

Management Committee

Meeting date: July 25, 2018

For the Metropolitan Council meeting of July 25, 2018

Subject: Southwest Light Rail Transit (Green Line Extension) Amendment #2 to the GKG Legal Services Contract

District(s), Member(s): All

Policy/Legal Reference: Minnesota Statutes sections 473.399 and 473.129

Staff Prepared/Presented: Ann Bloodhart, General Counsel, 651-602-1105
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Division/Department: Office of General Counsel and Metro Transit / Green Line Extension LRT

Proposed Action

That the Metropolitan Council approve and authorize the Regional Administrator to execute a sole source contract amendment to the legal services contract (16P243) with GKG related to freight rail for the Southwest Light Rail Transit (Green Line Extension), to add \$150,000 to the existing contract amount of \$450,000 for a total of \$600,000 and to extend the contract term through December 2019.

Background

The original contract was executed on October 25, 2016 for \$200,000. Amendment #1 was executed on April 25, 2018 to add \$250,000 for a total contract value to \$450,000. Amendment #1 was needed to finalize freight rail negotiations, prepare Surface Transportation Board (“STB”) filing documents and obtain STB approval for the Council’s acquisition of freight rail facilities in the Kenilworth Corridor and Bass Lake Spur.

On April 4, 2018, the Council petitioned the STB to request that the STB confirm that it does not have jurisdiction over the Council's acquisition of rights-of-way and physical freight rail assets that are required for construction of the Southwest LRT Project. On April 5, 2018, the Hennepin County Regional Railroad Authority (“HCRRA”) filed its petition with the STB (procedurally called a Notice of Exemption), which includes a notification that HCRRA intends to assume common carrier obligation on the Bass Lake Spur. On April 24, 2018, Twin Cities & Western Railroad (“TCWR”) filed comments with the STB on the Council's and HCRRA's petitions and asked the STB to dismiss the petitions, stay both proceedings, or set a procedural schedule to allow for public comment, discovery, and evidentiary submissions. The STB granted TCWR’s request to stay HCRRA’s Notice of Exemption and required the Council and HCRRA to submit an Operations and Maintenance Agreement related to freight activities on the Bass Lake Spur and Kenilworth Corridor. In addition to filing comments with the STB, TCWR filed a lawsuit against the Council, HCRRA, and Canadian Pacific Railway (“CP”). The Council used the amount authorized under the previous amendment to respond to these actions and needs to increase the contract for the following activities:

- Preparation of any follow-up STB documents/filings and obtain STB approval
- Support Council in activities related to siding track replacement or other freight rail operational issues

- Advisory and consultation services
- Legal analysis and opinions regarding STB and freight rail issues

Amendment #2 will add \$150,000 for a total authorized contract value of \$600,000.

Rationale

No alternatives are recommended due to the need to maintain continuity in completing the STB process and providing legal advice on STB matters. The contract amendment is for additional time needed to advise the Southwest Project Office on the critical freight rail agreements with CP, TCWR, and HCRRA, and implementation of the STB's decision on the Council's petition.

Transportation Committee Action

This joint business item was considered by the Transportation Committee at its July 9, 2018 meeting. The Committee approved a proposed action to increase the amount of this contract by \$300,000 rather than \$150,000. Subsequent to the Transportation Committee's July 9 action, the Council, HCRRA, Hennepin County, and CP negotiated a settlement agreement with TCWR. Under the terms of the settlement, TCWR agreed to withdraw its objections to the Council's and HCRRA's petitions to the STB and stipulate to a dismissal of its complaint pending in federal district court. Consequently, the Council now anticipates it will not need the level of legal services it originally estimated it would need to pursue its petition with the STB or respond to the litigation.

Thrive Lens Analysis

Coordination with freight rail companies is necessary to construct and operate the Green Line Extension that will increase the region's prosperity as it will provide access to 80,900 forecasted jobs and a new transportation option for 55,600 forecasted residents within ½ mile of the planned new stations in addition to the 145,300 forecasted jobs and 35,600 forecasted residents in downtown Minneapolis.

Funding

Legal Services is a project budgeted activity and a project eligible expense.

Known Support / Opposition

There is no known opposition to amending the GKG contract.