

## Management Committee

Meeting date: March 13, 2019

For the Metropolitan Council meeting of March 27, 2019

**Subject:** Southwest Light Rail Transit (Green Line Extension) Legal Services Contract Sole Source Amendment 3 with Best & Flanagan LLP (16P296)

**District(s), Member(s):** All

**Policy/Legal Reference:** Metropolitan Council 3-3; Minn. Stat. §§ 473.129, 473.3999

**Staff Prepared/Presented:** Ann Bloodhart, General Counsel, 651-602-1105  
Joan Hollick, Interim Director, New Starts Program, 612-373-3820  
Robin Caufman, Director TSD Administration, 651-602-1457

**Division/Department:** Regional Administration, Office of General Counsel

### Proposed Action

That the Metropolitan Council approve a sole source contract amendment for legal services for real estate acquisition for the Southwest Light Rail Transit (LRT) Project with Best & Flanagan LLP (16P296) to increase the contract amount by \$140,000 to a total contract amount of \$840,000.

### Background

In November of 2016, the Council passed Resolution 2016-28 declaring that the Southwest LRT Project (Green Line Extension) is a valid public purpose for the use of condemnation proceedings and directing the Council's attorneys to acquire properties needed for the Project by condemnation if they could not be acquired by direct negotiation. In 2017, on multiple occasions the Council authorized the use of condemnation for certain parcels appraised at greater than \$1 million.

In November 2016, the Council also executed a \$250,000 contract with Best & Flanagan to support real estate acquisition for the Southwest LRT project. At that time, it was anticipated that MnDOT legal counsel would prepare much of the condemnation documentation and file actions with the court. It was unknown exactly how many parcels would be put into condemnation.

In 2017, the Minnesota Legislature modified the eminent domain statute, Minnesota Statutes Chapter 117, and clarified that the Council must pay landowners' attorneys' fees and costs pursuant to Minn. Stat. § 117.031 for LRT projects. This had the effect of discouraging owners from settling and thus having more parcels put into condemnation.

By early 2018, it was determined that neither MnDOT legal staff nor the Council's Office of General Counsel had the capacity to handle all the Southwest LRT condemnations. As a result, the Council started utilizing the contract with Best & Flanagan to prepare condemnation documents, file actions, and otherwise represent the Council in property acquisitions and condemnation related processes.

In June 2018, with the number of condemnations and project delay, the contract was increased by \$250,000 to provide sufficient funds to continue the process of acquiring necessary property interests through condemnations. The last condemnation actions were filed in June/July 2018, with the Council acquiring title and possession of all but two parcels.

The Council finalized critical agreements with the freight railroads in July 2018 and was awarded a Letter of No Prejudice by the Federal Transit Administration (FTA) in November, allowing it to award the civil construction contract in December.

For SWLRT, 104 parcels have title and possession through the condemnation process, but still need to be finalized and approximately 20 complex relocation claims are under review or in the appeal process. In December 2018, this contract was increased by \$200,000 to continue the ongoing condemnation work while the Council prepared to issue a Request for Proposals for new contracts that are competitively procured to complete the post Title and Possession actions of the condemnation process and support the remaining relocation claim reviews and appeals. Council staff anticipate awarding these contracts in May 2019 and issuing the Notices to Proceed by the end of June 2019. In the meantime, however, the Council requires legal support for commissioners hearings that have been scheduled for three parcels and ongoing condemnation action activities pending completion of the ongoing competitive procurement process. Therefore, Council staff is requesting an additional \$140,000 be added to this contract to cover those expenses should the Council be unable to settle and the parcels go to hearing. When the Notices to Proceed have been issued for the new contracts, this contract will be closed and all condemnation activities will be transferred to the new contracts.

### **Rationale**

This sole source amendment is necessary for the Council to proceed with the Project and help ensure the owners' just compensation claims in condemnation are heard in a timely manner.

### **Thrive Lens Analysis**

Construction of the Green Line Extension will increase the region's prosperity as it will provide access to 80,900 forecasted jobs and a new transportation option for 55,000 forecasted residents within ½ mile of the planned new stations in addition to the 145,300 forecasted jobs and 35,600 forecasted residents for downtown Minneapolis.

### **Funding**

Funds for this contract amendment are included in the Project budget.

### **Known Support / Opposition**

There is no known opposition to this action.