

# Holland & Knight

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## Memorandum

Date: April 8, 2010

To: Robert J. Bauman

From: Jeffrey F. Boothe

Re: Proposal for Services

This memorandum is intended to follow-up our meeting on March 16<sup>th</sup> in Washington, DC and subsequent e-mails requesting that I prepare a scope of services to assist the city of Milwaukee.

### Initial Phase of the Engagement

Per our conversation, I understand the need of the city to develop a project advancement and approval strategy with the Federal Transit Administration (FTA) to advance the streetcar project in light of the provision by Congress of \$54.9 million in the Interstate Construction Estimate (ICE) program. It is my understanding that the project is not yet in the New Starts program and the request of \$24.99 million through the Urban Circulator program would enable the project to remain outside of the New Starts project rating and evaluation process. However, given the total cost of the project, FTA may seek to apply some elements of the New Starts project review process to the project.

Per your e-mail, the current need of the city of Milwaukee is to reach agreement with the FTA regarding what actions are necessary at the local level to advance the project into preliminary engineering (PE), to enter into agreement with FTA regarding the scope of environmental review under the National Environmental Policy Act (NEPA) and to secure agreement with FTA to allow the project to proceed utilizing a design-build contract. This scope would include a visit to Milwaukee to tour the project and meet with individuals familiar with the project to educate me regarding the alignment, environmental issues, initial engineering issues and the status of local match for the federal funds. I would also request any project related documents prepared to-date in support of the request to enter into PE so that I could review what has been submitted to FTA in support of the request. I propose fees of \$20,000 plus the following expenses for this phase of the engagement: air travel to Milwaukee, per approval of the city; hotel, travel and meals while in Milwaukee; and, any copying expenses, phone calls and local travel while in Washington, DC.

### Services Not Covered Under this Phase of Engagement

This scope does not include negotiation of a Project Development Agreement (PDA), Project Construction Grant Agreement (PCGA), Full Funding Grant Agreement (FFGA) or comparable

grant agreement with the FTA. This would be covered by a subsequent engagement with the city of Milwaukee.

### **Potential Services to be Provided Under a Future Engagement**

The proposed scope does not cover the services set forth below. We would like to discuss which of these services would be of assistance to the city of Milwaukee subsequent to approval into PE. We would structure a proposal per your need. Moreover, whether the engagement is directly with the city or through the entity selected by the city for the next phase of project development would be determined by the city and dictated by the services requested. For example, if the subsequent scope includes legislative or agency advocacy services, these services should be provided under a direct engagement with the city for lobby compliance purposes.

- **Federal Transit Administration** - I work extensively with both career and political staff at the FTA to resolve project related issues as the project advances through the Small Starts/New Starts process or the parallel process that FTA may establish given the unique nature of the federal funding for the project. I would set up meetings with the Administrator and career staff for the city, as appropriate, and present issues and potential resolution of those issues as the project winds through the FTA project review process. I have also negotiated several Full Funding Grant Agreements for transit properties.
- **Procurement** – We have negotiated several design-build or similar contracting arrangements for projects funded by the Federal Transit Administration and have extensive knowledge of the FTA procurement requirements that apply to those contracts.
- **Identify Federal Funding Opportunities** – As we discussed, there are emerging funding opportunities at the federal level. In addition to New Starts/Small Starts funding, we are seeing more opportunities to apply for grants at the Department of Transportation (DOT) through the TIGER program, at FTA since Congress does not earmark all of the New Starts/Small Starts monies, and at the Department of Housing and Urban Development (HUD) with the emerging focus on livability and sustainability that takes the form of integrated housing and transportation planning as well as challenge grants to areas willing to make hard choices to locate transit, affordable housing, greater densities, parking limitations and adopt zoning ordinances. We are able to both identify and then help the City position the project to secure funding as these opportunities emerge.
- **Legislative** – To the extent necessary, we are able to educate Congressional staff about the New Starts/Small Starts program and be your advocate with them on behalf of the project. On behalf of the New Starts Working Group, I prepared a 40 page guide titled, *Congressional Staff Handbook on New Starts*, that walks Congressional staff through each stage of the New Starts/Small Starts process, explains the process, explains the terms used by FTA and outlines where and how their Member of Congress or Senator should engage the FTA on behalf of the project. If additional funding is needed, we can assist the city to seek project funding through annual earmarks, the surface transportation authorization, or annual grant opportunities announced by federal agencies.