

SOUND TRANSIT

MOTION NO. M99-56

Contract Amendment - Commuter Rail Railroad Negotiation Services BACKGROUND AND COMMENTS

Meeting:	Date:	Type of Action:	Staff Contact:	Phone:
Finance Committee	8/19/99	Discussion/Possible Action	Desmond Brown	398-5017
Finance Committee	9/2/99	Discussion/Possible Action		

ACTION:

Approve amendment to increase the authorized amount of the commuter rail negotiations support contract by \$275,000 for a total authorized contract amount of \$925,000. The additional funds would be used to complete the negotiations necessary to implement Sounder service between Seattle and Tacoma and also to negotiate the capital and operating agreements necessary to implement service between Lakewood and Tacoma and between Seattle and Everett.

EXECUTIVE SUMMARY:

In November, 1997, the Finance Committee awarded contracts to 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. This legal negotiations team included experienced railroad attorneys with substantial railroad engineering expertise. 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.

When the negotiations began, the Burlington Northern Santa Fe's (BNSF) initial cost proposal required a capital investment of \$414 million. The negotiating team provided substantial legal and technical assistance in supporting Sound Transit's effort to reduce BNSF's cost estimates. Over a two-year period, the estimates have been reduced from \$414 million down to the \$270-\$322 million range, with Sound Transit's share expected to be approximately \$200 million. The team is also heavily involved in evaluating BNSF cost proposals to operate the commuter rail service. This work is expected to save the agency several million dollars. While these savings could change when the final engineering work and operating costs analyses are completed, the efforts of the legal negotiating team have substantially contributed to the progress made in reducing project costs by identifying and eliminating proposed capital improvements that were either unnecessary, duplicative, or were included solely to benefit the railroad's freight operations.

In April 1999, based on the progress of the negotiations with BNSF, the Finance Committee authorized an additional \$150,000 to extend the contract and complete the negotiations. Since that time, BNSF has raised a number of new issues that must be negotiated. For example, BNSF

has raised new issues related to the payment of utility relocation expenses, operating cost allocations, and BNSF's desire to reopen the negotiations periodically to renegotiate Sound Transit's long-term operating payments. A major issue that should receive significant attention is the final engineering cost report that will be the basis of determining the cost to be paid by Sound Transit for the capital improvements. We will also need to address the potential impact, if any, of reduced funding from our partners on our ability to maintain commuter rail service at planned levels. Because of the potential impact on commuter rail service levels, a careful analysis of these issues is recommended to ensure that the agency obtains the desired service at the appropriate cost.

Assuming that no additional issues arise (such as significant environmental problems), we believe that a contract increase of \$275,000 should be sufficient to complete the negotiations for the Seattle to Tacoma segment and to complete the negotiations for the Lakewood to Tacoma and the Seattle to Everett segments. The Lakewood to Tacoma and Seattle to Everett negotiations are anticipated to require significantly less time to negotiate because many of the issues will have been resolved.

RELEVANT BOARD 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.
- ◆ Motion Nos. 44 and M99-19 approving commuter rail legal negotiations support contracts.
- ◆ 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 agency's staff attorneys could assist with the negotiations and review the agreements for legal adequacy. However, because staff attorneys do not specialize in railroad negotiations, this approach has the potential to either delay the negotiation of the agreements or to result in an increased reliance on BNSF's analysis of the appropriate issues to be negotiated and the appropriate costs to be borne by Sound Transit.

CONSEQUENCES OF DELAY:

There are no consequences to delay in approving this motion if the Committee determines that the agency should not use outside legal counsel in negotiating the agreements. However, if legal counsel is to assist in the negotiations, then a delay in approving the motion will delay the

completion of the agreements that are required by BNSF before commuter rail operations can begin. (BNSF will not permit commuter rail operations to proceed until Sound Transit and BNSF execute agreements defining each parties' obligations with respect to the capital improvements to be funded by Sound Transit, and the compensation to be paid to BNSF for operating the trains).

LEGAL REVIEW:

The Legal Department has approved the background and comments and the motion.

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A motion of the Finance Committee of the Central Puget Sound Regional Transit Authority to approve amendment of contract RTA CR21-97 with Robert Kessler and the joint venture of Gordon Thomas Honeywell/Jane North and Harkins Cunningham for railroad negotiations increasing the contract in an amount not to exceed \$925,000.

Background:

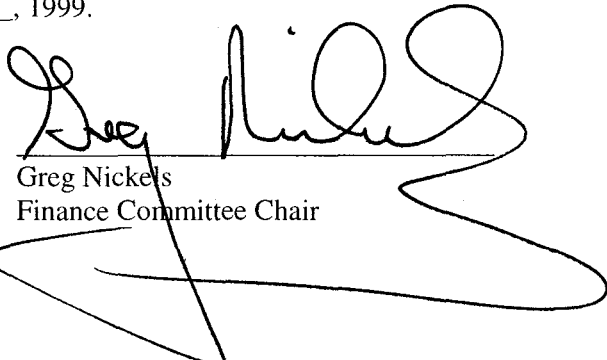
In August, 1997, Sound Transit conducted a competitive proposal process and selected Robert Kessler and a joint venture of Gordon Thomas Honeywell/Jane North and Harkins Cunningham to represent the agency in negotiations to implement commuter rail operations on existing rail right-of-way. The cost of 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 \$500,00. In April 1999, the Finance Committee authorized an additional \$150,000 for the negotiation support services. Since that time, the railroads have raised a number of new issues that must be negotiated. An increase in these consultants' contracts of \$275,000 is needed to complete the negotiations with the BNSF.

Motion:

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

The contract for railroad negotiation services with Robert Kessler and the joint venture of Gordon Thomas Honeywell/Jane North and Harkins Cunningham is increased by an additional \$275,000 to a maximum of \$925,000.

Approved by the Finance Committee of the Central Puget Sound Regional Transit Authority at a regular meeting thereof on the 19 day of August, 1999.



Greg Nickels
Finance Committee Chair

ATTEST:

Marcia Walker
Marcia Walker
Board Administrator