

# M E M O

## *Alameda Corridor Transportation Authority*

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To: Governing Board

Meeting Date: June 1, 2023

From: Heather M. McCloskey, Co-General Counsel  
Thomas Oh, Co-General Counsel

Subject: APPROVE 1) First Amendments to add an additional five year term for legal services agreements with BDG Law Group; Best, Best & Krieger LLP; Gibbs Giden Locher Turner Senet & Wittbrodt LLP; Hawkins Delafield & Wood LLP; Kutak Rock LLP; Nixon Peabody LLP; O’Melveny & Myers LLP; and Theodora Oringher PC and 2) First amendments for an additional five year term and additional funding with Nossaman LLP and Sheppard, Mullin, Richter & Hampton LLP.

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**Recommendation:**

- 1) Approve the first amendments to legal services agreements with the following law firms:

- BDG Law Group
- Best, Best & Krieger LLP
- Gibbs Giden Locher Turner Senet & Wittbrodt LLP
- Hawkins Delafield & Wood LLP
- Kutak Rock LLP
- Nixon Peabody LLP
- Nossaman LLP
- O’Melveny & Myers LLP
- Sheppard, Mullin, Richter & Hampton LLP
- Theodora Oringher PC

The amendments extend the term of each agreement for five years to June 30, 2028, and increase the total compensation for the agreements with Nossaman LLP and Sheppard, Mullin, Richter & Hampton LLP.

- 2) Authorize the Chief Executive Officer or Chief Financial Officer to execute said agreements.

**Discussion:**

Starting in 1997, ACTA has hired outside law firms to provide on-call specialized legal services, including litigation matters. Since 2008, ACTA has contracted with law firms through competitive selection procedures conducted in five-year intervals. The agreements currently in effect with law firms selected from the 2018 competitive process will expire on June 30, 2023.

In anticipation of the current agreements’ upcoming expiration date, ACTA issued a Request for Proposals (“RFP”) for legal services on January 24, 2023. The request for legal services was made for specific practice areas, with

the intention of selecting one or more firms for each area of specialized work. The practice areas for which ACTA requires outside legal assistance are public finance (bond, tax, and disclosure counsel); business transactions and contracts; employment matters; real property transactions; construction contracts and claims; environmental regulations and entitlements; and general litigation for these practice areas. Firms were invited to submit proposals offering services in one or more practice areas.

Twenty-five firms responded to the RFP, submitting proposals by the February 24, 2023, deadline. See Transmittal 1. Proposals were reviewed and selection of firms was based upon the following criteria:

- Demonstrated specific expertise, experience and qualifications of the firm and the attorneys for each proposed practice area;
- The firm's approach and strategy, including staffing, to provide services for each proposed practice area;
- Hourly rates, fees and cost effectiveness of the proposed practice areas; and
- The firm's general experience representing and advising public entities in the proposed practice areas, including litigation where applicable.

A selection committee consisting of both ACTA's Co-General Counsel, ACTA's Chief Executive Officer, ACTA's Chief Financial Officer and one Deputy City Attorney from the Harbor Division of the Los Angeles City Attorney's Office reviewed the proposals and made the selection recommendations set forth herein. The written proposals were independently reviewed and evaluated by each selection committee member. Thereafter, the selection committee discussed each firm's proposal with respect to the selection criteria and decided whether to select, reject or interview each firm.

The selection committee agreed that ten firms currently under contract with ACTA should be recommended to have their contracts renewed based upon their proposals and their work with ACTA during the preceding five years. Of the fifteen remaining firms, seven were invited to interview with the selection panel on May 1<sup>st</sup> and 2<sup>nd</sup>, 2023. From the interviews, three firms were selected for recommendation to provide legal services to ACTA. The request for the Governing Board to approve these three new agreements is set forth in a separate agenda item for the June 1, 2023, meeting.

The law firms recommended, and the budget allocations made therein, provide coverage for the range of services to meet ACTA's present and currently known legal needs. On a day-to-day basis, legal services may be initiated by ACTA staff contacting ACTA's Co-General Counsel to discuss the legal matter at hand. Co-General Counsel, in consultation with ACTA staff, will decide whether the matter may be handled in-house or if additional specialized services are required. Generally, legal services for public finance matters (i.e., bond, tax, and disclosure counsel), litigation matters and environmental regulatory matters (e.g. CEQA/NEPA counsel), require services by outside counsel.

When outside legal services are necessary, assignments may be given to law firms on a case-by-case basis by ACTA's Co-General Counsel after discussion with ACTA staff. However, whenever a larger size project or significant need for legal services arises, firms within the required practice area will be asked to submit a proposal for the work, propose attorneys to be assigned, provide examples of similar prior experience, if any, and submit a proposed schedule and budget. A current conflict check will also be conducted to ensure that a firm is not engaged for work in which it may have a client conflict, unless appropriate waivers are obtained. Conducting these "mini-

proposal” procedures ensures that ACTA receives legal services from the most qualified firm for that specific matter, along with a competitive budget proposal.

Transmittal 2 provides a table showing each law firm’s supervising attorney, selected practice areas, agreement compensation amount and additional funding if requested, and the proposed FY 23-24 budget. Transmittal 3 provides the amendments for each firm recommended for extension. The hourly rate structure is the same for all firms, namely, the firm’s first year proposed rates apply for the first two years, followed by 4% increases for years three through five.

The amendments for Nossaman LLP and Sheppard, Mullin, Richter & Hampton LLP have increased compensation amounts of \$320,000 and \$460,000 respectively. These two firms have provided, and will continue to provide, on-going real estate services for a variety of real property transactions, assisting with the exchange of easement and ownership rights among third parties and government agencies along the corridor. These real property transactions are with various government agencies and the two railroads operating on the corridor, involving the sorting of final ownership and access rights among the parties for property that was needed to build the corridor. These transactions involve transfers between various parties for fee ownership, easement rights or utility location rights. In some cases, parcel transfers involve multiple-layered transactions which require each agency involved to sign-off on the transfer plan and documents prior to closing the transaction through governing authority approvals. In addition to these continuing services, Sheppard Mullin provides annual disclosure services to ACTA in compliance with federal public finance laws and ACTA’s Master Trust Indenture obligations.

While the proposed funding budget does account for current on-going work, it does not account for the possibility of future significant legal services such as litigation or regulatory actions. Should such legal service needs arise, additional funding, if required, may be requested for the law firm handling such unforeseen matters. Finally, fees for public finance firms providing bond, tax, and disclosure services for bond transactions are funded from the proceeds of such transaction and are not included as part of the outside counsel budget.

**Budget Impact:**

There is no budget impact for eight of the proposed ten amendments, as no additional funds are being requested. Two amendments, those with Nossaman and Sheppard Mullin, will add additional funding totaling \$780,000 over the next five-year period. See Transmittal 2. Annual requests for approval to fund services provided by the law firms will be made pursuant to ACTA’s annual budget approval process. For the FY23-24 budget, the funding requested for the ten firms subject to this approval item is \$350,000.

**Co-General Counsel Review:**

ACTA’s Co-General Counsel has reviewed and approved the proposed amendments as to form.

**Transmittals:**

- Transmittal 1 – Law Firms Submitting Proposals in Response to the RFP
- Transmittal 2 – Proposed Law Firm Practice Areas and Budgets
- Transmittal 3 – Agreement Amendments