

High Desert Corridor Joint Powers Authority

April 9, 2015

Meeting Materials

Item 8

Recommended Action: Adopt HDCJPA Resolution 15-1 authorizing the Chairman of the JPA to enter into a Professional Services Contract with Transportation Solutions (TS), in substantially the form submitted to the Board, with such additions and changes that the Chairman determines are in the best interest of the JPA, for performance of the Scope of Work attached to the resolution, and for an amount not to exceed \$165,000

HDCJPA RESOLUTION NO. 15-1

A RESOLUTION OF THE HIGH DESERT CORRIDOR JOINT POWERS AUTHORITY (JPA) AUTHORIZING THE CHAIRMAN TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT BETWEEN THE HIGH DESERT CORRIDOR JPA AND TRANSPORTATION SOLUTIONS (TS)

On motion by _____, seconded by _____, the Board approves the following:

WHEREAS, the High Desert Corridor Joint Powers Authority (HDCJPA) Board supports the development of the High Desert Corridor as a Public Private Partnership; and

WHEREAS, HDCJPA to provide infrastructure to allow interoperability and connectivity to California High Speed Rail (CAHSR), XpressWest and Metrolink rail service without transfer to Los Angeles (LA) Union Station or north of Palmdale; and

WHEREAS, the HDCJPA supports inclusion of the HDC in the California State Rail Plan; and

WHEREAS, the HDCJPA supports expediting the scheduling of High Speed Rail connections between Palmdale and LA Union Station; and

WHEREAS, the HDCJPA supports inclusion of the HDC in a proposed Southwest Multi-State High Speed Rail System connecting to Phoenix, the Coachella Valley and the CAHSR; and

WHEREAS, on September 30, 2014, the California Department of Transportation (Caltrans) in cooperation with the Federal Railroad Administration and other federal agencies, issued a Draft Environmental Impact Report/Environmental Impact Statement (Draft DEIS) on the High Desert Corridor Project from State Route 14 to State Route 18 in Los Angeles and San Bernardino County, California; and

WHEREAS, the DEIS states that one of the purposes of the project is to provide improved access and connectivity to regional transportation facilities, including future passenger rail systems, which include the proposed California high-speed rail (HSR) system and the proposed XpressWest HSR system; and

WHEREAS, the alternatives selected for study include a HSR Feeder/Connector Service (Rail Connector) between the cities of Palmdale and Victorville; and

WHEREAS, if approved in the Final EIS/EIR, implementation of the Rail Connector will require coordination with the California High-Speed Rail Authority (CHSRA), XpressWest, and other state and federal entities; and

WHEREAS, Transportation Solutions (TS) has proposed to provide advisory services to the High Desert Corridor Joint Powers Authority (Authority) to lay out a path forward to expedite the Rail Connector which would address specific institutional, procurement, scheduling, scope, funding and risk issues identified in the Scope of Work attached to the proposed form of Professional Services Contract between the Authority and TS, submitted to the Board of the Authority; and

WHEREAS, the Board hereby finds that:

1. TS is uniquely qualified and situated to perform this work because of prior experience with both XpressWest and CHSRA, and recent work performed on the MTA HDC Financial Feasibility Study.
2. The Scope of Work includes development of a schedule for actions to be taken by various parties in order to obtain funding and financing commitments from various state, regional and federal agencies. Many of these actions have a long time line, so that it is urgent that the work be identified, agreed to and be initiated in the immediate future.
3. Because of its extensive background on both projects, TS can accomplish this scope of work for far less than any other consultant.

NOW, THEREFORE, BE IT RESOLVED, that the Chairman of the Authority is authorized to enter into a Professional Services Contract with TS, in substantially the form submitted to the Board, with such changes that the Chairman determines are in the best interest of the Authority, for performance of the Scope of Work described in the Contract, and for an amount not to exceed \$_____. The Chairman is authorized to execute any and all documents necessary for HDCJPA to move forward with this contract, including the execution of funding agreements with Member Agencies. No work shall be performed pursuant to the contract until the Controller of HDCJPA has confirmed sufficient funds are available for full performance.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2015

Chairman Robert A. Lovingood
High Desert Corridor Joint Powers Authority

ATTEST:

Laura H. Welch, Secretary

DRAFT SCOPE OF WORK

For HDCJPA Professional Services Contract with Transportation Solutions (TS)

In order to expedite the HDC project, a road map/a path forward needs to be laid out. One which addresses the institutional, procurement, scheduling, scope, funding and risk issues identified below.

- 1) Project Phasing. The EIS for the HDC was modified to include passenger rail in the right-of-way. If funding for the rail portion is made available in advance of full funding of the highway corridor, could the rail portion be advanced first?
 - a. Would the EIS need to be supplemented to contemplate this phasing?
 - b. Should the entire ROW be acquired in the first phase, or just the part sufficient for the rail project?

- 2) What party would be in the best position to acquire the ROW?
 - a. Metro
 - b. Caltrans
 - c. XpressWest
 - d. CHSRA
 - e. JPA

- 3) Which party should take the lead in financing and developing the rail portion of the project?
 - a. XpressWest, as an extension of its Las Vegas to Victorville project?
 - b. CHSRA, as an extension of the California High Speed Rail Project in order to connect to the XpressWest project?
 - c. A third party (Metro, State, JPA) with funding from rail access fees to be negotiated with XpressWest and/or CHSRA?
 - d. A "joint venture" of XpressWest, CHSRA and/or other parties?

- 4) How would construction and operation of the project be procured, and by what party?
 - a. What legal rights do each of the parties have to procure construction?
 - b. What legal rights do each of the parties have to procure operations?
 - c. What entity would serve as the "railroad" for purposes of federal STB and FRA jurisdiction?

- 5) What further traffic and revenue studies need to be performed, and by what parties?

- 6) What are the pre-requisites for equity and/or debt funding, especially RRIF funding, of (a) XpressWest; (b) CHSRA Burbank to Palmdale; (c) the HDC as part of each project or separately? What is the timing for receipt of each of these pre-requisites?

- 7) Who will provide rail service over the HDC? CHSRA, XpressWest or both?

HOW TRANSPORTATION SERVICES (TS) WOULD APPROACH THE PROJECT

CHSRA, XpressWest and Metro each have in place teams of engineering, environmental, legal, ROW and other advisors that have been involved in various aspects of their respective projects. We would not propose to add additional advisors for the scope of our work, but rather engage these teams to provide advice as outlined below:

1. The current status and potential timing of future development of both CHSRA's line from Burbank to Palmdale and XpressWest need to be carefully assessed. This due diligence review should include meetings with officials and officers of both entities, as well as their engineering, traffic and revenue, ROW and other consultants.
2. Advice should be obtained from legal advisors to Metro, the JPA, CHSRA and XpressWest regarding each party's legal jurisdiction, procurement authorities, land acquisition processes, required Surface Transportation Board authorizations, pending litigation and other legal issues.
3. Environmental and legal consultants to CHSRA, Caltrans and XpressWest should be consulted to determine steps necessary to complete the Final EIS for the HDC, and any implications for the environmental processes for other two segments.
4. Discussions with the traffic and revenue consultants for XpressWest and CHSRA should be regarding what information has been exchanged to date, and the scope of additional investment grade studies needed to support financing of the HDC apart from or as a part of the XpressWest or Burbank to Palmdale project.
5. Discussions should be undertaken with both CHSRA and XpressWest to understand their approaches to procurement of contractors, operators and equipment suppliers, and what consideration has been given to joint procurement.
6. Discussions should also be had with financial advisors to XpressWest and CHSRA to determine potential financing strategies, and what studies, contracts, permits and agreements are pre-requisites to closing of any financing, including RRIF loans.

The final work product will be a report or series of reports outlining the results of the above investigations and will include specific recommendations, and an Advocacy Plan, for further steps to be taken to advance and complete the project.



High Desert Corridor Joint Powers Authority



E-220 HIGH DESERT CORRIDOR

HIGH DESERT CORRIDOR JOINT POWERS AUTHORITY

Title of Proposal

Address
City, State, ZIP Code
Date

BOARD OF DIRECTORS

Robert A. Lovingood

Supervisor, San Bernardino County First District (Chairman)

Ronald D. Smith

Council Member, City of Lancaster

James C. Ledford

Mayor, City of Palmdale

Norm L. Hickling

Los Angeles County

Michael D. Antonovich

Supervisor, Los Angeles County Fifth District (Vice-Chairman)

Scott Nassif

Council Member, Town of Apple Valley

Richard Kerr

Mayor, City of Adelanto

Ryan McEachron

Council Member, City of Victorville



I. Proposal Submission

II. Purpose

III. Term of Agreement

Specific services to be provided are outlined under Scope of Work. The Agreement period will be for _____.

IV. Correspondence

All correspondence are to be submitted to:

HDCJPA

Attn: _____

Address

City, State, Zip Code

(909) _____ Phone

(909) _____ Fax

_____ Email

V. SCOPE OF WORK

A. Background

Insert Scope of Work here.

VI. AGREEMENT REQUIREMENTS

A. General

1. Legality and Severability

2. Representation of the County

In the performance of the Agreement, Proposer shall act in an independent capacity and not as officers, employees, or agents of the HDCJPA.

3. Relationship of the Parties

Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

4. Subcontracting

Proposer agrees not to enter into any subcontracting contracts for work contemplated under the Agreement without first obtaining written approval from the JPA. Any subcontracting shall be subject to the same terms and conditions as Proposer. Proposer shall be fully responsible for the performance and payments of any subcontractor's contract.

5. Agreement Assignability

Without the prior written consent of the HDCJPA, the Agreement is not assignable by Proposer either in whole or in part.

6. Agreement Modification

Proposer agrees any alterations, variations, modifications, or waivers of the provisions of the Agreement, shall be valid only when reduced to writing, executed and attached to the original Agreement and approved by the person(s) authorized to do so on behalf of Proposer and the HDCJPA.

7. Agreement Exclusivity

This is not an exclusive Agreement. The HDCJPA reserves the right to enter into an agreement with other proposers for the same or similar services.

8. Termination for Convenience

The HDCJPA for its convenience may terminate this Agreement in whole or in part upon ten (10) calendar day's written notice. Such adjustment shall provide for payment to the Proposer for services rendered and expenses incurred prior to the effective date of termination. Upon receipt of termination notice Proposer shall promptly discontinue services unless the notice directs otherwise. Proposer shall deliver promptly to HDCJPA and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

9. Attorney Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Part B-1 Indemnification.

10. Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

11. Fiscal Provisions

12. Conflict of Interest

Proposer shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the HDCJPA. Proposer shall make a reasonable effort to prevent employees, Proposers, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the HDCJPA determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed, by the County and such conflict may constitute grounds for termination of the Agreement.

13. Release of Information

No news releases, advertisements, public announcements or photographs arising out of this Agreement or Proposer's relationship with HDCJPA may be made or used without prior written approval of the HDCJPA.

Proposers are cautioned that making a false certification may subject the Proposer to civil penalties, termination of existing agreement, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.