



**TO:** Mayor Shaun Sipma  
Members of the City Council

**FROM:** John R. Zakian, DR Grant Program Manager & Chief Resilience Officer

**DATE:** July 19, 2018

**SUBJECT: EXTENSION OF EMINENT DOMAIN OUTSIDE COUNSEL CONTRACT**

**I. RECOMMENDED ACTION**

Approve 1 Year Extension of modified Eminent Domain Swanson & Warcup, Ltd. Contract

**II. DEPARTMENT CONTACT PERSONS**

John R. Zakian, DR Program Manager & Chief Resilience Officer, 423-4528

**III. DESCRIPTION**

A. Background

At the commencement of the Involuntary Acquisition Buy Out Program for flood mitigation projects, after issuance of an appropriate RFP the city engaged Swanson & Warcup, Ltd. To serve as special outside counsel for Eminent Domain cases. There is currently only one eminent domain case which was initially commenced in 2017.

B. Proposed Project

There are two modifications to the agreement. First, is establishing when use of this contract is triggered which will be the date upon which the City Council authorizes the city to proceed with an eminent domain case. It has become evident to me the importance of this language to clearly distinguish the roles of Swanson & Warcup being a subcontract to CDM Smith for basic services related to negotiation and closing on settled purchases, and initiating Eminent Domain cases when it is an Eminent Domain case. It should be noted that costs related to role of a subcontract to CDM Smith is already absorbed within the CDM Smith support services agreement with the city. The second modification is increasing the hourly charge by \$15 per hour for attorneys, paralegals, and \$10 per hour for research and clerical services. This will be the first increase since initiation of the contract which means an increase of 5% factoring the multi years with no increase which meets necessary and reasonable standards with HUD guidance.

**IV. IMPACT:**

A. Strategic Impact:

Assures we are in full compliance with the prescribed process to follow for involuntary action as set forth in the Uniform Relocation Act.

B. Service/Delivery Impact:

Modification to distinguish law firm's roles eliminates any confusion over responsibility for performance and accounting of payment allocation.

C. Fiscal Impact:

Costs will be incurred and paid from the CDBG-NDR funds or State Water Commission match. Costs related to the one existing eminent domain case are already reserved and there are not current known or projected new eminent domain cases.

**V. ALTERNATIVES**

N/A

**VI. TIME CONSTRAINTS**

NA

**VII. LIST OF ATTACHMENTS**

Copy of Agreement