

0150-10747-0001

TRANSMITTAL

TO
Deborah Flint, Chief Executive Officer
Department of Airports

DATE
JUN 13 2017

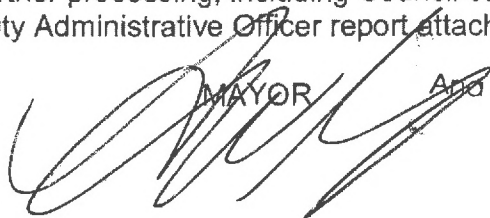
COUNCIL FILE NO.

FROM
The Mayor

COUNCIL DISTRICT
11

Request to Execute a Fifth Amendment to Contract with Morrison & Foerster, LLP to Increase Contract Funding to Continue Legal Services in Support of the Los Angeles World Airports

Transmitted for further processing, including Council consideration. See the City Administrative Officer report attached.


MAYOR Antonio Guerrero

RHL:WDC: 10170136t

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: June 9, 2017

CAO File No. 0150-10747-0001
Council File No.
Council District: 11

To: The Mayor

From: Richard H. Llewellyn, Jr., Interim City Administrative Officer

Reference: Communication from the Los Angeles World Airports dated June 1, 2017; referred by the Mayor for report on June 5, 2017

Subject: **REQUEST TO EXECUTE A FIFTH AMENDMENT TO CONTRACT WITH MORRISON & FOERSTER, LLP TO INCREASE CONTRACT FUNDING TO CONTINUE LEGAL SERVICES IN SUPPORT OF THE LOS ANGELES WORLD AIRPORTS**

RECOMMENDATIONS

That the Mayor:

1. Approve the proposed Fifth Amendment to Contract No. DA-4859 between the Los Angeles World Airports and the law firm of Morrison & Foerster, LLP to increase the contract funding by an additional \$5.4 million, for a total of \$11.5 million, to continue the provision of expert legal services to the Department for matters related to litigation involving deficiencies in and deterioration of the LAX Runway 25L concrete that was replaced by Tutor-Saliba/O&G Industries JV, and others, subject to City Attorney approval as to form and compliance with the City's Standard Provisions for Contracts, including the Living Wage Ordinance, Affirmative Action Program, Child Support Obligations Ordinance, Contractor Responsibility Ordinance, the First Source Hiring Program for all non-trade LAX airport jobs, the City Ethics Commission Form 55 pertaining to bidder contributions, the Equal Benefits Ordinance, and Charter Section 609(e) pertaining to the prohibition of underwriters' gifts and political contributions;
2. Authorize the Chief Executive Officer of the Los Angeles World Airports to execute the Amendment; and,
3. Return the proposed Fifth Amendment to the Department for further processing, including Council consideration and City Attorney approval.

SUMMARY

The Chief Executive Officer of the Los Angeles World Airports (Department; LAWA) requests approval to execute a Fifth Amendment to Contract No. DA-4859 with the law firm of Morrison & Foerster, LLP (contractor) to increase the contract funding by \$5.4 million, for a total of \$11.5 million, for the remaining 14 months of the contract.

The requested increase is needed to continue the provision of legal services in support of pending litigation involving the *City of Los Angeles vs. Tutor-Saliba Corporation/O&G Industries Inc., JV, etc., et al* related to LAX Runway 25L construction. The City Attorney affirms the need to continue the contractor's services. No other substantive changes to the contract terms are being proposed.

The original contract was for \$400,000 and a three-year term from September 1, 2013 to August 31, 2016. Three subsequent amendments increased the authorized funding whereas the Fourth Amendment, approved by the Board of Airport Commissioners (Board) in August 2016, extended the term by two years to August 31, 2018. The current contract expenditure authority is \$6.1 million, of which \$109,853 remained as of the December 2016 billing. The Department continues to work with the contractor to develop a budget for the remainder of the contract term, which requires the funding increase.

Pursuant to City Charter Section 371(e)(2) provisions, the contractor was selected in August 2013 without using a competitive process due to the urgency of this matter and the Department's need to prepare for and then litigate the case involving deterioration of the concrete surface of LAX Runway 25L that was constructed by Tutor-Saliba/O&G Industries JV at a cost of almost \$300 million. The trial is expected to begin in the summer of 2018 with Morrison & Foerster in the lead position representing the City.

As a result of the significant number of witnesses and depositions anticipated as part of the trial, as well as the extensive discovery process and complexities of the case, the Department believes that it is important to retain the contractor and continue to benefit from the firm's proficiency and experience throughout the remainder of the legal proceedings, as well as their demonstrated litigation and product liability expertise. Execution of a Fifth Amendment requires Council approval of an exemption from the provisions of Charter Sections 371(e)(2) and (e)(10), "Competitive Bidding; Competitive Sealed Proposals; Exceptions," in that the use of competitive bidding at this time would be undesirable, impractical, or impossible.

The proposed Fifth Amendment was approved by the Board at its meeting of June 1, 2017.

FISCAL IMPACT STATEMENT

Approval of the Fifth Amendment will have no impact on the City's General Fund. As of the December 2016 billing, there was approximately \$109,853 in authorized funds remaining for this contract. The Department continues to work with Morrison & Foerster to develop a budget for the remainder of the contract term, which requires this funding increase. With the approval of the proposed Amendment authorized funding will be increased by an additional \$5.4 million for a total of \$11.5 million to address the litigation and issues involving Runway 25L construction at LAX.

The required funds will be available from the Department's Fiscal Year 2017-18 Operating Budget in Cost Center 1110004 – Legal Services Division, Commitment Item 520 – Contractual Services. Costs incurred under Contract No. DA-4859 will be recovered from landing fees, terminal rates and charges, and non-aeronautical revenues (e.g., concessions, parking lot revenue, etc.). Future years' funding, if needed, will be requested as part of the annual budget process. The use of outside legal services complies with the Department of Airports' adopted Financial Policies.

