

Management Committee

Meeting date: March 9, 2022

For the Metropolitan Council meeting of March 23, 2022

Subject: METRO Green Line Extension Legal Services Contract in Support of Project Activities, Contract 20P007 – Amendment No. 1

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

Policy/Legal Reference: FM 14-2 – Expenditures for Procurement of Goods and Services Greater than \$500,000

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Division/Department: Regional Administration, Office of General Counsel

Proposed Action

That the Metropolitan Council authorize the Regional Administrator to negotiate and execute a sole source amendment to the legal services contract with Venable, LLC (Venable) to support METRO Green Line Extension Project (Project) activities in an amount not to exceed \$8.25 million, with a total contract value of \$10.75 million, and extend the term of the contract through 2027.

Background

In July 2020, Schiff Hardin, LLP and the Metropolitan Council (Council) executed Contract 20P007 in the amount of \$2.5 million to provide legal services to support the Council during construction of the METRO Green Line Extension Project. The contract was later assigned in January 2021 to Venable when Kenneth M. Roberts, the lead attorney for Schiff Hardin, and the construction law group with Schiff Hardin transferred the practice to Venable. Venable has retained construction claim experts and forensic engineers as subconsultants to support its services to the Council.

In Business Item 2022-35, the Council authorized the Regional Administrator to negotiate and execute a settlement agreement with the civil contractor Lunda McCrossan Joint Venture (LMJV) to complete civil construction and expeditiously resolve the disputes related to the additional time required to perform the work. The revised completion date to civil construction will establish a date certain turnover to the follow-on systems contractor and inform an update to the start of revenue operations. It also contains a process for evaluative mediation and arbitration of disputed costs. Venable is providing legal representation in the negotiation of the agreement. The Council expects to initiate similar settlement negotiations with the systems contractor later this year. Venable will be providing legal representation in the negotiation of the settlement with the systems contractor.

An amendment to the Venable contract is needed to increase the amount of the contract by approximately \$8.25 million and to extend services through 2027 when the Project concludes. The amendment will retain Venable services through the resolution of the civil re-baseline costs and provide budget to negotiate a settlement with the systems contractor. The additional amount will also continue to support Venable's subconsultants, construction claim experts and forensic engineers, to provide services throughout the Project.

Venable and its experts are uniquely qualified to conduct this work as they have represented Council in extensive settlement negotiations with LMJV and have gained an in-depth knowledge of the Project through the work completed under the original contract.

Small Business Inclusion

In 2020, the Office of Equal Opportunity evaluated the project for a sub-contracting goal and identified one DBE that could provide contract litigation services. OEO determined that a DBE sub-contracting goal could not be established and provided contact information for the DBE firm so they could be solicited for a proposal. The DBE firm did not submit a proposal.

Rationale

This contract is necessary to support the Council's Project activities including legal advice and consultation on claims and change orders on the Project's contracts and retaining the necessary experts. Continuing to retain legal counsel with specialized experience during construction will increase successful outcomes for the Council during evaluative mediation and arbitration processes and reduce the Council's risk for additional litigation.

Thrive Lens Analysis

Successful completion of the METRO Green Line Extension will advance the following Thrive MSP 2040 outcomes:

Stewardship: Transit investment provides an opportunity to reinvest and grow the capacity of our communities, with more inclusive development and intentional investment. It encourages businesses to invest in communities, which means access to resources, community amenities, jobs, and other community assets.

Equity: Connections to other METRO lines and countless local bus routes will bring people to jobs, jobs to communities, and returns to communities across the region.

Livability: The METRO Green Line Extension will add 14.5 miles to the existing Line, which connects downtown Minneapolis, downtown Saint Paul, and places in-between. This segment connects Eden Prairie, Minnetonka, Hopkins, and St. Louis Park to both downtown Minneapolis and Saint Paul, and major destinations at the University of Minnesota and the State Capitol.

Prosperity: The METRO Green Line Extension reflects strategic investment in regional infrastructure that will promote economic competitiveness and create prosperity for the region. Despite being under construction, the METRO Green Line Extension has already seen more than \$1.6 billion of investment within a half-mile of the line. Another \$500 million in investment is planned.

Sustainability: As many as 700,000 more people will be living, working, and moving around the Twin Cities region by 2040. As a result, a robust transportation system is needed to provide the region choices and more mobility.

Funding

The work for this contract amendment is a Southwest LRT Project (61001) eligible cost. Funds for the work are available in the project budget. This work is included in the Council's authorized capital budget.

Known Support / Opposition

There is no known opposition to this action.