Today’s Topics

• SWLRT Nossaman Contract Amendment

• Greene Espel Contract Amendments
  • Procurement overview
  • SWLRT amendment
  • BLRT amendment
Nossaman Amendment
BI #2017-221
Scope of Work for Original Contract

- Support negotiation, development, and legal review of freight rail agreements with CP
  - Design and engineering activities
  - Construction
  - Operations & maintenance
  - Risk and liability allocation
  - Safety
  - Real estate transactions including easements

- Provide expertise on operations and business practices
  - Investigation and legal research activities

- Interface with freight rail companies, FTA, FRA, and STB
Existing Freight Rail Network

Wayzata Subdivision
Owner: BNSF
Operator: BNSF, TC&W

Bryn Mawr Station

Kenilworth Corridor
Owner: HCRRRA
Operator: TC&W

Downtown Hopkins Station

Louisiana Avenue Station

Bass Lake Spur
Owner: CP
Operator: TC&W

MN&S Spur
Owner: CP
Operator: CP, TC&W

Glencoe Junction
Owner: TC&W
Operator: TC&W

Minnetonka
Hopkins
Minneapolis
Eden Prairie
Edina
Lake Calhoun
Lake Harriet
Cedar Lake
Lake Calhoun
Lake Harriet
Proposed Freight Rail Owners & Operators

- **Kenilworth Corridor/Bass Lake Spur**: Owner: Metropolitan Council, Operator: TC&W
- **Bass Lake Spur/Kenilworth Corridor**: Owner: Metropolitan Council, Operator: TC&W
- **Downtown Hopkins Station**
- **Bryn Mawr Station**
- **Louisiana Avenue Station**
- **MN&S Spur**
- **Bass Lake Spur**
- **Southerly Connector**

*Image showing a map of proposed freight rail corridors with key stations and operators.*
Procurement Summary

• RFP issued in 2014 for legal services to support Council in coordinating and negotiating with freight rail companies, and interfacing with FTA, FRA, and STB
  ▪ 4 proposals received from GKG Law, Nossaman LLP, Nwaneri Law Firm, and Hardwick Law Firm, LLC
  ▪ Evaluation Panel made up of Council staff recommended Nossaman based on qualifications, experience, responsiveness to RFP and proposed billing rates
  ▪ Approval of Evaluation Panel recommendation followed Council procedure (Supervisor, Program Director, and General Manager)

• At the time the RFP was issued, Project schedule assumed construction beginning in Summer of 2015
Billing Rates

• Nossaman LLP is based in Washington D.C.
  ▪ Team of five attorneys includes attorneys from D.C. and Los Angeles offices with expertise in Freight Rail negotiations including tax law and liability specialties

• 2014 rates were proposed including the following cost control measures:
  ▪ Discounted government rates
  ▪ Work completed by qualified local attorneys with lower rates whenever possible
  ▪ Maintaining internal database of documents to reduce research time

• 2015 - 2017 continued to use 2014 rate
  • no increase even though contract allowed a 5% per year escalation
Justification for Amendments #1 thru 3

• Amendment addresses scope changes, including shift in strategy
  ▪ Initial plan in 2014 was to do a land swap with CP
  ▪ In March 2015 CP requested land sale approach which resulted in requiring agreements with TCWR

• Number of agreements increased from 3 to 7
  ▪ Initial: CP Engineering, Property, and Construction
  ▪ Added: TCWR Freight Rail Coordination, Construction, and Operations and Maintenance agreements
  ▪ Added: CP Operations and Maintenance agreement in Kenilworth

• Complex terms took more time to negotiate
  ▪ Tax treatment of siding replacement
  ▪ Indemnification and insurance Construction and OMA
  ▪ Freight operations in shared corridor with LRT
Uses of Funds thru July: $788,375

- Negotiations/Strategy Meetings: $248,040 (31%)
- Legal Research: $114,399 (15%)
- Drafting: $423,572 (54%)
- Expenses and Travel: $2,364 (0%)

Total: $788,375
Scope of Work for Amendment #4

- Finalize negotiations with TCWR and CP
- Prepare STB filing documents and obtain STB approval
- Address FTA comments, execute agreements
- Real estate closings and tax counsel support for siding track replacement during IRS safe harbor period at least 6 months from replacement
- Advisory and consultation services, as requested
- Legal analysis and opinions, as requested
## Summary

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<th>Amount</th>
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| Amendment 1       | 8/13/2015     | No change  | $155,000 | $250,000              |
| Amendment 2       | 7/15/2016     | No change  | $250,000 | $500,000              |
| Amendment 3       | 6/15/2017     | No change  | $300,000 | $800,000              |
| Amendment 4       | TBD           | 6/30/2018  | $500,000 | $1,300,000            |
Recommendation

- Metropolitan Council authorize Regional Administrator to execute Amendment #4 to legal services contract (14P026) with Nossaman, LLP related to freight rail for SWLRT to add $500,000 for a total authorized contract value of $1,300,000
Greene Espel Contracts
Greene Espel Procurement Summary

• Competitive process used for first contract procured for **BLRT** in 2015
  ▪ RFP issued for legal services to prepare, negotiate, develop and execute agreements with freight rail companies for BLRT
  ▪ 3 proposals received from Greene Espel PLLP, Nossaman LLP and Hardwick Law Firm, LLC
  ▪ Evaluation Panel made up of Council staff recommended Greene Espel based on qualifications, experience, responsiveness to RFP, and proposed billing rates
  ▪ Approval of Evaluation Panel recommendation followed Council procedure (Supervisor, Program Director, General Manager, and RA)

• Sole source procurement used for second contract for **SWLRT** in 2016 based on need for continuity in negotiations
Roles and Responsibilities

- **Lead: Greene Espel**
  - Negotiations

- **Subcontractors**
  - Richardson Richter: Agreement Drafting
  - Lindquist & Vennum: Real Estate
Greene Espel
SWLRT Contract Amendment
BI #2017-234
SWLRT Scope of Work

• Support negotiation, development, and legal review of freight rail agreements with BNSF
  ▪ Design and Engineering activities
  ▪ Coordination Reimbursement Agreement – Construction Phase
  ▪ Operations & Maintenance
  ▪ Risk and Liability allocation
  ▪ Safety

• Real estate transactions including easements

• Provide expertise on operations and business practices
  ▪ Investigation and Legal Research activities

• Interface with freight rail companies, FTA, FRA
Existing Freight Rail Network
Justification for SWLRT Amendments #1 & 2

- Amendment addresses additional time needed to deliver original scope of contract
  - Engaging BNSF and initiating negotiations took longer than anticipated
  - Complex requirements took more time to negotiate
    - Form of property conveyance
    - Protection barriers
    - Indemnification and insurance
    - Freight operations in shared corridor
    - Federal Provisions
  - Number of agreements increased from 3 to 7
    - Initial: Property, Construction and Shared Use agreements
    - Added: MOU, Construction Amendment, Northstar Lease Amendment and Freight Rail Coordination Agreement
SWLRT Uses of Funds thru July: $693,277

- Negotiations/Strategy Meetings: $509,321 (73%)
- Drafting: $114,687 (17%)
- Legal Research: $62,055 (9%)
- Expenses and Travel: $7,214 (1%)
Scope of Work for SWLRT Amendment #3

- Address FTA comments, execute agreements
- Amend Coordination Reimbursement Agreement – Construction Phase to incorporate agreed plans, specs and schedule
- Finalize Northstar Lease Amendment
- Real Estate Closings
- Draft owners manual
- Advisory and consultation services, as requested
- Legal analysis and opinions, as requested
## SWLRT Contract and Amendments Summary

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Greene Espel
BLRT Contract Amendment
BI #2017-235
Scope of Work for BLRT Original Contract

• Agreement preliminary discussions and negotiations
  ▪ Purchase of property rights, third party leases and easements
  ▪ Design and engineering activities
  ▪ Construction
  ▪ Environmental liability
  ▪ Operations & maintenance
  ▪ Risk and liability allocation
  ▪ Grade crossings and signal coordination

• Prepare and review agreement or other documents

• Research and other related legal services

• Meeting participation

• Other legal services
LRT and Freight
Shared Corridor
Justification for BLRT Amendment

• Original contract value based on executing 3 agreements with BNSF prior to submitting FFGA application
• Engaging BNSF required more effort than originally anticipated
• Onus on Council to do majority of work involved in communications, document preparation, research, etc.
• In late 2016, negotiations necessarily focused on SWLRT to meet that Project’s earlier FFGA schedule
• FTA requested to perform legal review of definitive agreements which may result in additional changes, further postponing execution into 2018
BLRT Uses of Funds thru July: $417,482

- Negotiations/Strategy Meetings: $235,854 (56%)
- Drafting: $110,966 (27%)
- Legal Research: $68,200 (16%)
- Expenses and Travel: $2,462 (1%)

Total: $417,482
Scope of Work for BLRT Amendment

- Provide additional resources focus on remaining issues unique to 8-miles of shared alignment with BLRT
  - Legal support to re-engage BNSF in negotiations
  - Legal analysis to support negotiations with BNSF, development of agreement terms for new issues, and responding to comments from BNSF
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Recommendations
Recommendations

• **BI 2017-234**
  - Metropolitan Council authorize Regional Administrator to execute Amendment #3 to legal services contract (16P030) with Greene Espel, PLLP related to freight rail for *SWLRT* to add $300,000 for a total authorized contract value of $1 million

• **BI 2017-235**
  - Metropolitan Council authorize Regional Administrator to execute Amendment #1 to legal services contract (15P136) with Greene Espel, PLLP related to freight rail for *BLRT* to add $300,000 for a total authorized contract value of $750,000