



BRIEFING: June 14, 2016 BOARD MEETING AGENDA ITEM #5

TO: Chairman Richard and Board Members

FROM: Mark McLoughlin, Director of Environmental Services

DATE: June 14, 2016

RE: Consider Amending the Reimbursement Agreement with the U.S. Army Corps of Engineers for Permitting Services

Background

In November 2010, the Authority entered into a Memorandum of Understanding with the U.S. Army Corps of Engineers (Corps), the Federal Railroad Administration (FRA) and United States Environmental Protection Agency (EPA) to facilitate compliance with the National Environmental Policy Act (NEPA), Clean Water Act (CWA) and Rivers and Harbors Act process for the project-level (Tier 2) Environmental Impact Statements (EISs) for the segments of the high-speed rail system. Pursuant to the MOU, in October 2014, the Authority and the Corps entered into a Memorandum of Agreement (MOA) which was incorporated into a reimbursement agreement (HSR 14-38) (Agreement) to fund the costs of the Corps' involvement in the development, issuance and compliance monitoring of CWA Section 404 permits, related permitting requirements, and final mitigation plans for the high-speed rail program. CWA Section 404 establishes a program to regulate the discharge of dredged or fill materials into the waters of the United States, including wetlands. A section 404 permit, issued by the Corps, is required before any dredged or fill material may be discharged into waters of the U.S.

The current Agreement only contemplated the costs and time for the first two segments of project construction – Merced-Fresno and Fresno-Bakersfield. The Corps has issued a Section 404 Individual Permit (IP) for the Merced-Fresno (MF) segment (referred to as MF Permit Package/Construction Package 1) and will issue a Section 404 permit for the Fresno to Bakersfield (FB) segment (referred to as the FB Permit Package 1/Construction Package 2-3 and 4) upon completion of a final Compensatory Mitigation Plan.

The current Agreement does allow the Corps to review documents for all segments within Phase 1, however the budget in the Agreement only included costs associated with the Corps' review of documents for the first two (2) segments of the project. Since the statewide system consists of 10 segments, and each will likely require a Section 404 permit from the Corps, an amendment to the Agreement for time and money is required. This amendment will ensure that the Corps can continue to facilitate the tasks set forth in the MOU and expedite the evaluation of the Authority's permit applications for each of the various project segments.

Prior Board Action

Previous iterations of this agreement did not require Board approval, as they fell within the CEO's delegated authority. The Board has approved similar agreements with other resource agencies.

Discussion

As part of our work to streamline processes and advance the program efficiently, the Authority is working with the Corps and other agencies to secure all necessary permits for construction as close to the issuance of records of decision as possible. The requested amendment for time and money will allow the Authority to continue receiving these services and meet that goal. Additionally, the requested amendment will continue to support the implementation of Proposition 1A (the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century) funding directives that require the Authority to pursue a regional, coordinated approach to expedite the permitting process for the statewide program.

Specifically, Board approval of this amendment will allow the Corps to continue its involvement with the development, issuance and compliance monitoring of Section 404 permits and final mitigation plans for each project section. Efforts will include, but are not limited to:

- Implementation of the MOU processes;
- Issuance of and/or amendment to Section 404 permits;
- Review and verification of wetland delineation reports; review and approval of survey methodology;
- Vetting of mitigation sites;
- Approval of compensatory mitigation plans and related real estate documents, review of the performance of permit conditions; and,
- Measuring the tracking and reporting for all segments within Phase 1 of the Project. The Agreement is specifically to provide funding mechanism to "expedite the evaluation of DA permit applications pursuant to section 404/10 for HSR Projects and Corps participation in and review of FRA's EIS(s)."

Funding required in the future to cover costs outside the scope of the Agreement will require amendment to the Agreement.

Further, the Authority requires the Corps' involvement in the development of segment-specific and regional mitigation strategies to ensure the results of the wetland delineation reports characterize and locate aquatic ecosystems sufficiently to support issuance of Section 404 permits and approval of final compensatory mitigation plans. The proposed amendment to the Agreement will allow for the Corps' attendance at regular, reoccurring workshops and meetings necessary for their involvement to provide lead time and allow for sharing of information and cooperation in order to streamline and expedite the Corps' review under section 404 of the CWA and/or section 10 of the Rivers and Harbors Act of 1899 for Authority-designated priority projects.

The Corps' jurisdiction for the statewide high-speed rail system is split among three (3) districts: San Francisco, Sacramento, and Los Angeles. Prior permits for the Central Valley project sections involved only the Sacramento district. The upcoming permitting work will include all three (3) Corps districts. The requested amount for the amendment is estimated based on the cost to obtain prior permits in comparison to the upcoming work to complete permitting work for all 10 project sections. The costs include any expenditure to expedite permit application evaluation-related activities, including Corps' participation in meetings, permit application reviews and coordination, compliance, project management and administration, as described in more detail in the Agreement (attached).

Legal Approval

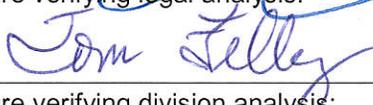
The Chief Counsel has reviewed and approved the requested amendment.

Budget Implications

The state funds allocated to fund this amendment are within the budget for environmental planning and are consistent with the cost estimates contained in the Authority's 2016 Business Plan.

Recommendations

Staff recommends the Board authorize the Chief Executive Officer, or his designee, to execute an amendment to the Agreement to add \$3,436,807.00, resulting in a maximum contract value of \$5,314,171.00 and to extend the performance period by two (2) years, resulting in a new contract termination date of September 30, 2019.

REVIEWER INFORMATION	
Reviewer Name and Title: Russell Fong, CFO	Signature verifying budget analysis: 
Reviewer Name and Title: Tom Fellenz, Chief Counsel	Signature verifying legal analysis: 
Reviewer Name and Title: Mark McLoughlin, Director of Environmental Services	Signature verifying division analysis: 

Attachments

- Resolution #HSRA 16-19
- Agreement HSR 14-38