

REGIONAL TRANSIT AUTHORITY

**MOTION NO. 44
BACKGROUND AND COMMENTS**

Meeting:	Date:	Agenda Item:	Staff Contact:	Phone:
Executive Committee	11/7/97	No. 5	Desmond Brown, Chief Legal Counsel	206-684-6758

ACTION:

Authorizing the Executive Director to enter into agreements with Robert Kessler, Esq., and with a joint venture comprised of the Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim law firm and the Harkins Cunningham law firm. These firms will provide specialized legal advice to assist the RTA in negotiating with the Burlington Northern Santa Fe Railroad (BNSF), Union Pacific Railroad (UP), and the Tacoma Eastern Railway (TE) (collectively, the “Railroads”) to permit the RTA to provide passenger rail service on existing freight trackage in King, Snohomish, and Pierce Counties. Such legal services will encompass advising the RTA throughout the course of the negotiations with the Railroads with respect to all legal issues relating to the RTA’s right to operate commuter rail service on trackage owned by, or franchised to, said Railroads. The legal services will include assisting the RTA with the development of a negotiating strategy, and the development and analysis of proposed agreements. The legal support team will also advise the RTA in direct contract negotiations with the Railroads, federal, state and local agencies, and will provide such other legal services as are required to successfully negotiate the required contracts.

BACKGROUND:

The RTA must negotiate with the Railroads for the right to operate commuter rail service on trackage owned or controlled by the Railroads. In order to secure these rights and to ensure that there is sufficient track capacity to accommodate the RTA’s commuter rail service in addition to existing freight traffic and Amtrak passenger service, the respective parties must reach agreement on a number of issues, including trackage use and access rights, liability and indemnification responsibilities, the level of capital investment necessary to upgrade existing track and signaling equipment, and the allocation of these costs between the RTA and the Railroads.

It is crucial that the RTA secure the rights necessary to ensure timely commuter rail operations. Because trackage rights agreements must be negotiated, and because extensive capital improvements to existing track and signaling equipment will be necessary to implement commuter rail service, it is recommended that the RTA retain expert legal counsel who specialize in providing commuter rail legal analysis and negotiations support to assist the RTA in negotiating with the Railroads. In order to obtain these legal services, the RTA published a request for qualifications and proposals for the provision of commuter rail legal negotiations support services. Ten (10) firms submitted proposals. Robert Kessler, Esq., and the joint venture comprised of the Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim law firm and the Harkins Cunningham law firm were selected because their proposals were clear leaders in responsiveness, experience, quality and cost.

RELEVANT BOARD POLICIES AND PREVIOUS ACTIONS:

- *Sound Move*, the ten-year plan for regional high-capacity transit. The plan encompasses the implementation of commuter rail facilities and services including rush-hour passenger service on 81 miles of existing train tracks stretching the north/south length of the district between Everett, Seattle, Tacoma and Lakewood, and includes building/improving 14 stations, making track improvements and upgrading signal control systems.
- Procurement of professional services in accordance with Resolution No. 78 and Motion No. 26 (guiding principles for employment and contracting.)

KEY FEATURES OF AGREEMENT:

Provide comprehensive commuter rail legal negotiations support to assist the RTA in implementing commuter rail service.

FUNDING:

The total cost for the three-year term of the agreements will depend on the level of effort required to negotiate an agreement with the Railroads. Assuming a normal negotiation process, the fees and costs are not expected to exceed \$500,000. The \$50,000 in fees expected to be incurred for the remainder of 1997 is included in the approved 1997 budget. The remaining \$450,000 will be included in the proposed budgets for 1998 and 1999.

ALTERNATIVES:

As an alternative to entering this contract for legal services, the RTA could rely on its in-house legal staff to provide legal negotiations support in implementing commuter rail service. In-house counsel currently lacks the expertise to provide such support, however, and the current commuter rail implementation schedule would not allow sufficient time to develop such expertise. It is believed that these negotiations will require a high degree of legal specialization in order to protect the RTA's interests with respect to the operation of commuter rail service, and with respect to the expenditure of tens of millions of dollars to upgrade the existing railway to support the service. The RTA's general counsel, Preston Gates & Ellis, cannot provide the RTA support in these negotiations because Preston would have a conflict of interest given its long-standing attorney-client relationship with one of the Railroads.

CONSEQUENCES OF DELAY:

The Sound Move schedule requires commuter rail service to begin in 1999 and negotiations with BNSF are already underway to provide service between Seattle and Tacoma. Delays in procurement of legal representation will increase the already significant time pressure on the negotiations with the Railroads. Extensive delays would likely prejudice the RTA's negotiation position with the Railroads.

**Regional Transit Authority
Motion No. 44**

A motion of the Executive Committee of the Regional Transit Authority for the Pierce, King and Snohomish Counties region authorizing the Executive Director to enter into agreements with Robert Kessler, Esq., and with a joint venture comprised of the Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim law firm and the Harkins Cunningham law firm to provide commuter rail legal negotiations support to the Regional Transit Authority.


Background:

The Regional Transit Authority ("RTA") selected Robert Kessler, Esq., and a joint venture comprised of the Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim law firm and the Harkins Cunningham law firm to provide commuter rail legal negotiations support to the Regional Transit Authority for a three-year term. This selection was made after conducting a competitive procurement in which proposals were received from ten (10) firms. The firms selected were determined to be the best qualified to provide the required services to the Regional Transit Authority in terms of cost, experience, quality and responsiveness to the requirements of the request for proposals and qualifications.

Motion:

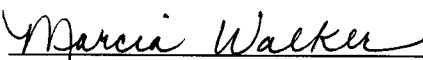
It is hereby moved by the Executive Committee of the Regional Transit Authority that the Executive Director be authorized to negotiate and execute agreements with Robert Kessler, Esq., and with a joint venture comprised of the Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim law firm and the Harkins Cunningham law firm to provide comprehensive commuter rail legal negotiations support services.

Approved by the Executive Committee of the Regional Transit Authority for the Pierce, King, and Snohomish Counties region at a meeting thereof on the 7th day of November 1997.



Bob Drewel
Board Chair

ATTEST:



Marcia Walker
Board Administrator