



# Council Agenda Report

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

Prepared by: Trevor Rusin, Interim City Attorney

Date prepared: September 14, 2023 Meeting date: September 25, 2023

Subject: Approve Amendment to Contract for Special Legal Services with Leech, Tishman, Fuscado & Lampl, Inc. to Provide for the Drafting and Filing of Comments Seeking to Reduce the Impact of Aviation Noise Generated from Changes to Los Angeles International Airport Flight Paths

---

**RECOMMENDED ACTION:** Authorize the City Manager to execute a third amendment to the Agreement for Legal Services with Leech, Tishman, Fuscado & Lampl, Inc. and direct Mr. Taber to prepare and file, in a form approved by the City Attorney and the City Manager, all necessary and appropriate public comment letters and/or related filings regarding the FAA's ongoing Noise Policy Review, and the Environmental Assessment for the new flight procedures over Malibu that are proposed for the operations of Los Angeles International Airport, in order to reduce the impact of aviation noise on the City's residents.

**FISCAL IMPACT:** No additional appropriation is required. This amendment adds \$30,000 to an existing contract. Services will be provided at an hourly rate per the scope of work, not to exceed \$108,000 without further authorization from the City. The existing contract, as amended is for a not-to-exceed amount of \$78,000, the additional \$30,000 would bring the total not to exceed amount to \$108,000. There is sufficient funding for this amendment in the Adopted Budget for Fiscal Year 2023–24.

**DISCUSSION:** On December 4, 2018, the City Council entered into an agreement for special legal services with Mr. 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 four plus years working to get the Malibu relief from the increased aviation noise and he has played a meaningful role in representing

the City as it encouraged the FAA to revisit this issue. 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 and drafting a petition for rulemaking request to the FAA. Taber has throughout this process kept the City and City Attorney's Office updated on activity related to this issue.

Likely in response to this sustained public advocacy and pressure (such as the City's Petition for Rulemaking), the FAA opened a public comment process on the subject of aircraft noise and is seeking public input on its Noise Policy Review. This represents a unique opportunity for Malibu to make its voice heard on the topic of aviation noise and potentially spur meaningful change.

According to the Request for Comments, the FAA is considering policy changes to:

1. Its current use of DNL or Day-Night Average Sound Level as the primary noise metric for assessing cumulative aircraft noise exposure;
2. If and how alternative noise metrics may be used in lieu of or in addition to DNL to better inform agency decisions and improve FAA's disclosure of noise impacts;
3. The community's understanding of noise impacts and how to better manage and respond to community's aviation noise concerns;
4. Ways to improve communications on proposed noise-related agency actions; and
5. The findings from ongoing noise research, including the Neighborhood Environmental Survey and other research related to health impacts, speech interference, sleep disturbance, and economic impacts.

In addition, the City has a chance to weigh in and comment on three new flight procedures that are expected to be released by the FAA on October 1, 2023. These new procedures are being proposed because three LAX Arrivals Procedures were set aside by the Ninth Circuit in the case of L.A. v. FAA. Per the judgment in that case, the FAA is required to redesign and re-implement flight procedures that would replace the IRNMN, HUULL and RYDRR arrival procedures that currently cause a significant portion of the aircraft noise over Malibu.

When the FAA publishes the draft Environmental Assessment for new LAX flight procedures on October 1, 2023, there will be a 30-day public comment period on the draft Environmental Assessment and the procedures.

Once public comments have been received, the FAA will finalize the Environmental Assessment and is expected to issue a "Finding of No Significant Impact" (FONSI) and, most likely, a Record of Decision (ROD). This usually takes 6-8 months, although it can be done in as few as 3 months, and as many as 3 years. After the ROD has been issued anyone who submitted comments has 60 days to file a Petition for Review challenging the FAA's decision. By providing comments the City may affect the final decision in this matter, and it also would allow the City to file a Petition for Review if it disagrees with the final decision.

Mr. Taber is intimately familiar with these issues, and particularly their impact in Malibu, which was used to prepare the City's Petition for Rulemaking. He is prepared to adapt his extensive work into comment letters and/or related filings in the above-described matters. This amendment will authorize Mr. Taber to take these actions and continue to advocate on the City's behalf during this critical time.

ATTACHMENTS: Amendment No. 3 to Agreement with Leech, Tishman, Fuscado & Lampl, Inc.

### AMENDMENT NO. 3

This third amendment (Third Amendment) 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 25<sup>th</sup> day of September, 2023.

#### RECITALS

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

B. On December 9, 2020, The Parties amended 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.

C. On October 25, 2021, the Parties amended the Agreement to increase the total compensation by \$13,000 (total not to exceed \$78,000) in order for the Firm to update the draft Petition for Rulemaking in light of then-recent litigation between the City of Los Angeles and the Federal Aviation Administration (FAA).

D. The Parties now desire to amend the Agreement a third time to increase the total compensation by \$30,000 (total not to exceed \$108,000) in order for the Firm to perform additional work including adapting prior work performed by Firm to prepare and file, in a form approved by the City Attorney and the City Manager and within all applicable deadlines, all necessary and appropriate public comment letters and/or related filings regarding the FAA's ongoing Noise Policy Review, any new flight procedures related to the operations of Los Angeles International Airport, and any related proceedings.

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

1. Section 3.1 is amended to read in its entirety 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 \$475/hour for services performed by Steven M. Taber and \$250/hour for services performed by Lisa Claxton or other attorneys of similar experience and skill, not to exceed \$108,000. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or designee.

2. The provisions of the Agreement not affected by this Third Amendment remain in full force and effect. This Third Amendment, together with the provisions of the Agreement as

amended from time to time, that are unaffected by this Third Amendment, constitute the entire agreement between the parties.

IN WITNESS WHEREOF the parties have executed this Agreement on the \_\_\_\_ day of September, 2023.

CITY OF MALIBU

By \_\_\_\_\_  
Steve McClary, City Manager

ATTEST:

\_\_\_\_\_  
Kelsey Pettijohn, City Clerk  
(Seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED  
By \_\_\_\_\_ BY THE CITY ATTORNEY'S OFFICE  
Trevor Rusin, Interim City Attorney

LEECH, TISHMAN, FUSCALDO & LAMPL, INC.

By \_\_\_\_\_  
Steven Taber