

SOUND TRANSIT

MOTION NO. M2000-15

Contract Amendment - Commuter Rail Railroad Negotiation Services BACKGROUND AND COMMENTS

Meeting:	Date:	Type of Action:	Staff Contact:	Phone:
Finance Committee	2/17/2000	Discussion/Possible Action	Desmond Brown Paul Price	398-5017 398-5111

ACTION:

Approve amendment to increase the authorized amount of the commuter rail negotiations support contract by \$105,000 for a total authorized contract amount of \$1,030,000. The additional funds would be used for further negotiations necessary to implement Sounder service segments between Lakewood--Tacoma, Tacoma--Seattle, and Seattle--Everett. The increase is requested to fund additional legal and engineering work to address the impacts of Initiative 695 on project implementation.

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 has provided substantial legal and technical assistance in supporting Sound Transit's effort to reduce BNSF's cost estimates by \$214 million down to \$200 million. These efforts identified areas that would reduce project costs by eliminating proposed capital improvements that were unnecessary and/or duplicative.

In 1999, based on the progress of the negotiations with BNSF, the Finance Committee authorized additional amounts totaling \$425,000 to extend the contract because BNSF had raised a number of new issues. In September 1999, the Board approved operating and construction agreements with BNSF. At that time, the Board was advised that additional negotiations would be required in the event Initiative 695 became law and impacted the \$60 million contribution agreed to be provided by WSDOT from the state MVET tax. In light of I-695's repeal of the state MVET funding source, the negotiations team was required to perform substantial additional work to evaluate and negotiate the level of construction improvements to be made to obtain the desired level of service for Sounder trains. Additional legal and value engineering work was also done to optimize the capital improvement and construction plan to be funded by Sound Transit assuming various levels of funding contributions and various levels of intercity train activity. The negotiation team requested that additional work be performed by the railroad engineering firms working with the team to model and optimize the capital improvement and construction plan. The additional work is ongoing and has required a greater level of effort and greater expenditure of the budgeted funds on these activities.

Assuming that no additional issues arise requiring railroad expertise, the negotiations have progressed to the stage where the majority of the remaining work can be performed by Sound Transit legal and commuter rail staff.

The increased budget is requested to permit the negotiations team to complete its original scope of work in negotiating the technical terms of the railroad construction implementation agreement and the operating agreement technical provisions and to provide periodic advice to Sound Transit as it completes the work.

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, M99-19, and M99-56 approving commuter rail legal negotiations support contract and amendments.
- ◆ Adoption of Fiscal Year 2000 Budget Resolution No. R99-33 (November 18, 1999).

FUNDING:

Funding for the contract increase is included in the Fiscal Year 2000 operating budget approved by the Board on November 18, 1999.

ALTERNATIVES:

The agency's staff attorneys could perform the work. 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 technical issues to be negotiated in finalizing the construction implementation and operating agreements.

CONSEQUENCES OF DELAY:

Overall legal work for the agency would be delayed because the internal legal staff would need to perform the work that would otherwise be performed by the negotiations team. This could result in project delays either with Sounder startup or with other Sound Transit projects requiring legal work.

LEGAL REVIEW:

Approved: (DLB-1/20/00)

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A motion of the Finance Committee of the Central Puget Sound Regional Transit Authority authorizing the Executive Director to execute an 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, by increasing the contract by an additional \$105,000 for an amount not to exceed \$1,030,000.

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 \$500,000. In 1999 the Finance Committee authorized additional amounts totaling \$425,000 for the negotiation support services to address a number of new issues that were required to be negotiated. The passage of Initiative 695 required that substantial additional negotiations be conducted to address the rail capacity and construction issues raised by the Initiative impact on anticipated funding sources. An increase in these consultants' contracts of \$105,000 is needed to complete the negotiations.

Motion:

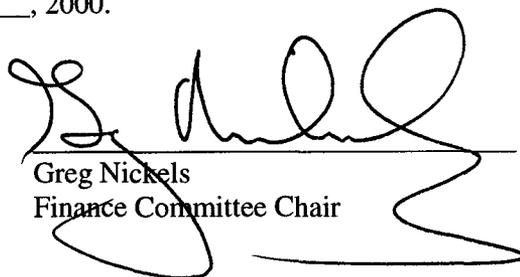
It is hereby moved by the Finance Committee of the Central Puget Sound Regional Transit Authority that the contract for railroad negotiation services with Robert Kessler and the joint venture of Gordon Thomas Honeywell/Jane North and Harkins Cunningham is increased by an additional \$105,000 to a maximum of \$1,030,000.

Approved by the Finance Committee of the Central Puget Sound Regional Transit Authority at a regular meeting thereof on the 17 day of February, 2000.

ATTEST:



Marcia Walker
Board Administrator


Greg Nickels
Finance Committee Chair