

MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 20 - 0013
JAN 08 2020

REPORT RE:

**PROPOSED AMENDMENT TO LEGAL SERVICES AGREEMENT FOR COUNSEL
IN CONNECTION WITH THE DEVELOPMENT OF
THE LOS ANGELES STREET CIVIC BUILDING PROJECT**

The Honorable City Council
of the City of Los Angeles
200 North Spring Street
City Hall, Room 395
Los Angeles, California 90012

Honorable Members:

This Office recommends that the Agreement for Professional Legal Services between the City of Los Angeles and Ashurst LLP, Contract Number C-132757 (the "Ashurst Contract") be amended in order to reflect the appropriated amount that has been reallocated for outside counsel within the current fiscal year budget for the Los Angeles Street Civic Building Project (the "Project").

Background

On October 24, 2018, the City Council authorized this Office to negotiate and execute a legal services agreement with Ashurst LLP ("Ashurst") and Loeb & Loeb LLP ("Loeb") for their assistance as joint outside counsel in the representation of the City for the Project in an amount not to exceed \$1.5 million (the "Contract Amount"). A copy of this Office's report to the City Council recommending the engagement of Ashurst and Loeb for the Project is attached hereto as Exhibit A. Due to the discovery and disclosure of potential conflicts of interest by Loeb during the negotiation of the legal services agreement and the determination by this Office that Ashurst was capable of

handling the representation, this Office proceeded to engage Ashurst alone pursuant to the Ashurst Contract.

The Contract Amount in the Ashurst Contract was based on the initial line item allocation set forth in the existing Project budget of \$32,300,000 (the "Existing Pre-Design Budget") that was approved by City Council on July 3, 2018, as updated in connection with City Council's approval of the Ashurst Contract. The Existing Pre-Design Budget was approved by City Council in order for the Bureau of Engineering ("BOE") to undertake work relating to demolition, pre-design services and other necessary activities for the Project. Such Existing Pre-Design Budget includes, among other things, line items for demolition, demolition contingency, technical and procurement consultants, outside legal counsel, and City staffing.

Reallocation Among Budget Line Items

On December 21, 2019, the Municipal Facilities Committee ("MFC") approved BOE's request to reallocate funds among internal line items within the Existing Pre-Design Budget for the 2019-2020 fiscal year ("FY 2019-2020"), including reallocations necessary to cover projected consultant costs to be incurred during the remainder of FY 2019-2020. Specifically, MFC approved the reallocation of \$1,500,000 from the demolition contingency line item to line items for the Project's technical consultant, procurement consultant, and outside counsel for FY 2019-2020, of which \$750,000 was allocated to the outside counsel line item. These reallocations were based on BOE's forecast that the remaining demolition contingency line item would be sufficient to ensure completion of the demolition scope of work, as well as the projected consultant costs for the remainder of FY 2019-2020. The reallocations among line items did not alter the overall Existing Pre-Design Budget, which remains at \$32,300,000.

Recommendation

This Office respectfully requests that the City Council:

1. Authorize the City Attorney to negotiate and execute an amendment to the Ashurst Contract to update the not-to-exceed amount stated therein from \$1,500,000 to \$2,250,000, consistent with the MFC-approved updated line item for outside counsel within the Existing Pre-Design Budget for FY 2019-2020;
2. Authorize the City Attorney or designee to prepare Controller instructions for any necessary technical adjustments, subject to the approval of the City Administrative Officer, and authorize the Controller to implement such instructions.

If you have any questions regarding this matter, please contact Deputy City Attorney Sean Torres at (213) 978-8179. He or another member of this Office will be present when you consider this matter to answer questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By 
DAVID MICHAELSON
Chief Assistant City Attorney

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Exhibit A

Prior City Attorney Report to City Council regarding Execution of Ashurst Contract

[see attached]



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 18 - 0 3 0 5
OCT 0 4 2018

REPORT RE:

**PROPOSED LEGAL SERVICES AGREEMENT FOR COUNSEL
IN CONNECTION WITH THE DEVELOPMENT OF
THE LOS ANGELES STREET CIVIC BUILDING PROJECT**

The Honorable City Council
of the City of Los Angeles
200 North Spring Street
Room 395, City Hall
Los Angeles, California 90012

Honorable Members:

This Office recommends that the law firms of Ashurst LLP ("Ashurst") and Loeb & Loeb LLP ("Loeb", together with Ashurst, "Ashurst/Loeb") be retained as joint outside counsel to assist the City in the development of the Los Angeles Street Civic Building Project ("Project").

Background

The Project includes the demolition of the Parker Center building located at 150 North Los Angeles Street, followed by the development of an office building that will be occupied by City departments. On July 5, 2018, City Council authorized the use of the Public-Private Partnership/Design-Build-Finance-Operate-Maintain project delivery methodology ("P3/DBFOM") for the Project. City Council also approved a conceptual Project budget of up to \$32,300,000 for work relating to demolition, pre-design services, and other necessary activities. That approved budget includes funding for outside legal

counsel specializing in P3/DBFOM. Accordingly, our Office issued a request for proposals for such legal services. After a thorough selection process, and for reasons set forth below, we now recommend the retention of Ashurst/Loeb as joint outside counsel for the Project.

Outside Counsel Selection

This Office does not have the requisite knowledge and experience to handle a P3/DBFOM transaction without assistance from outside counsel who practices in such a specialized area of law. On July 24, 2018, our Office issued a Request for Proposals ("RFP") for P3/DBFOM legal services for the Project. The RFP response period closed on August 15, 2018, with the receipt of 14 proposals. Because the P3/DBFOM market is global, many of the responding firms are based outside of California. Some of those law firms submitted joint proposals with local law firms who would assist with any potential issues unique to California law. This Office, with the participation of the City Administrative Officer and the Chief Legislative Analyst, conducted a comprehensive interview process. Considering various factors such as experience, budget, team composition, and geographic location, we have identified Ashurst/Loeb as the most appropriate counsel to assist the City on the Project.

Ashurst is an international law firm that has extensive experience and involvement with P3/DBFOM projects all over the world. Andrew Fraiser, Ashurst's Global Head of Project Finance and Head of Energy & Infrastructure for the Americas and the proposed lead attorney on the Ashurst/Loeb team, is a recognized legal expert in the P3/DBFOM global market. He has worked on over a hundred P3 projects in various countries. In addition, he has helped set P3/DBFOM standards worldwide, having written standard P3/DBFOM contracts used by different government agencies. Ashurst's website states that Mr. Fraiser is "the only lawyer in the world to have been recognized by the Chambers Legal Directory as a Band 1 lawyer for [P3] in both the UK and the USA." In addition to Mr. Fraiser, other highly-qualified P3/DBFOM attorneys from Ashurst will provide assistance on the Project. Loeb, which has partnered with Ashurst on other P3/DBFOM projects, will play a supportive role (about 8% of the joint representation). Loeb's role as local counsel will provide advice on issues unique to local land use law and other California law. Loeb's team, led by Paul Rohrer, has extensive experience in land use entitlement and other real estate development matters, especially in connection with projects involving partnership between public entities and private developers.

Scope of Services and Budget

If approved as joint outside counsel for the Project, Ashurst/Loeb will work with the City team (including the City's P3/DBFOM financial advisor and technical advisor) to provide necessary legal services for the Project, at the direction and under the

supervision of our Office. One of the main components of the scope of legal work will involve drafting and negotiating the P3/DBFOM project agreement.

Ashurst/Loeb provided the City with an estimated budget of approximately \$1,500,000, which includes legal services throughout all stages of the Project. The \$32,300,000 budget that was approved by City Council on July 5, 2018, contemplated the work but included only \$1,000,000 for outside legal counsel. That lower amount was estimated by the Bureau of Engineering in May of this year prior to information learned in the RFP process. Based on the qualified RFP responses received, it has become apparent that the \$1 million budget allocation is insufficient for the intended scope of work. Ashurst/Loeb's budget is in line with, and in many cases lower than, budgets from the other qualified law firms. As discussed with the City Administrative Officer, our recommendation to enter into contract with Ashurst/Loeb for up to \$1,500,000 does not require net new funds because the \$32,300,000 authorized budget includes a Program Contingency line item of \$500,000 that may be used for this purpose.

Loeb's Request for Conflict Waiver

Ashurst does not have any existing or potential conflicts of interest in representing the City on the Project.

Since 2016, Loeb has been representing the City of Los Angeles on certain matters relating to the Los Angeles Harbor Department and the Los Angeles World Airports Department. In connection with such representation, the City Council previously approved Loeb's request for waiver of a possible conflict of interest where Loeb represents the appellants who are challenging the constitutionality of City's signage regulations in *The Folb Partnership, et al., v. The City of Los Angeles, et al.* (9th Cir. Docket 17-55620). We also note that Loeb currently represents the real party in interest who is aligned with the City in the challenge to a zoning determination in *Past Present Future Frogtown, a California unincorporated association v. City of Los Angeles, et al.* (Los Angeles Superior Court Case No. BS164437). Paul Rohrer and his associate who will work on the Project are not litigators, and they have not been involved in the two litigation matters mentioned above. Loeb has requested that the City waive any potential conflict of interest in order for Loeb to assist Ashurst and the City on the Project. This Office is satisfied that Loeb's current potential conflict of interest is waivable and recommends such a waiver.

Recommendation

This Office respectfully requests that the City Council:

1. Authorize the City Attorney to negotiate and execute a legal services agreement with Ashurst/Loeb for their assistance as joint outside counsel

in the representation of the City for the Project in an amount not to exceed \$1.5 million, to be funded from MICLA CP Fund No. 298, Account 50NTCD, entitled Los Angeles Civic Center Program;

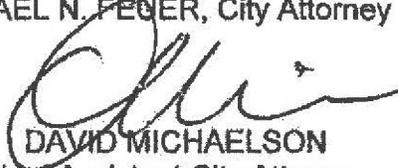
2. Approve waiver of Loeb's current potential conflict of interest to cover its representation of the City on the Project; and
3. Authorize the City Attorney or designee to prepare Controller instructions for any necessary technical adjustments, subject to the approval of the City Administrative Officer, and authorize the Controller to implement such instructions.

If you have any questions regarding this matter, please contact Timothy McWilliams at (213) 978-8209. He or another member of this Office will be present when you consider this matter to answer questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By


DAVID MICHAELSON
Chief Assistant City Attorney

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