

# Los Angeles World Airports

October 13, 2010

The Honorable City Council  
of the City of Los Angeles  
City Hall, Room 395  
Los Angeles, CA 90012

Subject: **APPROVE THE THIRD AMENDMENT TO CONTRACT NO. DA-4159 WITH KAYE SCHOLER, LLP FOR LEGAL SERVICES RELATED TO FEDERAL REGULATORY ISSUES AND LITIGATION MATTERS AT LOS ANGELES INTERNATIONAL AIRPORT.**

LAX  
LA/Ontario  
Van Nuys

## City of Los Angeles

Antonio R. Villaraigosa  
Mayor

## Board of Airport Commissioners

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President

Valeria C. Velasco  
Vice President

Joseph A. Aredas  
Michael A. Lawson  
Sam Nazarian  
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Walter Zifkin

Gina Marie Lindsey  
Executive Director

In accordance with Section 373 of the City Charter, the Board of Airport Commissioners transmits for your approval the Third Amendment to Contract No. DA-4159 between the City of Los Angeles and Kaye Scholer, LLP covering an extension for six months.

## RECOMMENDATION FOR CITY COUNCIL

1. APPROVE the Third Amendment to Contract No. DA-4159 between the City of Los Angeles and Kaye Scholer, LLP.
2. CONCUR in the Board's action authorizing the Executive Director to execute the Third Amendment to Contract No. DA-4159 between the City of Los Angeles and Kaye Scholer, LLP.
3. FIND that this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

The Board of Airport Commissioners, at their meeting held on October 4, 2010, by Resolution No. 24249 approved the Third Amendment subject to the approval of your Honorable Body is attached.

## MAYOR'S TRANSMITTAL

Enclosed is the approval by the Mayor and the Office of City Administrative Officer.

There is no impact on the General Fund.

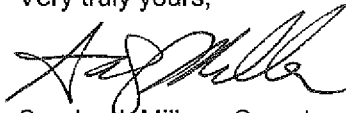


Los Angeles City Council  
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**CONCLUSION**

Please return the attached Third Amendment to the Department of Airports' Board Office after City Council approval and Certification of that approval.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. Miller', written over a horizontal line.

Sandra J. Miller – Secretary  
BOARD OF AIRPORT COMMISSIONERS

cc: Trade, Commerce and Tourism Committee  
Councilmember Hahn, E-file  
Councilmember Rosendahl, E-file  
Councilmember LaBonge, E-file  
CAO (Airport Analyst), E-file  
CLA (Airport Analyst), E-file  
City Clerk's Office, Enc. (one original and one copy)



RESOLUTION NO. 24249

WHEREAS, on recommendation of Management, there was presented for approval, Third Amendment to Contract No. DA-4159 with Kaye Scholer, LLP to assist Los Angeles World Airports and the City Attorney with legal services relating to federal regulatory issues and litigation matters. The Third Amendment will extend the contract term for an additional six (6) months; and

WHEREAS, on December 4, 2006, the Board of Airport Commissioners (BOAC) authorized its Executive Director and the City Attorney's Office to enter into a three (3)-year legal services contract with Kaye Scholer, LLP ("Kaye Scholer") (Resolution No. 23153). The Contract was initially approved for \$1,500,000. On May 21, 2007, BOAC authorized its Executive Director and the City Attorney's Office to approve a First Amendment for this legal services contract (Resolution No. 23294), which increased the contract amount to \$4,000,000. On October 19, 2009, BOAC authorized its Executive Director and the City Attorney's Office to approve a Second Amendment for this legal services contract (Resolution No. 23925), which increased the contract amount to \$4,200,000 and extended the contract by one (1) year. Kaye Scholer was originally selected from a list of qualified firms pursuant to an in-depth Request for Proposals (RFP) process; and

WHEREAS, there are three (3) ongoing legal matters that require Kaye Scholer's expertise and continued assistance. In each of these matters, litigation has resulted and Kaye Scholer has represented Los Angeles World Airports (LAWA). Due to the complex nature of these matters and the significant effort expended by Kaye Scholer to date, LAWA would be negatively impacted if their representation did not continue. A brief description of these matters and their current status follows:

Rates and Charges Litigation

In late 2006, BOAC approved a new Tariff which imposed new terminal rates and charges on the airlines operating at Los Angeles International Airport ("LAX") without long term leases. In early 2007, seven (7) domestic airlines operating at Terminals 1 and 3, filed a complaint with the U.S. Department of Transportation ("DOT") alleging that these new terminal rates and charges were unreasonable and discriminatory. Twenty-two (22) international airlines operating at Tom Bradley International Terminal (TBIT) (the "TBIT Complainants") also filed a complaint with the DOT. A lengthy trial before an administrative law judge followed.

In June 2007, the DOT issued its Final Decision. The parties, including the City of Los Angeles ("City"), subsequently filed a petition for review of the DOT Decision in the U.S. Court of Appeals for the District of Columbia Circuit (the "Court of Appeals"). Thereafter, the TBIT Complainants moved to withdraw their petition for review, which motion was granted in June 2008. In August 2008, LAWA and the TBIT Complainants entered into a Partial Settlement Agreement settling, among other things, certain rates and charges matters pending the outcome of the petition for review of the DOT Decision in the Court of Appeals.

The Court of Appeals issued its opinion on August 7, 2009. The Court of Appeals affirmed the DOT's Decision that the increased maintenance and operation ("M&O") fees imposed by LAWA and LAWA's commercial compensatory methodology were non-discriminatory and not unreasonable when used to recover fully-allocated terminal M&O costs, including the increasing costs for general administration, ground transportation and airport security. This ruling will result in an increase in LAWA's cost recovery in the tens of millions of dollars over the next several years.



Significantly, the Court of Appeals also remanded several issues to the DOT for further consideration, which will require briefings and additional evidentiary hearings may also be ordered. Kaye Scholer's continued involvement will benefit LAWA.

#### Long Term Lease Negotiations

The airlines with long term leases (American Airlines, Continental Airlines, United Airlines, Delta Airlines and Northwest Airlines) also filed litigation in early 2007 regarding increased M&O charges. In January 2008, LAWA has entered into interim settlement agreements with airlines and the cases were dismissed without prejudice. United Airlines has since settled its claims with LAWA relating to this matter. However, the negotiations are continuing with respect to the future M&O charges for the other airlines and Kaye Scholer's continued assistance would benefit LAWA.

#### General Advice

With respect to the "General Advice on Aviation Law" task, we anticipate needing ongoing advice related to the New Lease Form, Tariff, and M&O; and

WHEREAS, to date, authorized Contract funding is \$4,200,000. As required by the scope of work, and to the extent it is necessary, the City Attorney will return to the BOAC and City Council for any future adjustments to fee; and

WHEREAS, funds for the Amendment are currently available in the Fiscal Year 2010-2011 LAWA Operating Budget in Cost Center 1110004 – Legal Services Division, Commitment Item 520 – Contractual Services. Funds for subsequent periods will be requested as part of the annual budget process; and

WHEREAS, this action, as a continuing administrative and personnel-related activity, is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Article II Section 2(f) of the Los Angeles City CEQA Guidelines; and

WHEREAS, Kaye Scholer will comply with the provisions of the Living Wage Ordinance; and

WHEREAS, Procurement Services Division reviewed this item. No specific Minority/Women Business Enterprise levels of participation were set for the project, as no subcontracting opportunities were identified; and

WHEREAS, Kaye Scholer will comply with the provisions of the Affirmative Action Program; and

WHEREAS, Kaye Scholer has been assigned Business Tax Registration Certificate No. 0000641007; and

WHEREAS, Kaye Scholer will comply with the Child Support Obligations Ordinance; and

WHEREAS, Kaye Scholer has approved insurance documents, in the terms and amounts required, on file with LAWA; and

WHEREAS, Kaye Scholer has submitted the City of Los Angeles Contractor Responsibility Questionnaire and Pledge of Compliance, and will comply with the provisions of said program; and

WHEREAS, Kaye Scholer has been determined by the Public Works – Office of Contract Compliance to be in full compliance with the provisions of the Equal Benefits Ordinance; and

WHEREAS, Kaye Scholer will be required to comply with the provisions of the First Source Hiring Program for all non-trade LAX jobs; and

WHEREAS, the Third Amendment to Contract No. LAA-4159 will become final pursuant to the provisions of Los Angeles City Charter Sections 373 and 275;

NOW, THEREFORE, BE IT RESOLVED that the Board of Airport Commissioners determined that this action is exempt from the California Environmental Quality Act requirements; adopted the Staff Report; adopted the Third Amendment to Contract No. DA-4159 with the law firm Kaye Scholer, LLP to extend the contract term to May 19, 2011; and authorized the Executive Director to execute the Third Amendment to Contract No. DA-4159 with the law firm Kaye Scholer, LLP subject to approval by the Los Angeles City Council, and upon approval as to form by the City Attorney.

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I hereby certify that this Resolution No. 24249 is true and correct, as adopted by the Board of Airport Commissioners at its Regular Meeting held on Monday, October 4, 2010.

A handwritten signature in black ink, appearing to read 'Sandra J. Miller', with a stylized, flowing script.

Sandra J. Miller – Secretary  
BOARD OF AIRPORT COMMISSIONERS

**THIRD AMENDMENT  
TO AGREEMENT FOR PROFESSIONAL LEGAL SERVICES  
CONTRACT NUMBER DA-4159  
BETWEEN  
THE CITY OF LOS ANGELES ACTING BY AND THROUGH THE  
DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES  
AND  
KAYE SCHOLER, LLP**

**THIS THIRD AMENDMENT** to Contract Number **DA-4159** is made and entered into by and between the City of Los Angeles, a municipal corporation, (hereinafter referred to as the "City") acting through the Office of the City Attorney (hereinafter referred to as "City Attorney") and its Board of Airport Commissioners (hereinafter "Board") and KAYE SCHOLER, LLP (hereinafter referred to as "Outside Counsel").

**WITNESSETH**

**WHEREAS**, the City and Outside Counsel entered into a contract wherein Outside Counsel agreed to assist the City Attorney with legal representation in litigation and transactional matters involving federal regulatory work and related matters, said Contract effective November 20, 2006, which hereinafter shall be referred to as the Contract; and

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

**WHEREAS**, the City and Outside Counsel are desirous of amending the Contract for the purpose of extending the Contract an additional six (6) months.

**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 II, paragraph A, Period of Performance, is amended to extend the contract by additional six (6) months as follows:

This Agreement shall begin on November 20, 2006 and shall continue until May 19, 2011, 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 five (5) duplicate originals, each of which is deemed to be an original. This amendment consists of three (3) pages.

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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 \_\_\_\_\_  
Gina Marie Lindsey  
Executive Director

Date \_\_\_\_\_

By \_\_\_\_\_  
Wei Chi  
Deputy Executive Director, Comptroller

Date \_\_\_\_\_

THE CITY OF LOS ANGELES,  
CARMEN A. TRUTANICH, City Attorney

By \_\_\_\_\_  
WILLIAM CARTER  
Chief Deputy City Attorney

Date \_\_\_\_\_

KAYE SCHOLER, LLP

By Jeffrey A. Romanil  
Date 9/30/10

APPROVED AS TO FORM  
CARMEN A. TRUTANICH, City Attorney

By [Signature]  
Anne Haley  
Assistant City Attorney

Date 10-13-2010

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