

HARBOR DIVISION

425 S. PALOS VERDES ST.

P.O. BOX 151

SAN PEDRO, CA 90733-0151

FACSIMILE

(310) 831-9778

(310) 732-3750



OFFICE OF THE CITY ATTORNEY

MICHAEL N. FEUER
CITY ATTORNEY

JANNA B. SIDLEY
GENERAL COUNSEL

JOY M. CROSE
ASSISTANT GENERAL COUNSEL

CHRISTOPHER B. BOBO
ESTELLE M. BRAAF
JOHN T. DRISCOLL
JUSTIN HOUTERMAN
JANET KARKANEN
KENNETH F. MATTFELD
HEATHER M. MCCLOSKEY
ESTHER S. OLSEN
STEVEN Y. OTERA
MINAH PARK
HELEN J. SOK

DATE: APRIL 9, 2014

FROM: OFFICE OF THE CITY ATTORNEY

**SUBJECT: RESOLUTION NO. _____ APPROVE AND AWARD
AGREEMENT FOR LEGAL SERVICES BETWEEN THE CITY OF LOS
ANGELES AND ALVARADOSMITH**

SUMMARY:

The Office of the City Attorney seeks the assistance of outside legal counsel to defend the City of Los Angeles and the Harbor Department in pending litigation entitled *California Cartage Company, Inc. v. City of Los Angeles, et al.*, Los Angeles Superior Court case number BC536307. The defense requires special expertise in the area of inverse condemnation, the primary claim asserted in the litigation. AlvaradoSmith is especially well qualified to provide the necessary representation due to its extensive inverse condemnation experience. The Office of the City Attorney requests the Board of Harbor Commissioners (Board) approve and award a three-year agreement (Agreement) to AlvaradoSmith with an appropriation of \$175,000.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Find in accordance with Charter Section 1022 that the scope of work of the proposed Agreement can be more economically and feasibly provided by an independent contractor than by City employees;
2. Approve the Agreement with AlvaradoSmith in an amount not to exceed \$175,000 for a period of three years from April 21, 2014 through April 20, 2017;
2. Authorize the Executive Director to execute and the Board Secretary to attest to The Agreement; and
3. Adopt Resolution No. _____.

SUBJECT: AGREEMENT WITH ALVARADOSMITH

DISCUSSION:

Background and Context - In accordance with Los Angeles City (City) Charter Section 275, the Office of the City Attorney has determined that it requires outside legal counsel to assist in defending against the litigation Cal Cartage Company, Inc. (Cal Cartage) commenced against the City and Harbor Department on February 13, 2014. The effort demands specialized expertise in inverse condemnation, the primary claim asserted by Cal Cartage.

The action is primarily an inverse condemnation claim arising out of the Harbor Department's termination of Cal Cartage's leasehold interests in premises located within the proposed Southern California International Gateway (SCIG) near-dock intermodal rail facility footprint. AlvaradoSmith is highly qualified to provide needed expertise in inverse condemnation and other asserted causes of action.

The City granted Cal Cartage the use of approximately 86 acres in the Wilmington Classifications Yard (Premises) for the operation of a warehousing and transload facility under Agreement No. 2069 (Agreement) and Revocable Permit No. 95-40 (RP). The initial term of the Agreement expired on April 30, 2008. The City subsequently granted Cal Cartage holdover status extending the term of the Agreement on a month-to-month basis. The RP was granted on a month-to-month basis from its inception.

In March 2013 and May 2013, the Board and City Council certified the Final Environmental Impact Report (EIR) for the SCIG project and approved the Site Preparation and Access Agreement (SPAA) and a 50-year Permit granted to the BNSF Railway Company (BNSF). Cal Cartage, along with six other petitioners, has objected to the SCIG project and is seeking to have the EIR declared invalid under the California Environmental Quality Act (CEQA) in a separate court proceeding.

On July 2, 2013, the City delivered to Cal Cartage a 30-day notice of termination of the holdover status of the Agreement and a separate 30-day notice of termination of the RP. As a result, Cal Cartage's right to possession of the Premises under the Agreement and the RP terminated on August 2, 2013. Cal Cartage subsequently entered into a sublicense agreement with the BNSF as allowed under the SPAA. Cal Cartage thus currently remains in possession of the Premises.

On July 31, 2013, Cal Cartage submitted a Claim for Damages (Claim) with the City Clerk seeking damages for loss of business goodwill in the amount of \$100,000,000 and unspecified additional damages based primarily on a theory of inverse condemnation. On August 8, 2013, the Board authorized the City Attorney's Office to deny the Claim. On August 15, 2013, this Office issued the denial of the Claim.

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On February 13, 2014, Cal Cartage filed its complaint with the Los Angeles Superior Court asserting five causes of action: (1) inverse condemnation, (2) nuisance, (3) breach of implied covenant of good faith and fair dealing, (4) negligent interference with prospective economic relations, and (5) deprivation of rights pursuant to 42 U.S.C. section 1983. Each of the causes of action is premised on an alleged wrongful taking of a real property interest for public use.

Scope of Work – AlvaradoSmith will be retained to assist the Office of the City Attorney with defending against the litigation Cal Cartage commenced against the City and the Harbor Department on February 13, 2014. AlvaradoSmith shall work under the direction of the Office of the City Attorney which will rely on the competence, expertise and experience of AlvaradoSmith. AlvaradoSmith shall provide professional legal advice and services at the highest level expected of law firms providing legal services in the Los Angeles region. The Agreement is a non-exclusive agreement to provide legal services to the City and, at the City Attorney's discretion, the City may augment the services with another law firm or law firms or select to terminate AlvaradoSmith's services in a manner consistent with the Agreement.

Selection Process - The Harbor Division relied on a Request for Proposals (RFP) previously conducted by the Office of the City Attorney for outside legal counsel services regarding the Los Angeles Department of Water and Power's (DWP) acquisition of real property for the Barren Ridge Renewable Transmission Project (BR RTP). Since the BR RTP and SCIG project both involve the acquisition of real property for public use and require counsel with expertise in eminent domain and inverse condemnation issues, relying on this Office's previous selection process is appropriate.

In February 2013, the Office of the City Attorney retained the firm of AlvaradoSmith as primary outside eminent domain counsel to assist and advise the DWP on the acquisition process and to coordinate litigation related to the BR RTP. In February 2014, the Harbor Division interviewed AlvaradoSmith and two other firms that responded to the RFP previously issued for the BR RTP with regard to representing the City and Harbor Department in the Cal Cartage litigation. Each firm was questioned on how the firm would approach the defense of the litigation. The interviews were conducted by Assistant City Attorney Anne Haley and Deputy City Attorney Janet Karkanen. Each firm interviewed provided proposed hourly rates and litigation budgets. AlvaradoSmith stood out during the interview process as the most knowledgeable, experienced, and responsive to the questions posed. AlvaradoSmith has extensive experience representing public entities in relation to project implementation, eminent domain, and inverse condemnation matters. AlvaradoSmith's proposed budget is reasonable and competitive with the other proposers.

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ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a three-year Agreement with AlvaradoSmith for professional legal services in support of the Office of the City Attorney. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II Section 2 (f) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

Approval of the proposed Agreement will support 1 direct and 1 secondary one-year equivalent jobs for the five-county region.

FINANCIAL IMPACT:

Funding for the proposed new Agreement has been budgeted in the FY 2013-14 Operating Budget and there are funds available within the Office of the City Attorney's Legal Fees and Services account- Account 54410 within Cost Center 0120 and Program 000. A total of \$75,000 can be committed for the proposed Agreement to cover costs and expenses for the remaining portion of FY 2013-14 (April 21, 2014 to June 30, 2014).

Funding for future fiscal years if necessary, will be requested to be budgeted as part of the annual budget adoption process, upon Board approval. A funding out clause is included in the proposed Agreement.

Firm	FY 13/14	FY14/15	FY15/16	TOTAL
AlvaradoSmith	\$ 75,000	\$ 75,000	\$ 25,000	\$ 175,000

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the proposed Agreement as to form and legality.

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TRANSMITTAL:

1. Proposed Agreement with AlvaradoSmith

FIS Approval: JKP (initials)

CA Approval: JBS (initials)

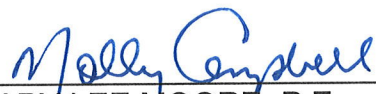


JANET KARKANEN
Deputy City Attorney



JANNA B. SIDLEY
General Counsel

APPROVED:

By 

for GARY LEE MOORE, P.E.
Interim Executive Director

Author: JANET KARKANEN
Board Meeting: 4/17/2014