



BRIEFING: APRIL 17, 2018 BOARD MEETING AGENDA ITEM #3

TO: Chairman Richard and Board Members

FROM: Tom Fellenz, Chief Counsel

DATE: April 17, 2018

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

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 \$12.4 million. At the current expenditure rate, accrued expenses will reach the \$12.4 million limit under the IA near or shortly after the current contract expiration date. The IA must be extended (time) and funding added to facilitate continued legal services to support real property acquisitions in CP 1 to CP 4.

Staff requests an additional \$15.5 million, and three additional years, to fund the IA through June 2021. The funding is to facilitate remaining acquisitions in the CP 1 to CP 4 area only, and assumes no meaningful increase in the number of parcels as compared to the number of parcels known today to require acquisition.

The Board approved a \$3.6 million increase to this IA in October 2017, to provide funding through the IA expiration of June 2018. Staff noted at that time that staff would return to the Board in spring 2018 (to allow the 2018 Business Plan to inform matters) to request a time extension and additional funding.

Background

Based on present information, approximately 607 parcels (out of approximately 1,918) remain to be acquired within the CP 1-4 area, 129 of which are currently in condemnation proceedings. A significant number of these 607 parcels are more intricate acquisitions in terms of technical complexity and/or the owner's opposition to acquisition. Most of the 1,918 acquisitions that were likely to settle by negotiation, without the need for meaningful litigation proceedings, have occurred. Many of the acquisitions remaining, therefore, will require litigation, including trial preparation and (if the case does not settle as trial approaches) trials.

While possession of the needed remaining parcels will transfer to the Authority sooner, trials regarding valuation could extend for multiple years due to a variety of factors, including but not limited to impacted judicial trial calendars. Staff estimates that these trials should be completed by early 2021, hence the request to extend the IA to June 2021.

Prior Board Action

In March of 2012, the Board approved Resolution #HSRA12-07 (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, including the one for funding the Board approved in October 2017, extended the term to June 30, 2018 and the not to exceed amount to \$12,436,000.

Discussion

Completing acquisitions and valuation trials likely will continue into early 2021. The \$15.5 million in additional funding is a projection based on recent Caltrans invoice data and anticipated monthly costs through that period. Caltrans agrees with the \$15.5 million projection.

The requested amendment would allow the Authority to continue to benefit from the low hourly rate at which Caltrans provides legal services. The rate for services, 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.

Legal Approval

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

Budget and Fiscal Impact

This request has no current fiscal year budget impact, but does impact the Total Program Budget. While this augmentation was included in the overall 2018 Central Valley Cost Update (provided in January 2018), further additions in Right-of-Way (ROW) parcel needs in CP 1 to 4 beyond the need known today could necessitate additional needs for ROW legal services in the future. This proposed budget change is within the Authority’s funding source appropriations and the increase to Caltrans is in line with the 2018-19 Governor’s Budget, which extends the staff positions at Caltrans through June 2021 related to providing the services funded by the IA.

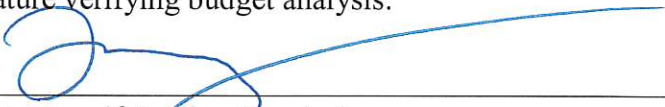

Once approved, the HSR11-18 contract amount will increase by \$15.5 million and extend for three additional years. The result of this action will increase the HSR11-18 contract amount to \$27,936,000 (\$12,436,000 + \$15,500,000). The increase to the HSR11-18 budget will be funded with State funding sources.

2017-18 Fiscal Year Budget Impact

Contract Name	Contract/Activity Number	Current FY Contract/Activity Budget	Budget Change	Funding Source
Caltrans – ROW Legal	HSR11-18	\$6,600,000	None	N/A
In line with the 2018-19 Governor’s Budget.			None	N/A

Program Budget Impact

Contract Name	Contract/Activity Number	Current Total Program Contract/Activity Budget	Budget Change	Funding Source
Caltrans – ROW Legal	HSR11-18	\$12,436,000	\$15,500,000	State funding
In line with the 2018-19 Governor’s Budget.			N/A	N/A

REVIEWER INFORMATION	
Reviewer Name and Title: Russell Fong Chief Financial Officer	Signature verifying budget analysis: 
Reviewer Name and Title: Thomas Fellenz Chief Counsel	Signature verifying legal analysis: 

Recommendation

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

Attachments

- Draft Resolution #HSRA 18-08
- Resolution #HSRA 17-20
- Resolution #HSRA 12-10