

AGENDA: August 4, 2005

TO: Regional Transportation Commission/Rail Trail Authority
FROM: Luis Pavel Mendez, Acting Deputy Director
RE: Santa Cruz Branch Rail Line Acquisition Project – Negotiations Contract

RECOMMENDATIONS

Staff recommends that the Regional Transportation Commission:

1. Approve the attached resolution (Attachment 5) amending the contract with Miller, Owen and Trost for Santa Cruz Branch Rail Line acquisition services to add \$170,000, increase the rate for attorneys with subconsultant Kirkpatrick and Lockhart, clarify language and make the necessary budget amendments consistent with this action; and
 2. Accept status information on other elements of the Santa Cruz Branch Rail Line Acquisition Project.
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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 the 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 the acquisition of the Santa Cruz Branch Rail Line.

In December 2004, the RTC approved entering into a non-binding Letter of Intent with Union Pacific to purchase the Santa Cruz Branch Rail Line for \$19 million. A significant amount of work remains before the RTC can determine to close a purchase with Union Pacific.

The contract with MOT has been amended periodically to add funds for subconsultants to produce studies, reports and analyses, and for continued negotiations and coordination for the rail acquisition project elements. Amendments have also extended the term of the contract with Miller, Owen and Trost and augmented the scope of work. The contract is currently in its 53rd month, with a current expiration date of December 31, 2005. Attachment 1 provides a summary of the contract budget, expenditures and funding to date.

DISCUSSION

Rail Line Acquisition Consultant Contract

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 open and closed sessions with the RTC and via the Rail Acquisition Task Force (RATF) and staff. 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 and requests for proposals for consultant work related to the acquisition project (new appraisals, environmental investigations and review, short line operator), 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 right of entry agreements and information for necessary environmental work and other studies, analysis and development of various funding options, coordination and negotiations with funding agencies, and submittal of applications for Proposition 116 funds.

It is difficult to predict the time frame and work necessary in negotiating a complex 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 the required range of work and tasks connected with acquisition of the Santa Cruz Branch Rail Line right-of-way. The initial contract budget allocated specific funds to only a small number of subconsultants including Alta, R.L Banks & Associates and KirkPatrick & Lockhart. 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 some of the subconsultant costs. The RTC has also added funds as needed for necessary subconsultant work and in September 2004, the RTC added funds for the work performed by the main consultant.

A significant amount of work and negotiations remain for the RTC to determine whether to purchase the Santa Cruz Branch Rail Line and if so, when and under what conditions to close a purchase agreement with Union Pacific. In April 2005, the RTC approved a financial plan (Attachment 3) that added funds for the remaining work expected at that time. In June 2005, the RTC approved the necessary budget amendment (Attachment 4) to include these funds in the Fiscal Year 04/05 budget. Those funds now need to be transferred to the 05/06 Fiscal Year budget and added to the corresponding consultant contracts as necessary.

Staff recommends that the Regional Transportation Commission approve the attached resolution (Attachment 5) to transfer unspent funds from the Fiscal Year 04/05 Rail/Trail Authority budget to the Fiscal Year 2005/2006 Rail/Trail Authority budget and to amend the MOT contract adding \$170,000 in allocated, earmarked federal funds for continuation of services necessary for acquisition of the Santa Cruz Branch Rail

Line consistent with the approved financial plan. The funds will be used for the services provided by Miller, Owen and Trost and its subconsultants as follows:

- \$100,000 for continued negotiations and rail line acquisition services provided by Miller, Owen and Trost;
- \$20,000 for work by the Woodside Consulting Group associated with the development of the RFP for the shortline operator;
- \$50,000 for technical assistance for the rail service negotiations – currently this work is being done by the Woodside Consulting Group but other subconsultants may also be involved. \$100,000 is budgeted for this work but currently only \$50,000 is needed.

Term of the Agreement

Because it was expected that acquisition of the Santa Cruz Branch Rail Line would close in November 2005, the contract with Miller, Owen and Trost will expire on December 31, 2005. Due to recent developments in the negotiations with Union Pacific it will be necessary to extend the contract beyond December 31, 2005. The length of the term extension will depend on negotiations with Union Pacific. Staff expects to present a revised timeline with a new closing date to the RTC at its September meeting. **Staff recommends that the Executive Director be authorized to extend the term of the agreement with Miller, Owen and Trost as necessary to complete the acquisition of the Santa Cruz Branch Rail Line.**

Subconsultant Kirkpatrick and Lockhart

Kirkpatrick and Lockhardt is one of the original subconsultants under the Miller, Owen and Trost contract which began in March 2001. Two attorneys with Kirkpatrick and Lockhart, Kevin Sheys and Traci Spears, are listed to perform work under the MOT contract. This specialized field of law is not practiced by many firms and their services are costly. The rates for Kevin Sheys and Traci Spears were \$350/hr and \$200/hr respectively in March 2001. In 2005, Kevin Sheys and Traci Spears have been providing some work in connection with the appraisals of the Santa Cruz Branch Rail Line. For calendar year 2005 Mr. Sheys and Ms. Spears typically charge \$600/hr and \$335/hr respectively. About 75% of the work has been performed by Mr. Sheys and Kirkpatrick and Lockhart has agreed to a reduced rate of \$540/hr for 2005 for Mr. Sheys under the Miller, Owen and Trost contract. In order to pay for the work recently performed by Mr. Sheys and Ms. Spears, the contract with Miller, Owen and Trost must be amended to increase their rates. **Staff recommends amendment of the Miller, Owen and Trost contract to increase the billing rates for Kevin Sheys and Traci Spears to \$540/hr and \$350/hr respectively for any services performed in calendar year 2005.**

In calendar year 2004, Mr. Sheys and Ms. Spears provided services to a total of \$960 for the entire year. Their rates for 2004 were \$450/hr and \$300/hr respectively. The invoice for those services was paid. Because only the 2001 rates were listed in the contract, it is now necessary to either retroactively approve that payment or seek a reimbursement of \$270. **Because the rates charged in 2004 were the regular rates, staff recommends approving**

the payment for services performed by Kirkpatrick and Lockhart in 2004 and not seeking reimbursement.

The field of law practiced by Kevin Sheys and Traci Spears is very specialized and therefore costly. However, Miller, Owen and Trost is seeking other lawyers with Mr. Sheys expertise in this specialized field of law and who can provide services at a lower cost.

Language Clarification in the Budget by Task

The budget within the contract with Miller, Owen and Trost is organized according to the tasks in the scope of work (Attachment 2). Exhibit B of the contract with Miller, Owen and Trost includes a cost estimate by task and states:

“The following cost estimates for each task listed in the scope of work are based on the CONTRACTOR’s experience with similar railroad right-of-way acquisitions. The actual costs per task may vary. Every effort shall be made to keep costs to a minimum. It is possible that some tasks will cost less than estimated and some tasks will cost more than estimated. The COMMISSION shall periodically analyze the actual expenditures by task and make adjustments to this schedule, if necessary.”

The intention has always been that the Executive Director would make changes to the budget by task, as long as these did not impact the total contract budget. Adjustments to the expenditures by task have been made by the Executive Director as necessary and that has always been acceptable to the County Auditor’s Office. However, recently staff at the County Auditor’s Office has indicated that although such budget changes within tasks in a contract are typically done by staff and do not require official action by a governing board, the language above is not completely clear and has asked that it be clarified. **Therefore, staff recommends that the RTC amend the above language in Exhibit B of the contract with Miller, Owen and Trost to read as follows:**

“The following cost estimates for each task listed in the scope of work are based on the CONTRACTOR’s experience with similar railroad right-of-way acquisitions. The actual costs per task may vary. Every effort shall be made to keep costs to a minimum. It is possible that some tasks will cost less than estimated and some tasks will cost more than estimated. The COMMISSION staff shall periodically analyze the actual expenditures by task and the Executive Director shall make adjustments to this schedule, if necessary.”

Status of Other Work Products and Tasks

Mapping of Santa Cruz Branch Rail Line

At the June 2005 Transportation Policy Workshop meeting, the Commission approved the staff recommendation to work with the County Geographic Information Systems (GIS) Department to develop maps of the Rail Right of Way (ROW). The maps will show the rail line ROW with abutting parcels, the width of the ROW, streets, and waterways using the best available data.

The County GIS Department has completed scanning and registering the ROW Valuation Maps to the County GIS data which includes parcel data and points of reference. They are currently in the process of developing a stationing system for the ROW Valuation maps. Developing a stationing system is necessary in order to include right-of-way width information given available data. When the stationing is complete, SCCRTC staff will work with the County GIS Department to refine these maps and distribute them to the Commission. Completion of the maps has been delayed because the County GIS Department moved its offices as the mapping work began. However, it is expected that a portion or a full set of the maps will be available by the August Transportation Policy Workshop meeting.

Historical Designation of Structures

In response to RTC direction, staff has been investigating the possible presence of historical structures within the proposed acquisition area of the Union Pacific right-of-way (ROW). Staff contacted the Office of Historic Preservation (OHP) which is part of the California State Parks and purchased a listing of all the designated historic facilities in the Santa Cruz County. Only one structure within the Union Pacific ROW appears in the list: the trestle over Soquel Creek (within Capitola's Historic Riverview District), is included as a "listed historical resource" within the California State Office of Historic Preservation's official "Historic Properties Directory" for Santa Cruz County. This designation (National Register Status) of "1D" signifies that the property/structure is a "contributor to a district or multiple resource property listed in the National Register of Historic Places." In this particular case, the Trestle is an element of the "Old Riverview Historic District," as officially designated in January, 1988.

Request for Proposals (RFP) for Freight Rail Service

At its June 16, 2005 Transportation Policy Workshop (TPW) meeting the RTC approved an RFP for freight rail service and directed staff to release the RFP once the necessary information was obtained from Union Pacific. The consultants and staff are not satisfied with the progress of negotiations with Union Pacific; therefore, the RFP has not been released. Staff and the negotiations consultant will provide additional information during the closed session.

Timeline

Due to negotiations with Union Pacific, several items including the RFP for freight rail service, the appraisals and structures assessment have been delayed. This means that the

project timeline including dates for approval by funding agencies must be revised. Staff and the negotiations consultant will provide more information during closed session. As it becomes evident what the new dates for completion of work products and funding agency approvals will be, staff will produce a revised timeline and present it to the RTC. Staff plans to present a revised timeline at the RTC's September meeting.

SUMMARY

Staff recommends that the RTC approve the attached resolution amending the contract with Miller, Owen and Trost for Santa Cruz Branch Rail Line acquisition services to add \$170,000, increase the billing rates for Kevin Sheys and Traci Spears of Kirkpatrick and Lockhart, and make the necessary budget amendments consistent with this action. Staff will return to a future meeting with a revised timeline and maps developed by the County GIS Department.

- Attachment 1: Summary of Miller, Owen and Trost Rail Acquisition Services Contract
- Attachment 2: Scope of Work for Miller, Owen and Trost Contract
- Attachment 3: Approved Financial Plan for the Rail Acquisition Project (enclosed separately)
- Attachment 4: Fiscal Year 04/05 Amended Rail/Trail Authority Budget
- Attachment 5: Resolution for Amendments to the Miller, Owen and Trost Contract and corresponding budget amendment

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