

COMMUNICATION

File No. 09-2620

TO: THE COUNCIL OF THE CITY OF LOS ANGELES

FROM: COUNCILMEMBER BILL ROSENDAHL, CHAIR
TRADE, COMMERCE, AND TOURISM COMMITTEE

ADMINISTRATIVE EXEMPTION and COMMUNICATION FROM CHAIR, TRADE, COMMERCE, AND TOURISM COMMITTEE relative to proposed Fourth 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).

Recommendations for Council action:

1. FIND that this action, as described in the August 4, 2011 Board of Airport Commissioners (Board) report and attached to the Council file, is exempt from the California Environmental Quality Act (CEQA) pursuant to Article II Section 2(f) of the Los Angeles City CEQA Guidelines.
2. APPROVE the Fourth Amendment to Contract No. DA-4159 with Kaye Scholer, LLP to extend the contract term until May 19, 2012.
3. CONCUR with the Board's action of May 2, 2011 by Resolution No. 24442 authorizing the Executive Director to execute the Fourth Amendment to Contract No. DA-4159 with Kaye Scholer, LLP.

Fiscal Impact Statement: The Board reports that approval of the proposed Fourth Amendment to Contract No. DA-4159 with Kaye Scholer, LLP will have no impact on the General Fund.

Community Impact Statement: None submitted.

TIME LIMIT FILE - OCTOBER 3, 2011

(LAST DAY FOR COUNCIL ACTION – SEPTEMBER 30, 2011)

SUMMARY

On August 9, 2011, the Chair of the Trade, Commerce and Tourism Committee considered an August 4, 2011 Board report and Resolution No. 24442 relative to proposed Fourth Amendment to Contract No. DA-4159 with Kaye Scholer, LLP (Kaye Scholer) for legal services related to Federal regulatory issues and litigation matters at LAX. The proposed Fourth Amendment would extend the contract term for an additional year for a total term from November 20, 2006 through May 19, 2012.

According to the Board, in late 2006, it approved a new Tariff which imposed new terminal rates and charges on the airlines operating at LAX without long term leases. In early 2007, seven domestic airlines operating at Terminals 1 and 3 (the "T1/3 Complainants"), filed a complaint with the United States Department of Transportation (DOT) alleging that these new terminal rates and charges were unreasonable and discriminatory. 22 international airlines operating at

Tom Bradley International Terminal (the "TBIT Complainants") also filed a complaint with the DOT. A lengthy trial before an administrative law judge followed.

Subsequently, in June 2007, the DOT issued its Final Decision. The parties, including the City, subsequently filed a petition for *review* of the DOT Decision in the United States 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 and 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.

The Court of Appeals also remanded several issues to the DOT for further consideration. The parties requested the DOT to stay proceedings while the parties discussed a possible settlement. The DOT has granted such request, and such stay will expire in August 2011. It is expected that the parties to request an extension to the stay to continue settlement negotiations.

The DOT has requested that the parties provide periodic status reports while settlement negotiations were ongoing. At a minimum, there will be further briefings and evidentiary hearings on the remanded issues. The record in this case is voluminous, and if settlement cannot be reached and further evidentiary proceedings are required, LAWA will be disadvantaged if Kaye Scholer is not available as legal counsel.

After further consideration and having provided an opportunity for public comment, the Committee Chair moved to recommend approval of the Fourth Amendment to Agreement No. DA-4159 as detailed in the above recommendations. This matter is now forwarded to the Council for its consideration.

Respectfully submitted,

COUNCILMEMBER BILL ROSENDAHL, CHAIR
TRADE, COMMERCE, AND TOURISM COMMITTEE

<u>MEMBER</u>	<u>VOTE</u>
ROSENDAHL:	YES
LABONGE:	YES

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Not Official Until Council Acts