



Meeting: **Reservoir Committee & Authority Board**
Agenda Item 1.5

December 15, 2023

Subject: **Task Order Amendments for Nossaman LLP and Perkins Coie LLP**

Requested Action:

Reservoir Committee and Authority Board to consider approval of the following task order amendments resulting in a change to the 2023 budget:

1. Budget transfer of \$100,000 from the Real Estate Subject Area to the Program Operations Subject Area.
2. Budget transfer a total of \$650,000 to the Planning subject Area from Engineering Contingency.
3. Increase Perkins Coie LLP CEQA/NEPA Legal Services Contract by \$650,000 for a new FY23 total authorization of \$1,622,321 and increase the contract authority for Amendment 3 to \$2,511,516.

Detailed Description/Background:

In September 2021, the Authority Board approved the Amendment 3 work plan, which included budgets for CEQA Legal Services provided by Perkins Coie and Real Estate and Inter-Agency Agreement Legal Services that was later contracted with Nossaman. Per the Delegation of Authority Matrix adopted by the Board in December 2020, Board approval is required to allocate contingency or transfer funds from one subject area to another in excess of \$100,000 and to increase contract authority in excess of \$100,000.

Real Estate and Inter-Agency Agreement Legal Services Scope and Contract Changes – Nossaman LLP:

For the Inter-Agency Agreements scope, existing activities have required additional effort for B&O contract development beyond what was included in the current approved task order. For the Real Estate scope, less effort than initially expected has been expended in FY23 due to deferral of land acquisition to align with CEQA approval. The proposed budget transfers support the following contract amendments to the Nossaman Contract. These include the reallocating of \$100k from Nossaman’s Real Estate task (Real Estate Subject Area) to their Inter-Agency Agreement task (Prog Ops Subject Area) as well as allocating \$30k from unrestricted contingency to cover the additional work activities to be completed by Nossaman in 2023. This task order amendment will result in an increase to Nossaman’s overall contract ceiling from \$850,327 to \$880,327 and increase their authorized 2023 total from \$425,000 to \$455,000. A list of the proposed changes to be included in the Nossaman task order amendment is provided below.

Each of these actions on their own are within Executive Director authority however the \$100,000 budget transfer is proposed for Board approval to 1) represent that the Board is in agreement with these collective changes, and 2) get confirmation whether the Board has concerns with the delegated authority regarding this unique situation that was not specifically contemplated when the delegation authority was established. Without specific feedback from the Board, Staff will assume the Board is comfortable with the Executive Director executing these types of changes under the delegated authority in the future.

Planning Legal Services - Perkins Coie LLP:

Increases in Perkins Coie's overall budget amount are needed for two reasons. First, to meet the requirements of SB 149, the Authority was required to complete and post its entire CEQA record of proceedings on its website and certify the record within 5 days of Project approval. The record of proceedings is posted on the Authority's website here www.sitesproject.org/ceqa-record-of-proceeding. The record is hundreds of thousands of pages long, including thousands of documents throughout the CEQA process. In addition, over 100,000 potentially responsive Authority emails and internal communications spanning several years were reviewed by Perkins Coie in development of the record, resulting in nearly 10,000 emails and internal communications deemed responsive and included in the record. This level of effort was not assumed when the prior contract change earlier this year to cover admin record prep was approved by the Board and with the urgency to finalize CEQA, Staff felt it was better to complete the work and come to the Board with a final actual cost. Development of the CEQA record of proceedings also required focused time for the Authority's lead attorneys to review, provide direction to technical staff, and develop materials to ensure a comprehensive record of proceedings. Second, the Authority received a handful of late comments as part of the CEQA process. These comments required additional review and focused attention from the Perkins Coie team both in responding to the comments prior to the certification of the EIR but also in reviewing the record of proceedings to ensure the items identified in the comments were addressed in the record.

This budget adjustment requires allocation of \$650,000 from contingency to Perkins Coie resulting in an increase to the overall Perkins Coie task order ceiling from \$1,861,516 to \$2,511,516 and their 2023 authorized total from \$972,321 to \$1,622,321. This action will also require moving budget from the Engineering Subject Area contingency to the Planning Subject Area resulting in a change of \$650,000 to the overall approved subject area budgets. The Engineering Subject Area contingency is being used for this amendment because the Planning Subject Area contingency does not have sufficient funds to cover this change.

The proposed changes to scope and budgets have been reviewed and recommended for approval by the Budget and Finance Committee.

Prior Action:

November 2022 - Board approval of 2023 annual budgets.

Fiscal Impact/Funding Source:

The proposed scope changes to Nossaman’s contract result in an overall net change to the Nossaman task order of \$30,000 which will be allocated from unrestricted contingency. The proposed scope changes to Perkins Coie’s contract result in an overall net change to the Perkins Coie task order of \$650,000 which will also be allocated from unrestricted contingency. The overall Board approved 2023 budgets by subject area will include the following net zero changes:

- Engineering: -\$650,000
- Planning: +\$650,000
- Real Estate: -\$100,000
- Program Ops: +\$100,000

Staff Contact:

Joe Trapasso
Ali Forsythe (Perkins Coie)
JP Robinette (Nossaman Inter-Agency Agreements)
Kevin Spesert (Nossaman Real Estate)

Primary Service Provider:

Brown and Caldwell – Project Controls

Attachments:

None