

5. Approve Amendment to Contract for Special Legal Services with Leech, Tishman, Fuscado & Lampl, Inc. to Provide for Representation of the City related to the Matter of City of Malibu v. Federal Aviation Administration related to Aviation Noise and Impacts Generated from Changes to Los Angeles International Airport Flight Paths

Recommended Action: Authorize the City Manager to execute a fourth amendment to the Agreement for Legal Services with Leech, Tishman, Fuscado & Lampl, Inc. for representation of the City related to the matter of Malibu v. Federal Aviation Administration, No. 24-2503.

Staff Contact: Interim City Attorney Rusin, 456-2489, ext. 228



# Council Agenda Report

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

Prepared by: Trevor Rusin, Interim City Attorney

Date prepared: August 16, 2024 Meeting date: September 9, 2024

Subject: Approve Amendment to Contract for Special Legal Services with Leech, Tishman, Fuscado & Lampl, Inc. to Provide for Representation of the City related to the Matter of City of Malibu v. Federal Aviation Administration related to Aviation Noise and Impacts Generated from Changes to Los Angeles International Airport Flight Paths

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**RECOMMENDED ACTION:** Authorize the City Manager to execute a fourth amendment to the Agreement for Legal Services with Leech, Tishman, Fuscado & Lampl, Inc. for representation of the City related to the matter of Malibu v. Federal Aviation Administration, No. 24-2503.

**FISCAL IMPACT:** No additional appropriation is required. This amendment adds \$40,000 to an existing contract. Services will be provided at an hourly rate per the scope of work, not to exceed \$148,000 without further authorization from the City. The existing contract, as amended is for a not-to-exceed amount of \$108,000, the additional \$40,000 would bring the total not to exceed amount to \$148,000. There is sufficient funding for this amendment in the Adopted Budget for FY 2024–25.

**DISCUSSION:** On December 4, 2018, the City Council entered into an agreement for special legal services with Mr. Taber 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 and impacts generated requires specialized knowledge and experience.

Attorney Steven Taber has spent the last five plus years working to get Malibu relief from the increased aviation noise and impacts caused by these routes. 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, researching and drafting a petition for rulemaking request to the FAA, providing comments on the FAA's Noise Policy Review, providing comments on the environmental review conducted for these revised routes, and filing a petition for review of the FAA's actions when it declined to take action in response to the comments filed by the City. Taber has throughout this process kept the City and City Attorney's Office updated on activity related to this issue.

After three LAX Arrivals Procedures were set aside by the Ninth Circuit in the case of L.A. v. FAA, the FAA was 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 published the draft Environmental Assessment for the new LAX flight procedures the City provided comments on the draft Environmental Assessment and related procedures. Unfortunately the FAA did not make meaningful changes to these procedures after the Court's order and issued a "Finding of No Significant Impact" (FONSI) and a Record of Decision (ROD). As a result the City filed a Petition for Review challenging the FAA's decision.

This amendment will allow Mr. Taber to continue to advocate and represent the City in this process and seek relief for Malibu's residents.

ATTACHMENTS: Amendment No. 4 to Agreement with Leech, Tishman, Fuscado & Lampl, Inc.

## AMENDMENT NO. 4

This fourth 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 9<sup>th</sup> day of September, 2024.

### R E C I T A L S

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. On September 25, 2023, the Parties amended the Agreement to increase the total compensation by \$30,000 (total not to exceed \$108,000) in order for the Firm 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.

E. The Parties now desire to amend the Agreement a fourth time to increase the total compensation by \$40,000 (total not to exceed \$148,000) in order for the Firm to perform additional work including, based on prior work and additional work performed by Firm, representing the City in its Petition for Review, entitled City of Malibu v Federal Aviation Administration no 24-2503, and related work advocating for the City on related issues.

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 \$148,000. 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, 2024.

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