

Agenda: September 2, 2004

To: Regional Transportation Commission
From: Linda Wilshusen, Executive Director
RE: Santa Cruz Branch Rail Acquisition – Amendment to Add Funds to Miller, Owen & Trost Acquisition Services Contract

RECOMMENDATION

Staff recommends that the Regional Transportation Commission adopt the attached resolution (Attachment 1) adding \$155,000 in allocated, earmarked federal funds to the Santa Cruz Branch Rail Line acquisition services contract with Miller, Owen and Trost, increasing the hourly rates on the contract, extending the term of the contract to December 31, 2005, and authorizing a Fiscal Year 04-05 budget amendment consistent with this action.

BACKGROUND

In March 2001, the Regional Transportation Commission entered into a \$262,000 21-month contract with Miller, Owen & Trost (MOT) to provide services in connection with acquisition of the Santa Cruz Branch Rail Line right-of-way. The services included in the contract are development of negotiating strategies, review of appraisals, preparation of agreements, provision of legal advice and other duties in connection with acquisition of the Santa Cruz Branch Rail Line. The contract is now in its 43rd month, with a current expiration date of March 31, 2005.

In March 2004, the Commission added \$55,000 in Proposition 116 funds to the MOT contract for subconsultant, Systra Consulting, to produce a business plan for the Santa Cruz Branch Rail Line; an administrative draft of the business plan for the Santa Cruz Branch Rail Line was received by the Commission at its August 5, 2004 Commission meeting during closed session. At the March 2004 Transportation Policy Workshop (TPW), the RTC also authorized adding \$75,000 in Proposition 116 funds to the MOT contract for title review and structures assessment, to be conducted by subconsultants at the appropriate time. Once a tentative price is reached with Union Pacific, these approved funds will be added to the contract to perform this necessary work.

As requested by Commissioners at the March 2004 TPW meeting, a report was prepared for the April 2004 TPW meeting providing information on the contract with Miller, Owen and Trost and the contract's budget. At that meeting, the Commission was informed that it was expected that \$130,000 would need to be added to the contract to complete acquisition of the Santa Cruz Branch Rail Line.

In August 2004, at its Transportation Policy Workshop, the Commission approved adding \$15,000 to the MOT contract for legal review of the responses to comments and the draft Final

Environmental Impact Report (EIR) for the Capitola to Aptos Recreational Rail Service with an Extension to Seascapes and revising the MOT contract's scope of work to include the legal review. These amendments are currently being processed.

DISCUSSION

Kirk Trost of Miller, Owen & Trost has been principally responsible for all aspects of the work covered by the acquisition services contract. Mr. Trost has been negotiating with Union Pacific on behalf of the Regional Transportation Commission and has kept the RTC abreast of developments through closed sessions with the RTC, and the Rail Acquisition Staff Advisory Group when appropriate. Several analyses needed for the acquisition project have been performed through subconsultants and others are in progress. Mr. Trost has advised the RTC in seeking funding for the acquisition project, in developing scopes of work for consultant work related to the acquisition project (new appraisals, environmental review), in evaluating proposals resulting from those scopes of work, and in assisting staff with analysis of administrative draft documents, reports, and appraisals of the Santa Cruz Branch Rail Line being produced by various consultants. Unanticipated tasks associated with this project have included significant negotiations with Union Pacific to provide a right of entry agreement for environmental review assessment of the acquisition project (still not authorized by UP), analysis of potential recreational service options to qualify for Proposition 116 funds, development of a project study report for recreational rail service, submittal of applications for Proposition 116 funds and a lengthy business plan development process due to unavailability of needed information from Union Pacific. In addition, this contract has now been in effect nearly twice as long as originally expected and it is expected to last at least another year.

It is difficult to predict the time frame and work necessary in negotiating a property transaction, especially with a very large railroad company like Union Pacific. The scope of work (Attachment 2) for the acquisition services contract is general in order to allow it to accommodate a range of work and tasks connected with acquisition of the Santa Cruz Branch Rail Line right-of-way. The contract also includes subconsultants, which are shown on Attachment 3 along with the funds budgeted to and spent by each through June 30, 2004. (This attachment was provided for the April 2004 TPW meeting and has been updated for this report.) The initial contract budget allocated specific funds to only a small number of subconsultants. As new subconsultants and additional work have been added to the original contract, the contingency funds and funds allocated to the main consultant have been used to cover the subconsultant costs with the exception of Systra Consulting.

The rates in the MOT contract have not changed in the 3.5 years since the contract has been in effect; however, with this amendment, MOT is requesting that the contracted rates increase by \$10 per hour (see table below). Kirk Trost and Paul Chrisman have done about 98% of the work completed by MOT and of that about 75% has been done by Kirk Trost and 25% by Paul Chrisman whose current rates are \$175 and \$160 respectively. By comparison, County Counsel charges \$144 per hour and the attorneys for the Highway 1 Widening Project, Nossaman, Guthner, Knox and Elliott, charge approximately \$400/hour.

Hourly Rates for the Miller, Owen and Trost Contract

	Current Rate	New Rate
Kirk Trost	\$175	\$185
Nancy C. Miller	\$175	\$185
Phillip L. Isenberg	\$200	\$210
Paul J. Chrisman	\$160	\$170
Associates	\$110 to \$160	\$120 to \$170
Law Clerks	\$100	\$110
Paralegals	\$65	\$75

Less than \$20,000 remains in the acquisition services contract for services provided by the main consultant. An estimated additional \$155,000 is necessary for the duties performed by Miller, Owen and Trost and subconsultants to continue negotiations with Union Pacific and to complete a purchase transaction of the Santa Cruz Branch Rail Line. As discussed in April, \$130,000 would be necessary for work provided directly by MOT which includes reviewing appraisals, working with appraisers and Caltrans to obtain right-of-way clearance and get authorization for a purchase transaction, reviewing the Phase II Environmental Site Assessment, evaluating funding options and assisting with funding applications, reviewing title reports, continuing and completing price negotiations with Union Pacific, negotiating and preparing various agreements with Union Pacific, including a purchase agreement and agreements concerning freight transfers at Pajaro Junction, negotiating and preparing agreements with short line operators of freight and passenger rail service, and assisting with any other issues that may arise in the course of acquiring the Branch Line. In addition, consistent with the draft *Business Plan*, staff and Mr. Trost have determined that an additional \$25,000 will be needed to hire a subconsultant to investigate the leases on the Santa Cruz Branch Rail Line and produce a report on lease revenue potential for the property.

The federal appropriation funds and Proposition 116 funds available for the acquisition project may be used for all costs connected with acquisition of the rail road right-of-way including the services provided by Miller, Owen and Trost. The \$300,000 currently available to the Commission in Proposition 116 funds are being used for the appraisals, business plan and the proposed recreational rail service EIR. Of the nearly \$1.5 million in federal appropriations funds, the Commission has assigned about \$115,000 for the Phase II Environmental Site Assessment contract with Geomatrix Consultants; therefore, there are sufficient federal appropriations funds available to cover what is needed for the negotiations services contract with Miller, Owen and Trost. Attachment 4 is a revised capital budget showing all of the funding currently programmed for Rail/Trail Authority capital projects, including this recommendation.

Staff recommends that the Regional Transportation Commission adopt the attached resolution to amend the MOT contract adding \$155,000 in allocated, earmarked federal funds for continuation of services necessary for acquisition of the Santa Cruz Branch Rail Line, increasing the hourly rates in all categories by \$10, extending the term to December 31, 2005, and authorizing a Fiscal Year 04-05 budget amendment consistent with this action.

SUMMARY

Funds for the Regional Transportation Commission's contract with Miller, Owen and Trost for rail line acquisition services are close to being exhausted. The scope of work and costs to date for Miller, Owen & Trost, and its subconsultants are included as attachments. Due to the extended period of negotiations with Union Pacific and various unanticipated tasks it is estimated that an additional \$155,000 is needed to complete acquisition of the Santa Cruz Branch Rail Line. Staff recommends that the Regional Transportation Commission adopt the attached resolution to amend the MOT contract adding \$155,000 in allocated, earmarked federal funds for continuation of services necessary for acquisition of the Santa Cruz Branch Rail Line, increasing all contracted hourly rates by \$10, extending the term of the contract to December 31, 2005, and authorizing a budget amendment consistent with this action.

Attachments:

1. Resolution Authorizing Adding \$155,000 to the Contract with Miller, Owen and Trost
2. Scope of Work for the Rail Line Acquisition Services Contract with Miller, Owen and Trost
3. Expenditures by Consultant under the Rail Acquisition Services Contract with Miller, Owen & Trost
4. Available Funding for the SCCRTC Rail/Trail Authority Capital Projects