

## SOUND TRANSIT

### MOTION NO. M99-19

#### Contract Award for Legal Services, Eminent Domain and Railroad Negotiation Services BACKGROUND AND COMMENTS

Meeting:	Date:	Type of Action:	Staff Contact:	Phone:
Finance Committee	3/18/99	Deferred	Desmond Brown	684-6758
Finance Committee	4/1/99	Discussion/Possible Action		

#### ACTION:

To approve award of contracts to the firms and individuals listed in Exhibit A to provide general legal services and eminent domain legal services; to add additional attorneys as needed; to extend the contracts for railroad negotiations; and to approve a one-year contract extension for Preston Gates & Ellis, LLP. The exact amount of each contract will depend on the work performed, but the total amount of contracts shall not exceed the approved 1999 budget amount of \$2,222,850.00 for legal services.

#### EXECUTIVE SUMMARY:

A substantial amount of legal work will be necessary to successfully implement *Sound Move*. In order to provide the highest quality and most timely legal services, it is necessary to supplement Sound Transit's core legal staff with outside legal services under the supervision of Staff Attorneys and the General Counsel. The rosters and contracts for general legal services, eminent domain, and railroad negotiation services that have been developed through a competitive process and include individual attorneys and small, medium, and large firms from throughout Sound Transit's region. In addition to providing on-call, as-needed attorneys, these rosters will help fulfill Sound Transit's subarea equity policy. Extension of the Preston contract will allow the transition to an on-call roster of attorneys to occur in an orderly fashion over the next year while maintaining access to those attorneys who have worked on critical phases of the project over the last five years. Extension of the railroad negotiation contract will permit the negotiations to be completed in a timely fashion.

#### BACKGROUND:

##### General Legal Services

In September, 1998 Sound Transit issued a Request for Proposals (RFP), RTA/LE 81-98, for thirteen categories of legal services. Over 40 firms and solo practitioners located throughout the region from Everett to Tacoma submitted proposals in October, 1998. A selection committee evaluated the proposals and determined that each of the firms and solo practitioners were qualified to perform legal work in one or more categories. By contracting with each firm and solo practitioner to provide legal services to Sound Transit on an on-call basis, Sound Transit

will have the ability to select the most qualified attorney from throughout the region when outside counsel services are needed in specialized areas or when our project schedule requires additional legal resources.

The work to be provided could include a broad array of legal issues that will arise as part of the identified work programs in commuter rail, regional express, light rail, finance and administration, and public and governmental affairs. The issues expected to arise include land-use/environmental permitting, construction contracting, environmental justice, employment and labor law, tax law, and general municipal law issues.

In order to meet our immediate legal needs, we have begun a limited amount of work with attorneys in Everett, Seattle, Federal Way, and Tacoma. However, board approval will be required to continue this work and to utilize the other attorneys who have been selected and deemed eligible to provide legal services.

### **Eminent Domain**

Sound Transit issued an RFP, LE 86-98, for eminent domain services to acquire properties for the commuter rail and light rail projects. Proposals were received in October, 1998 and were evaluated by a selection committee. Based on past successful experience representing public and private clients in condemnation negotiations and trials, eight firms were selected for award of a contract. The firms selected are identified in Exhibit A and are located in Everett, Seattle, Bellevue, and Tacoma. The utilization of each firm will depend on Sound Transit's ability to acquire properties through negotiations rather than through filing a legal action to condemn the needed property.

The board has previously authorized condemnation of specific properties in Resolution 98-50, and condemnation actions have already been filed to acquire ten properties for the commuter rail project. In order to meet our immediate legal needs in this area, we have authorized firms in Tacoma and Seattle to perform a limited amount of work to begin the condemnation actions. However, board approval is necessary if this work is to continue.

### **Preston Gates & Ellis**

In 1994, the Board conducted a competitive procurement and selected the law firm of Preston Gates & Ellis (Preston) as the RTA's general legal counsel. Preston acted as the general counsel until Sound Transit developed its own internal legal staff in 1998. Preston has continued to provide additional legal services in a reduced role on an as-needed basis under the contract approved by the board in 1994. Because of the legal resources required to maintain project schedules, Preston continues to provide general legal services to supplement Sound Transit's legal staff. The current Preston contract expires in April, 1999.

Although we recommend that we transition from utilizing one firm to provide a majority of Sound Transit's legal services, approval is sought for a one-year extension of the Preston contract. Extending the contract for one additional year will serve several purposes. First, Preston's familiarity with Sound Transit's history and its extensive experience in representing

the agency from its inception will likely be of substantial benefit in dealing with the complex legal issues we now face in implementing Sound Move. Second, extending the contract will permit Preston attorneys who have advised the agency on environmental issues over the past five years to continue to provide advice on the environmental process as light rail and commuter rail reach critical phases over the next year. Finally, while we are committed to providing expanded opportunities for utilizing attorneys from throughout the region, we need to ensure that we maintain access to attorneys intimately familiar with the project as we transition from utilizing a single firm for our general legal services to utilizing multiple firms from throughout the region. We would like to maintain the ability to know that we can always be assured of having immediate access to a group of attorneys that is familiar with the project and can provide immediate assistance. We believe that this is especially important in completing the environmental process and obtaining the required permits for the light rail and commuter rail projects that Preston attorneys have supported since the initial 1993 Final Environmental Impact Statement. At the completion of the additional year, it is anticipated that Preston would become part of the on-call roster of attorneys.

### **Commuter Rail Operations**

In August, 1997, Sound Transit conducted a competitive proposal process and selected Robert Kessler and a joint venture of Gordon Thomas Honeywell/Jane North and Harkins Cunningham to represent the agency in negotiations to implement commuter rail operations on existing rail right-of-way. The cost of these services was difficult to estimate because the cost depended on the difficulty of reaching agreement with the railroads that own the right-of-way. The original contract amount was \$500,000. However, based on the additional work to be performed, the 1999 budget includes \$300,000 to extend the existing contracts with the above-named attorneys to complete the negotiations.

### **RELEVANT BAORD POLICIES AND PREVIOUS ACTIONS TAKEN:**

- ◆ Adoption of *Sound Move*, the Ten-Year Regional Transit System Plan (May 31, 1996)
- ◆ Resolution No. 78-1 (April 9, 1998), establishing delegation of authority and procurement procedures.
- ◆ Adoption of Fiscal Year 1999 Budget Resolution No. 98-49 (November 12, 1998)

### **FUNDING:**

Funds for these contracts were included in the Fiscal Year 1999 operating budget approved by the Board on November 12, 1998.

### **ALTERNATIVES:**

The board could decide to continue the use of a single firm as outside counsel and conduct a separate procurement to select one firm to provide the services as Preston has done in the past. This approach has the potential to delay the implementation of commuter rail and light-rail as

legal services are delayed until a new firm is selected. Alternatively, the board could decide to extend Preston's contract through 2001 when FTA regulations would require a new procurement. Finally, the board could decide to increase the number of staff attorneys to provide the majority of the required legal services.

#### **CONSEQUENCES OF DELAY:**

As property acquisition, procurement of goods and services, and construction of capital improvements are rapidly proceeding, Sound Transit's legal needs are expanding and accelerating to keep pace. The delay in acquiring the necessary legal services would likely delay implementation of the commuter rail and light rail projects or require the agency to proceed without legal review of certain aspects of the projects.

#### **LEGAL REVIEW:**

The Legal Department has prepared and approved the Background and Comments and the Motion.

## **SOUND TRANSIT**

### **MOTION NO. M99-19**

A motion of the Finance Committee of the Central Puget Sound Regional Transit Authority authorizing the Executive Director to execute contracts with the firms and legal services listed in Exhibit A to provide general legal services and eminent domain legal services; to add additional attorneys to the on-call roster; to extend the contracts for railroad negotiations; and to approve a one-year contract extension for Preston Gates & Ellis, LLP. The exact amount of each contract will depend on the work performed, but the total amount of contracts shall not exceed the approved 1999 budget amount of \$2,222,850 for legal services.

#### **Background:**

In September, 1998 Sound Transit issued a Request for Proposals (RFP), RTA/LE 81-98, for thirteen categories of legal services. Proposals were received in October, 1998 and were evaluated by a selection committee. All proposers who were qualified in one or more categories were selected for award of a contract in the applicable categories. It is anticipated that Sound Transit will update the roster of on-call attorneys and that other attorneys not currently on the roster will be identified as qualified to provide services to Sound Transit.

In September, 1998 Sound Transit issued an RFP LE 86-98, for eminent domain services. Proposals were received in October, 1998 and were evaluated by a selection committee. Eight firms were selected for award of eminent domain contracts.

The Board selected the law firm of Preston Gates and Ellis, LLP (Preston) as Sound Transit's primary outside legal counsel in 1994. Sound Transit's contract with Preston will expire in April 1999 unless extended. Extension of Preston's contract will allow it to complete work on several projects involving commuter and light rail and to ensure continuity and to ensure that Sound Transit retains access to attorney who are familiar with Sound Transit during the transition period from the use of a single law firm to the use of an on-call attorney roster.

In August, 1997, Sound Transit conducted a competitive proposal process and selected Robert Kessler and a joint venture of Gordon Thomas Honeywell/Jane North and Harkins Cunningham to represent the agency in negotiations to implement commuter rail operations on existing rail right-of-way. The cost of these services was difficult to estimate because the cost depended on the difficulty of reaching agreement with the railroads that own the right-of-way. The original contract amount was \$500,000. However, based on the additional work to be performed, the 1999 budget includes \$300,000 to extend the existing contracts with the above-named attorneys to complete the negotiations.


**Motion:**

It is hereby moved by the Finance Committee of the Central Puget Sound Regional Transit Authority as follows:

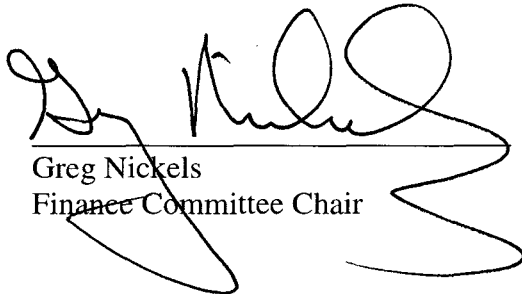
1. The total aggregate amounts for all contracts approved by this motion shall not exceed the \$2,222,850.00 approved in the 1999 budget for legal services.
2. The Executive Director is authorized to contract with the law firms and solo practitioners identified in Exhibit A to perform the legal services for which the attorneys were selected, including various general legal services, eminent domain, and railroad negotiations. The Executive Director shall provide a quarterly report to the Finance Committee on the utilization of such services.
3. The on-call roster is updated annually; additional attorneys may be added to the roster provided that adding additional attorneys to the roster shall not increase the total budget for legal services.
4. The contract with Preston Gates & Ellis, LLP for general legal services is extended for one additional year.
5. The contracts with Robert Kessler, Esq., Gordon Thomas Honeywell/Jane North and Harkins Cunningham for commuter rail negotiations are to a maximum of \$650,000.

Approved by the Finance Committee of the Central Puget Sound Regional Transit Authority at a regular meeting thereof on the 1<sup>st</sup> day of April, 1999.

ATTEST:



Marcia Walker  
Board Administrator

  
Greg Nickels  
Finance Committee Chair

## **Exhibit A**

### **General Legal Services Roster**

Alston, Courtnage, Proctor & Basetti  
Anne Diehl Rees  
Barbara Selberg  
Bogle & Gates  
Buckley & Leaders  
Clint Ells  
Curman M. Sebree  
David Hall  
Davis, Wright & Tremaine  
Debra Eby Ricci  
Dianne M. Ward Turk  
Eckert Seamens Cherin & Mellott  
Eisenhower Carlson  
Foster, Pepper & Shefelman  
Garcia & Guarnero  
Gordon, Thomas, Honeywell  
Graham & Dunn  
Hight, Green & Yalowitz  
Hillis, Clark, Martin & Peterson  
Hopkins & Sutter  
Jane North  
Jean Schiedler-Brown & Associates

John D. Terry  
Juliet W. Jones  
Karr Tuttle Campbell  
Lane, Powell, Spears & Lubersky  
Lawrence & Finkelstein  
Oppenheimer, Wolff, Donnelly & Bayh  
Ordal, Kaseburg & Mitchell  
Perkins-Coie  
Purcell, Smith & Adams  
Rebecca A. McIntyre  
Robert G. Taylor  
Robert Gunter  
Sanford Kinzer  
Schwabe, Williamson & Wyatt  
Skellenger Bender, PS  
Smith-Smart  
Stoel Rives  
Thomas F. Haensly  
Tousely-Brain  
Williams & Williams  
Wilson, Smith, Cochran & Dickerson

### **Eminent Domain**

Danielson, Harrigan & Toffelson  
Gordon, Thomas & Honeywell  
Graham & Dunn, PC  
Hanson, Baker, Ludlow & Drumheller  
Jeffrey Twersky  
Sanford Kinzer  
Smith-Smart, PPLC  
Williams & Williams

### **Legal Services Contract Extension**

Preston Gates & Ellis, LLP

### **Railroad Negotiation Contract Extension**

Robert Kessler  
Gordon Thomas Honeywell/Jane North and Harkins Cunningham (a joint venture)