

Management Committee

Business Item

Item: 2008-134

Meeting date: May 14, 2008

Council Meeting: May 21, 2008

ADVISORY INFORMATION

Date: May 5, 2008

Subject: Request for Waiver of Conflict – Fredrikson & Bryon, P.A.

District(s), Member(s):

Policy/Legal Reference: Minnesota Statute § 473.19, subd. 3

Staff Prepared/Presented: Nils F. Grossman, General Counsel 651.602.1463

Division/Department: Legal – Office of General Counsel

Proposed Action

That the Metropolitan Council waive any conflict of interest and consent to the representation by Fredrikson & Byron, P.A. of Minnesota Transit Constructors in connection with Disadvantaged Business Enterprise (DBE) issues associated with the Hiawatha Light Rail Transit project.

Background

The law firm of Fredrikson & Bryon, P.A. represents the Metropolitan Council in connection with the Mall of America/Metropolitan Airports Commission litigation regarding acquisition of an easement or use of property for a section of LRT tracks in the City of Bloomington. The firm has recently been retained to represent Minnesota Transit Constructors (MnTC) in connection with Disadvantaged Business Enterprise (DBE) issues associated with the Hiawatha Light Rail Transit project. The firm feels that there is no conflict of interest in this matter for the following reasons:

- The subject matter of its representation of MnTC is unrelated to the work being done for the Council.
- No lawyers who work on Council matters are performing any legal services for MnTC.
- It feels there is no direct adversity between MnTC and the Council in this matter because it believes any claims against MnTC will be brought by the Minnesota Department of Transportation rather than the Council and it has taken certain steps with co-counsel on the matter to avoid any future adversity with respect to the Council.

However, although the firm does not feel there is a conflict of interest for the reasons indicated above, it has requested that the Council waive any perceived conflict that may arise as a result of its representation of MnTC.

Rationale

See attached letter from Fredrikson & Byron, P.A.

Funding

No funding implications or impacts.

Known Support / Opposition

None.

April 30, 2008

Via E-mail and U.S. Mail

Metropolitan Council
Attn: Nils Grossman, Esq.
390 Robert Street North
St. Paul, MN 55101-1805

Re: Minnesota Transit Constructors

Dear Nils:

Following up on your several conversations with Jim Dorsey, as counsel to the firm I am writing this letter to you regarding our representation of Minnesota Transit Constructors (MnTC).

My colleagues, David Lillehaug and Dulce Foster, are representing MnTC in connection with an investigation being conducted by the Federal Government into DBE issues associated with the Hiawatha Light Rail project. This is a civil matter which David and Dulce are endeavoring to resolve. It may, however, result in litigation in U.S. District Court.

The Federal Government is the adverse party to MnTC. The Fabyanske firm is handling potential claims between MnTC and the Minnesota Department of Transportation. We did not believe any conflict existed when we commenced representation of MnTC insofar as the Metropolitan Council was concerned. We reexamined the issue, however, after learning that you had expressed some concern to Dean Thomson about our role in the matter.

We are aware that the Metropolitan Council has co-signed a letter in which a possible claim against MnTC is laid out. That claim, however, is one which would be brought by MNDOT rather than the Metropolitan Council. Nevertheless, the Metropolitan Council may arguably bear some responsibility--actual or perceived--for the administration of the DBE program and may also be the repository of certain documents and information that could be relevant to the matter which we are handling for MnTC.

While we continue to believe that there is no direct adversity between MnTC and the Metropolitan Council, we have agreed with co-counsel for MnTC, the Fabyanske firm, that it

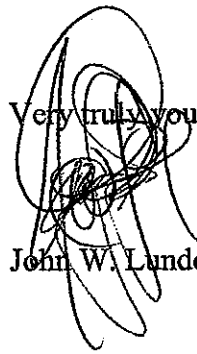
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will assume responsibility for any aspects of the case that might create adversity with respect to the Metropolitan Council. We would be grateful if you would approve of this arrangement and waive any perceived conflict that may arise as a result of our representation of MnTC. As the subject matter of our representation of MnTC is completely unrelated to any work that we are doing for the Metropolitan Council and no lawyers who work on Metropolitan Council matters are performing any legal services for MnTC, the situation is well-suited for waiver.

Please do not hesitate to contact me if you have any questions or concerns. Otherwise, we would appreciate your confirming our request in writing. We understand that written confirmation may take several weeks to accomplish. In the meantime, we understand that we will continue to represent MnTC under the conditions described above, including attendance at the meeting next week at the Office of the U.S. Attorney, to which attorneys for the Metropolitan Council were invited by the Department of Justice, for the purpose of seeking a comprehensive resolution of all disputes.

Very truly yours,

A handwritten signature in black ink, appearing to read "John W. Lundquist", is written over the typed name. The signature is somewhat stylized and overlaps the text.

John W. Lundquist

cc: James E. Dorsey
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