Update on Independent General Counsel

November 5, 2020
JPB Board of Directors
Background

- JPB Board Resolution (August 6, 2020) accompanying Measure RR ballot placement contained amongst others, three key provisions:
  - The JPB Board shall appoint an auditor (and shall not have the same auditor as SMCTD) by January 15, 2021.
  - The JPB Board shall appoint an independent counsel (and shall not have the same counsel as any member agency) by January 31, 2021 to represent the JPB, and until such time the law firm of Olson Remcho LLP shall be available to the Board for consultation upon request.
  - The JPB Board will recommend a governance structure or procedures to the three Member Agencies no later than December 31, 2021.

- Board Ad Hoc committee (Bruins, Zmuda, Collins) appointed to address and recommend path forward on these provisions
  - 5 meetings held to date
Status

- Appointment of auditor
  - Projected award in January 2021
- Appointment of Independent General Counsel
  - For discussion today
- Development of governance recommendation by 12/31/21
  - Process discussion underway by Ad Hoc Committee
Objectives of Independent Counsel Effort

- Comply with language and intent of JPB Resolution
- Ensure the integrity, quality and continuity of JPB legal support
  - California and Commuter rail expertise is critical
- Development of recommendation for JPB consideration with respect to the acquisition of independent legal counsel
Process

- JPB retained expertise of Renee Marler to lead process to obtain independent counsel.
- Process to develop recommendation for Board consideration
  - Collect data on current JPB counsel services/needs
  - Evaluate market
  - Conduct peer discussions
  - Develop options for consideration
JPB Legal Counsel-General Description

- Services are provided to the JPB by Hanson Bridgett (HB) serving as general counsel and providing a diverse set of specialized practice areas.
  - Special counsel hired when necessary if HB has a conflict or does not have the required expertise
- Hourly fee is $400
  - In comparison, quotes for Special Counsel ranged from $410 - $729/hour
- Legal budget varies based on services required
  - Annual non-litigation budget for last 2 complete fiscal years
    - FY 19 $2.25 million
    - FY 20 $2.8 million
JPB Legal Counsel-General Description

- HB provides services in a diverse set of practice areas including:
  - Railroad regulatory, compliance, business practice, negotiation
  - Real property, eminent domain, TOD and development
  - Environmental law including CEQA/NEPA
  - Litigation
  - Construction and procurement law
  - Finance/financing, insurance
  - Civil rights, labor, First Amendment
Legal Service Scan

- Initial scan to determine if a single firm can satisfy needs
  - HB provides a unique family of services.
  - Few comparable firms exist but are on the east coast and lack California expertise.
  - Several firms provide subsets of required services.
Peer/Agency Research

- Several agencies interviewed to determine approach to legal services.
  - Construction Authority
  - Multimodal Operating Entities
  - Commuter Railroads
General themes

- No single solution
- Form of legal services provision results from organizational objectives
  - Financial
  - Practical
- Practice for established commuter railroads is to hire in house legal staff, which had evolved over time
  - Supplemented by contractors with specialist firms
Options for consideration (cont)

- Several options developed to satisfy JPB requirements
  - Hire Special Counsel (not compliant with Resolution)
  - Hire Replacement firm for HB (procurement of a single firm not feasible)
  - Hire in-house general counsel (JPB lacks administrative structure to hire employees)
  - Hire contracted general counsel firm (with contracted other legal services-2 options)
- All options measured against JPB objectives and practical requirements
Contracted General Counsel

- Option 1 – Hire contracted general counsel to advise Board with executive management of other contracted legal services

- Option 2 – Hire contracted general counsel to advise Board and manage other contracted legal services
Recommendation

- Option 2-Hire contracted general counsel to manage all contracted legal services
  - Single manager of all legal services
  - Provides coordination among various legal contracts
  - Provides good governance support for the JPB board
  - Provides support to JPB though governance discussions
  - Provides flexibility as agency evolves
Transition

- Any change from the current provision of legal services will require a thoughtful transition that:
  - Prioritizes support for on-going litigation and other critical activities
  - Retention of expertise and Caltrain-specific skills and knowledge
Timing

- Procurement of these services could proceed on the following timeline if direction is provided today
  - Finalize scope and RFP for review by Ad Hoc Process Committee and issue RFP - 2 weeks
  - Advertisement - 3 weeks
  - Pre-proposal activities/proposals due - 9 weeks
  - Appoint Board interview committee - January
  - Proposals/interviews - 6 weeks
  - Contract negotiations-board award 3-6 weeks
Next Steps

- Develop and advertise RFP
- Continue discussion with Ad Hoc Committee
- Determine interview and evaluation process
- Appoint Board interview committee