



## **BRIEFING: MAY 15, 2018 BOARD MEETING AGENDA ITEM #4**

**TO:** Chairman Richard and Board Members

**FROM:** Tom Fellenz, Chief Counsel

**DATE:** May 15, 2018

**RE:** Consider Extending the Legal Services Contract with Nossaman LLP for Time Only

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### **Summary of Recommended Action**

Staff recommends that the Board approve extending the legal services contract with the Nossaman LLP law firm by two and a half years, from June 30, 2018 to December 31, 2020, with no funding addition at this time. Continuation of this contract is necessary to support administration and interpretation of the three design-build contracts in the Central Valley.

### **Background**

The Nossaman LLP law firm has been providing legal services to the Authority since 2009, which was a point in time when the Authority had no in-house lawyers. The period between late-2010 and mid-2014 was a critical time for the Authority and the development of the high-speed rail project. Specific milestones during this period included: negotiating and executing the American Recovery and Reinvestment Act (ARRA) grant agreement, preparation of the first Proposition 1A funding plan, issuance and certification of the first two environmental documents and pursuit of associated permits, development and issuance of the first design-build contract RFP and associated subsequent contract negotiation and execution, and strategy development and first filing before the Surface Transportation Board. Nossaman was the main outside law firm providing legal advice during this critical and intensive period.

By fall of 2014, the Authority had expended approximately \$17 million to obtain Nossaman's services since 2009. Having been pleased with the services provided over the years across a range of legal topics, staff requested Board approval in Fall 2014 for a funding increase to the Nossaman contract. The Board approved an increase, but significantly less than staff requested (\$2 million instead of \$10 million). The Board directed staff to diversify its stable of outside legal contractors, which staff has done. Staff also has increased its number of in-house lawyers. Of the \$2 million increase the Board approved in late 2014, approximately \$620,000 remains unspent.

### **Prior Board Action**

In April of 2012, the Board approved Resolution #HSRA 12-14 to increase the Nossaman contract by \$4.7 million, to a then-total of \$5.9 million. In August of 2013, the Board approved Resolution #HSRA 13-18 to increase the Nossaman contract by \$8.6 million, to a then-total of \$14.5 million. An amendment within the

CEO's authority in July of 2014 increased the contract amount to \$17 million. In November of 2014, the Board approved Resolution #HSRA 14-36 to increase the Nossaman contract by \$2 million, to the present contract maximum of \$19 million. In June of 2015, the Board approved Resolution #HSRA #15-10 to increase the duration of the Nossaman contract to June 30, 2016. In May of 2016, the Board approved Resolution #HSRA #16-16 to increase the duration of the Nossaman contract to June 30, 2018.

**Discussion**

Presently, Nossaman provides very limited, but critically important, support in interpreting the Authority's three existing design-build contracts. Nossaman largely supported the authoring of these contracts, as noted above. Nossaman provides that support only when Authority counsel and its primary outside construction counsel (Rutan and Tucker, hired following the Board's 2014 direction to staff to diversify) cannot perform the work due to workload or when Nossaman can most efficiently provide an answer due to issue familiarity. Having Nossaman available for this overflow work is essential. The Nossaman contract expires June 30, 2018; this request is to extend the contract by two and a half years, to December 31, 2020.

During the period of 2013 to 2015, generally speaking, Nossaman also was heavily involved in the development of the strategy and document preparation regarding Authority procurement of trainsets. Those documents still exist and may provide a foundation upon which to build. When a trainset procurement moves forward and/or when procurement of track/track and systems and electrification moves forward, staff will evaluate outside legal staffing and budget for such procurement(s) and will return to the Board as required for associated approval(s).

**Legal Approval**

The Legal Office has confirmed the Authority's legal ability to add time to the Nossaman contract, as proposed.

**Budget and Fiscal Impact**

This request is to extend the term of the contract and does not request any additional funding.

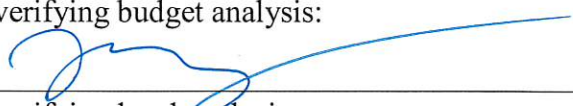
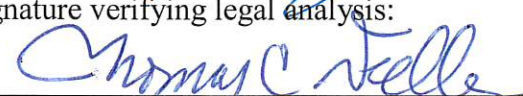
**2017-18 Fiscal Year Budget Impact**

Contract Name	Contract/Activity Number	Current FY Contract/Activity Budget	Budget Change	Funding Source
Nossaman	HSR08-10	\$733,318	N/A	State Funding
Time Extension Only Request				

The Nossaman contract has increased from the original contract amount of \$500,000 to the current budget of \$19,000,000 following several contract amendments that incrementally increased the budget since 2009. The current request would extend the contract term but not increase the Total Program Budget.

**Total Program Budget Impact**

Contract Name	Contract/Activity Number	Current Total Program Contract/Activity Budget	Budget Change	Funding Source
Nossaman	HSR08-10	\$19,000,000	N/A	State Funding
Time Extension Only Request				

REVIEWER INFORMATION	
Reviewer Name and Title: <b>Russell Fong, Chief Financial Officer</b>	Signature verifying budget analysis: 
Reviewer Name and Title: <b>Tom Fellenz, Chief Counsel</b>	Signature verifying legal analysis: 

**Recommendation**

Continued availability of outside counsel to assist, in an overflow capacity, with administration and interpretation of the three design-build contracts is critical. Nossaman largely drafted these contracts, so is in the best position to provide this continued service. Accordingly, staff recommends extending the contract by two and a half years, to December 31, 2020.

**Attachments**

- Draft Resolution #HSRA 18-10
- #HSRA 12-14
- #HSRA 13-18
- #HSRA 14-36
- #HSRA 15-10
- #HSRA 16-16