring and providing analysis on efforts by other jurisdictions challenging the FAA's implementation of the NextGen program at LAX, and researching a petition for rulemaking request to the FAA. Taber indicates that he has exhausted the initial contract amount due to the FAA's resistance to providing all the documents in a

timely fashion. The additional \$15,000 will cover the costs of drafting and filing the petition for rulemaking.

The purpose of the petition for rulemaking is to request that the FAA amend or repeal certain flight procedures that impact the City and will be based on the data that has been acquired from the FAA via the Freedom of Information Act requests made under the current Agreement, as well as data obtained independently through a noise monitoring program.

ATTACHMENTS: Amendment No. 1 to Agreement with Leech, Tishman, Fuscado & Lampl, Inc.

AMENDMENT NO. 1

This is an amendment to the Agreement for Legal Services between the CITY OF MALIBU, a Municipal Corporation, (City) and Leech, Tishman, Fuscaldo & Lampl, Inc. (Firm) dated December 4, 2018 (the Agreement). This Amendment is made and entered into by the parties this 2nd day of December 2020.

RECITALS

A. The City contracted with the Firm to provide special legal services pursuant to the terms of the Agreement.

B. The Parties now desire to amend the Agreement to increase the total compensation by \$15,000 (total not to exceed \$65,000) in order for the Firm to complete the Petition for Rulemaking.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, and in the Agreement amended hereby, the parties agree as follows:

1. Section 3 is amended to read as follows:

3. Compensation and Billing Procedures.

3.1 The City shall pay the Firm for its professional services rendered as specified by the Scope of Work at the rate of \$450/hour for services performed by Steven M. Taber and \$250/hour for services performed by Esther Choe or other attorneys of similar experience and skill, not to exceed \$65,000. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or her designee.

3.2 Notwithstanding any other provision of this Agreement, Firm shall fully complete the Petition for Rulemaking as described in Exhibit A to this 1st Amendment (highlighted section entitled “Finishing Petition for Rulemaking”) as a result of the increase in compensation. Payments bringing the total paid over \$62,000 shall not be due until the Petition for Rulemaking is complete.

3.3 The Firm will not bill the City for any expenses, including but not limited to copying, telephone, mileage, facsimile, word processing or electronic research. The rates charged includes all fees and costs associated with this engagement.

3.4 The Firm shall submit to the City, by no later than the 10th day of each month, its bill for services itemizing the fees and costs incurred during the previous month. The City shall pay the Firm all uncontested amounts set forth in the Firm's bill within 30 days after it is received. In the event that the City contests any amounts set forth in the Firm's bill, the City shall notify the Firm within 30 days from its receipt of the bill.

2. The provisions of the Agreement not affected by this Amendment remain in full force and effect. This Amendment No. 1, together with the provisions of the Agreement, as amended from time to time, that are unaffected by this Amendment No. 1, constitute the entire agreement between the parties.

IN WITNESS WHEREOF the parties have executed this Agreement the 2nd day of December 2020.

CITY OF MALIBU

By _____
Mikke Pierson, Mayor

ATTEST:

Heather Glaser, City Clerk
(Seal)

LEECH, TISHMAN, FUSCALDO & LAMPL, INC.

By Steven M. Taber
Steven Taber