



**BRIEFING: OCTOBER 19, 2017 BOARD MEETING AGENDA ITEM #3**

**TO:** Chairman Richard and Board Members

**FROM:** James Andrew, Acting Chief Counsel

**DATE:** October 19, 2017

**RE:** Consider Amending the Interagency Agreement with Caltrans for Legal Services to Support Right-of-Way Acquisition

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**Summary of Recommended Action**

The California Department of Transportation (Caltrans) provides legal representation to the High-Speed Rail Authority (Authority) in the acquisition of real property needed for construction of the high-speed rail project. Caltrans performs this work under interagency agreement HSR11-18 (IA). The IA began in 2012 and expires on June 30, 2018. The current not-to-exceed contract value of the IA is \$8.836 million. At the current expenditure rate, accrued expenses will reach the \$8.836 million limit under the IA early this fall. Funding must be added to the IA now to facilitate continued legal services to support acquisitions. Staff requests at this time an additional \$3.6 million to fund the IA through June 2018. Staff will return to the Board in spring 2018 to request a time extension beyond June and additional associated funding for the 2018-19 through 2020-21 Fiscal years.

**Background**

Based on present information, approximately 580 parcels (out of approximately 1800) remain to be acquired within the CP1-4 area, 146 of which are currently in legal proceedings. A significant number of these 580 parcels are more intricate acquisitions in terms of technical complexity and/or the owner's opposition to acquisition. Most of the 1800 acquisitions that were likely to settle by negotiation, without the need for significant legal proceedings, have occurred. Many of the acquisitions remaining, therefore, will require substantial legal resources to resolve, including trial preparation and (if the case does not settle as trial approaches) trials.

Movement toward more complex legal proceedings began this year, with an associated significant increase in monthly work/invoices from Caltrans in preparation for just compensation trials that have been scheduled in recent months. The Authority and Caltrans expect that work pattern to continue. As would be expected, legal costs increase exponentially in the few months leading up to trial, including costs for expert appraisers as both sides prepare for trial and expert appraisers are deposed. Most of the Authority's expert appraisers who will testify at trial will be charged under the IA.

While possession of the needed remaining parcels will transfer to the Authority and its contractors first, trials regarding valuation could extend for multiple years after possession is obtained due to a variety of factors, including but not limited to impacted judicial trial calendars. Staff estimates that these trials should be completed by 2020 or 2021.

### **Prior Board Action**

In March of 2012, the Board approved Resolution #HSRA 12-07 (attached) to allow the Authority to enter into the IA with Caltrans for right-of-way legal services for a three year period with a not to exceed amount of \$7.3 million. The resultant original IA was effective from June 2, 2012, to June 30, 2014, with a not to exceed amount of \$7,086,000.00. Amendments to the IA extended the term to June 30, 2018, and the not to exceed amount to \$8,836,000.

### **Discussion**

Trials regarding valuation likely will continue into 2020 or 2021, however, staff is requesting \$3.6 million in additional funding at this time to fund the IA only through June 2018. The \$3.6 million in additional funding is a projection based on recent Caltrans invoice data and anticipated monthly costs through June 2018. Staff will return to the Board in spring 2018 to request a time extension and additional funding. This approach will allow the pending Business Plan and supporting analyses to inform that future time and funding extension request, which could involve time and funding for anticipated future property acquisitions beyond CP 1-4.

The \$3.6 million associated with this request would be redirected from the Right-of-Way Capital allocation into a separate Legal Right-of-Way Support Services allocation. Continued delivery of right-of-way parcels is critical for CP 1-4, and Caltrans Legal Department's support is necessary for that delivery.

Permitting the requested amendment would allow the Authority to continue to benefit from the steeply discounted cost for Caltrans Legal Department's services and support, the cost of which, at \$122 per hour for an experienced attorney, is 60 percent or more below market rate for similar legal services purchased on the open market.

Authority Right-of-Way and Legal staff are actively managing the IA. This management includes exploring with Caltrans Legal Department approaches to ensuring efficient and judicious use of inherently-costly (but usually necessary) expert valuation appraisers while also ensuring adequate trial readiness; working with Caltrans Legal, staff will find the appropriate balance.

### **Legal Approval**


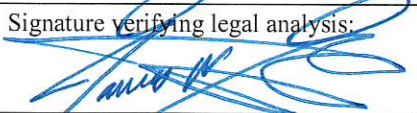
The Legal Office has confirmed the Authority's legal ability to add money to the IA, as proposed.

**Budget and Fiscal Impact**

This proposed budget change is within the Authority’s funding source appropriations. Once approved, the HSR11-18 contract amount will be increased by \$3.6 million and the FY2017-18 Right-of-Way acquisition funding for CP4 will be reduced by \$3.6 million resulting in a net zero overall program budget change. The result of this action will increase the HSR11-18 contract amount to \$12,436,000 and decrease Right-of-Way acquisition funding for CP4 to \$119,380,675. The increase to the HSR11-18 budget will be funded with State funding sources.

This budget change of decreasing funding for CP4 acquisitions is a temporary solution and the decreases to the ROW acquisition funding will need to be backfilled in the future to fund ROW acquisition costs. The future backfill may come from other program cost mitigations, for example. Such mitigations partially could include funds disencumbered from valuation expert witness contracts in cases that settle before the contract amount is fully spent.

Contract Name	Contract/Activity Number	Current Contract Budget	Budget Change	Funding Source
Caltrans – ROW Legal	HSR11-18	\$8,836,000	\$3,600,000	State funding
CP4 ROW Acquisition	HSRROW-CP04	\$122,980,675	(\$3,600,000)	State funding

REVIEWER INFORMATION	
Reviewer Name and Title: <b>Russell Fong</b> <b>Chief Financial Officer</b>	Signature verifying budget analysis: 
Reviewer Name and Title: <b>James Andrew</b> <b>Acting Chief Counsel</b>	Signature verifying legal analysis: 

**Recommendation**

Property acquisition is critical to completion of CP 1-4, and inevitably involves legal service costs for some parcels. Support from Caltrans Legal is the most cost-effective approach to ensure continuation of property acquisition. It is therefore recommended that the requested IA amendment be approved as proposed.

**Attachments**

- Draft Resolution #HSRA 17-21
- Resolution #HSRA 12-07