



Management Committee

October 25, 2017



Today's Topics

- SWLRT Nossaman Contract Amendment
- Greene Espel Contract Amendments
 - Procurement overview
 - SWLRT amendment
 - BLRT amendment



Nossaman Amendment BI #2017-221

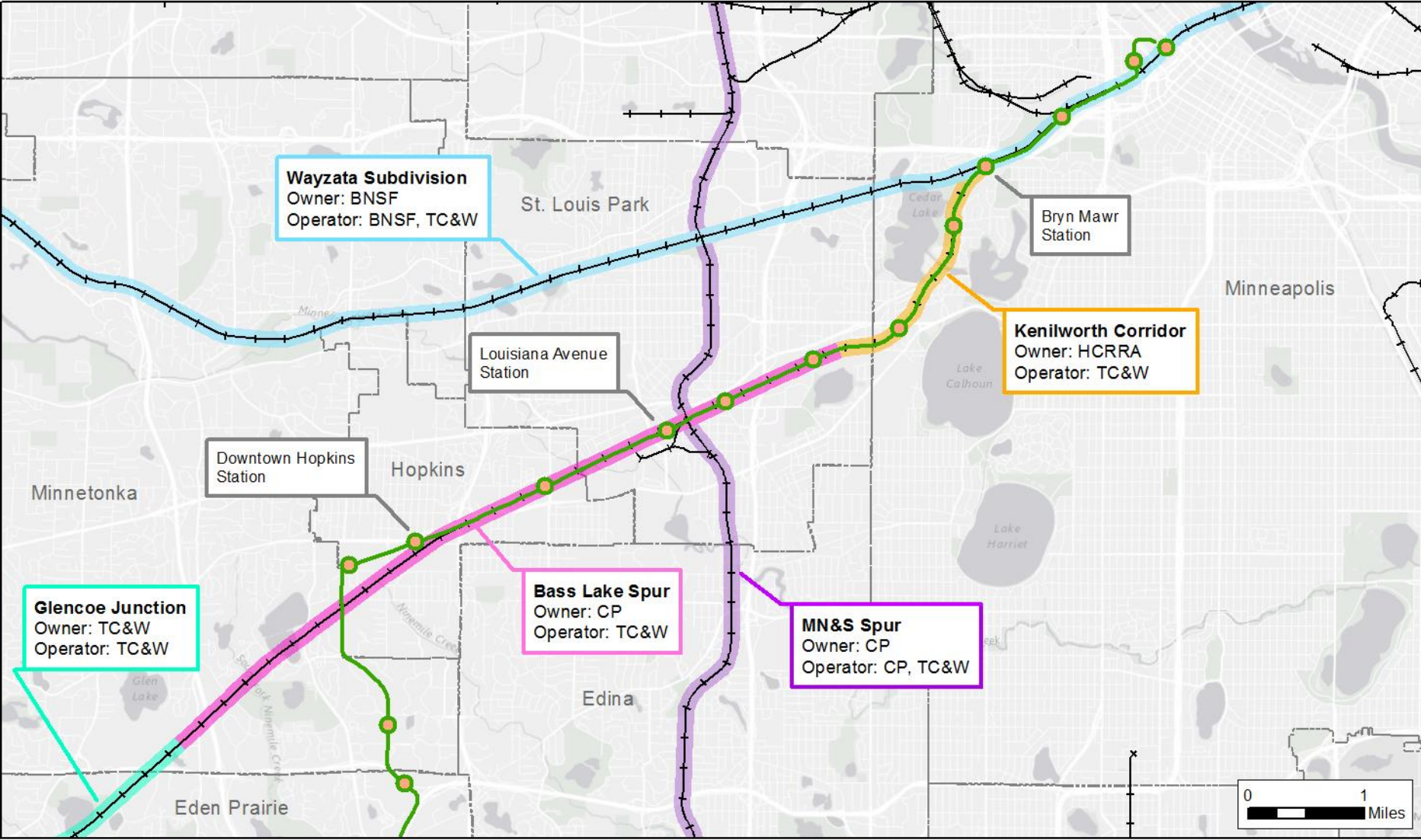


Scope of Work for Original Contract

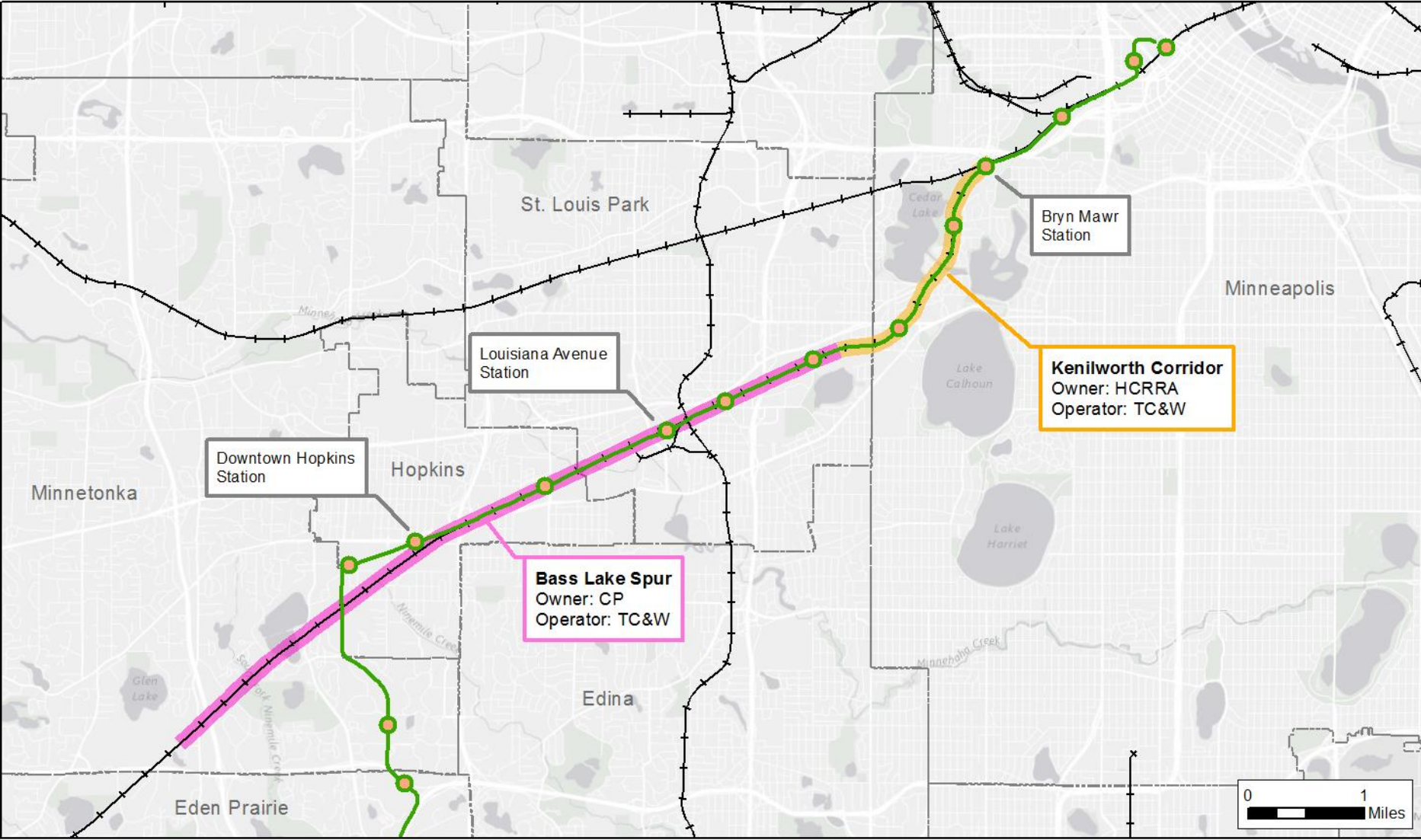
- Support negotiation, development, and legal review of freight rail agreements with CP
 - Design and engineering activities
 - Construction
 - Operations & maintenance
 - Risk and liability allocation
 - Safety
 - Real estate transactions including easements
- Provide expertise on operations and business practices
 - Investigation and legal research activities
- Interface with freight rail companies, FTA, FRA, and STB



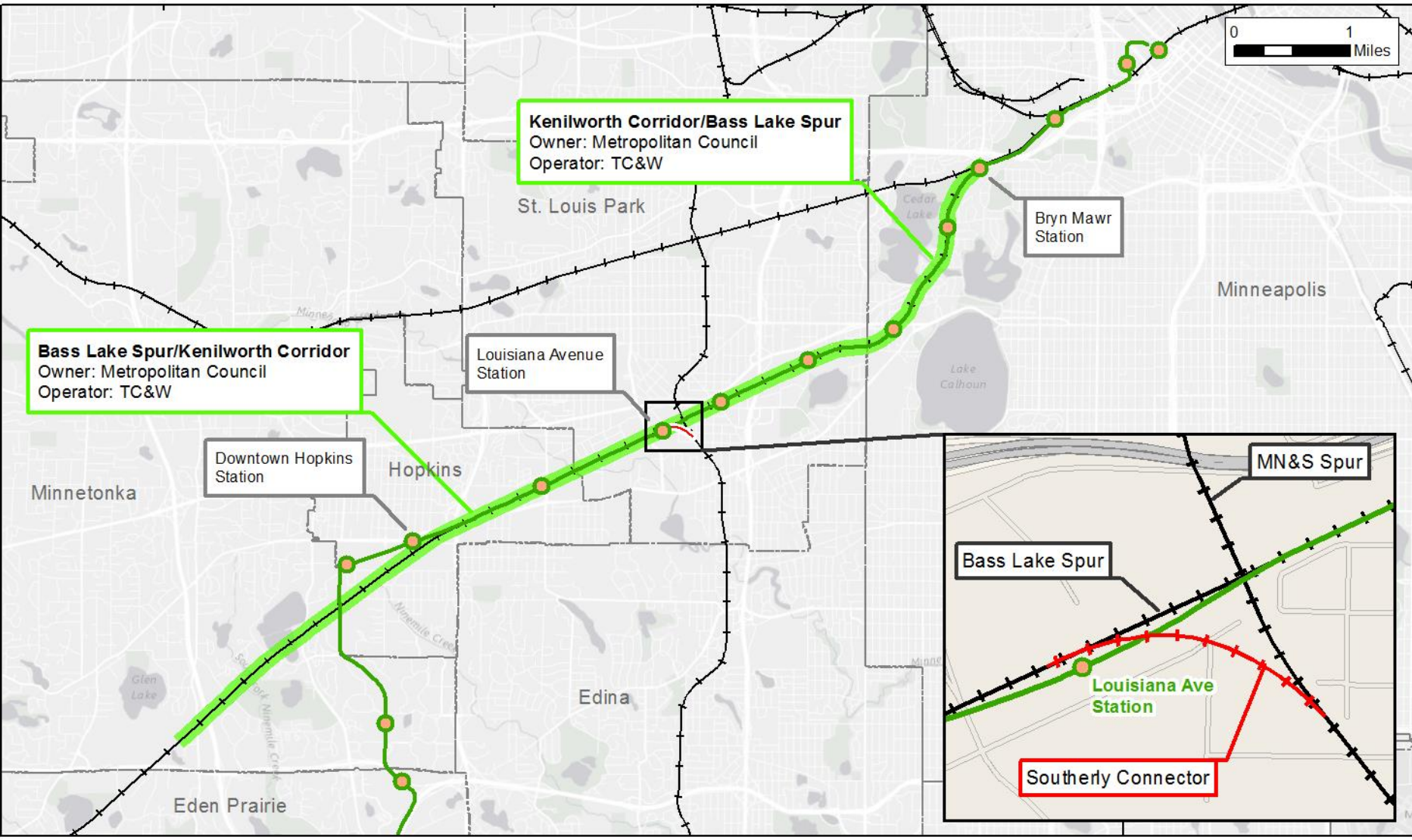
Existing Freight Rail Network



Existing Freight Rail Owners & Operators



Proposed Freight Rail Owners & Operators



Procurement Summary

- RFP issued in 2014 for legal services to support Council in coordinating and negotiating with freight rail companies, and interfacing with FTA, FRA, and STB
 - 4 proposals received from GKG Law, Nossaman LLP, Nwaneri Law Firm, and Hardwick Law Firm, LLC
 - Evaluation Panel made up of Council staff recommended Nossaman based on qualifications, experience, responsiveness to RFP and proposed billing rates
 - Approval of Evaluation Panel recommendation followed Council procedure (Supervisor, Program Director, and General Manager)
- At the time the RFP was issued, Project schedule assumed construction beginning in Summer of 2015



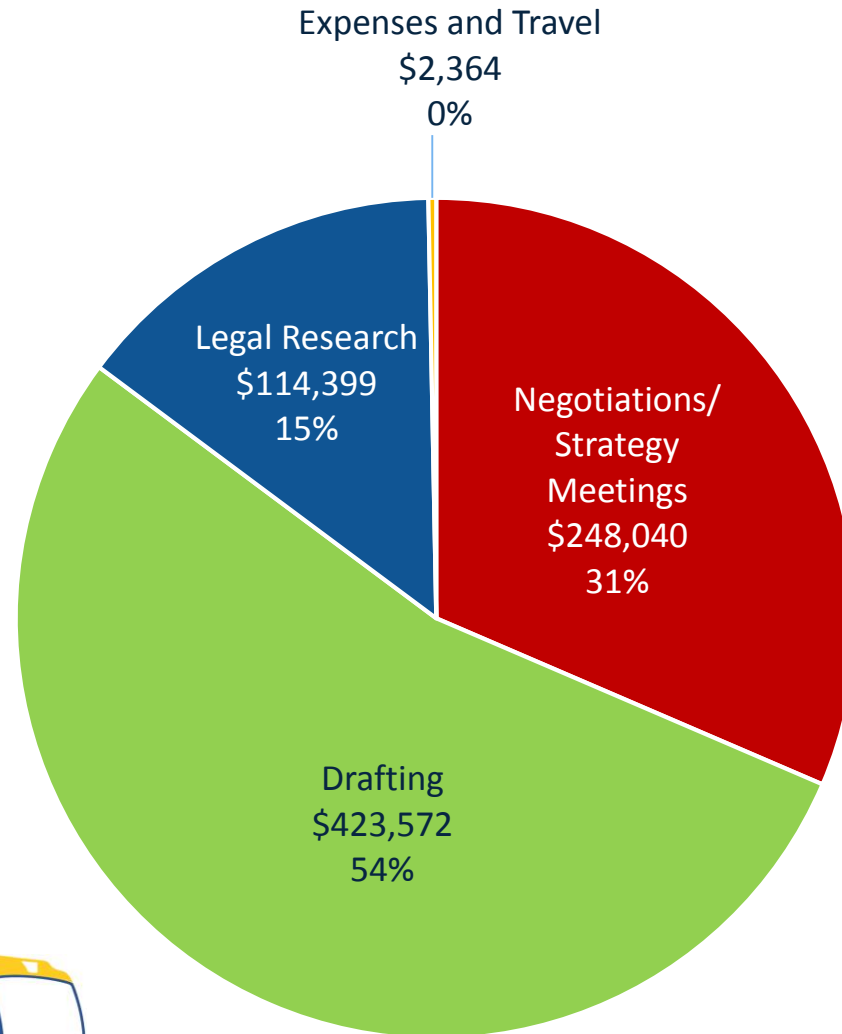
Billing Rates

- Nossaman LLP is based in Washington D.C.
 - Team of five attorneys includes attorneys from D.C. and Los Angeles offices with expertise in Freight Rail negotiations including tax law and liability specialties
- 2014 rates were proposed including the following cost control measures:
 - Discounted government rates
 - Work completed by qualified local attorneys with lower rates whenever possible
 - Maintaining internal database of documents to reduce research time
- 2015 - 2017 continued to use 2014 rate
 - no increase even though contract allowed a 5% per year escalation

Justification for Amendments #1 thru 3

- Amendment addresses scope changes, including shift in strategy
 - Initial plan in 2014 was to do a land swap with CP
 - In March 2015 CP requested land sale approach which resulted in requiring agreements with TCWR
- Number of agreements increased from 3 to 7
 - Initial: CP Engineering, Property, and Construction
 - Added: TCWR Freight Rail Coordination, Construction, and Operations and Maintenance agreements
 - Added: CP Operations and Maintenance agreement in Kenilworth
- Complex terms took more time to negotiate
 - Tax treatment of siding replacement
 - Indemnification and insurance Construction and OMA
 - Freight operations in shared corridor with LRT

Uses of Funds thru July: \$788,375



Scope of Work for Amendment #4

- Finalize negotiations with TCWR and CP
- Prepare STB filing documents and obtain STB approval
- Address FTA comments, execute agreements
- Real estate closings and tax counsel support for siding track replacement during IRS safe harbor period at least 6 months from replacement
- Advisory and consultation services, as requested
- Legal analysis and opinions, as requested



Summary

	Date Executed	Term	Amount	Total Contract Amount
Original Contract	8/28/2014	12/31/2017	\$95,000	\$95,000
Amendment 1	8/13/2015	No change	\$155,000	\$250,000
Amendment 2	7/15/2016	No change	\$250,000	\$500,000
Amendment 3	6/15/2017	No change	\$300,000	\$800,000
Amendment 4	TBD	6/30/2018	\$500,000	\$1,300,000

Recommendation

- Metropolitan Council authorize Regional Administrator to execute Amendment #4 to legal services contract (14P026) with Nossaman, LLP related to freight rail for SWLRT to add \$500,000 for a total authorized contract value of \$1,300,000





Greene Espel Contracts

Greene Espel Procurement Summary

- Competitive process used for first contract procured for **BLRT** in 2015
 - RFP issued for legal services to prepare, negotiate, develop and execute agreements with freight rail companies for BLRT
 - 3 proposals received from Greene Espel PLLP, Nossaman LLP and Hardwick Law Firm, LLC
 - Evaluation Panel made up of Council staff recommended Greene Espel based on qualifications, experience, responsiveness to RFP, and proposed billing rates
 - Approval of Evaluation Panel recommendation followed Council procedure (Supervisor, Program Director, General Manager, and RA)
- Sole source procurement used for second contract for **SWLRT** in 2016 based on need for continuity in negotiations

Roles and Responsibilities

- Lead: Greene Espel
 - Negotiations
- Subcontractors
 - Richardson Richter: Agreement Drafting
 - Lindquist & Vennum: Real Estate

Greene Espel SWLRT Contract Amendment BI #2017-234

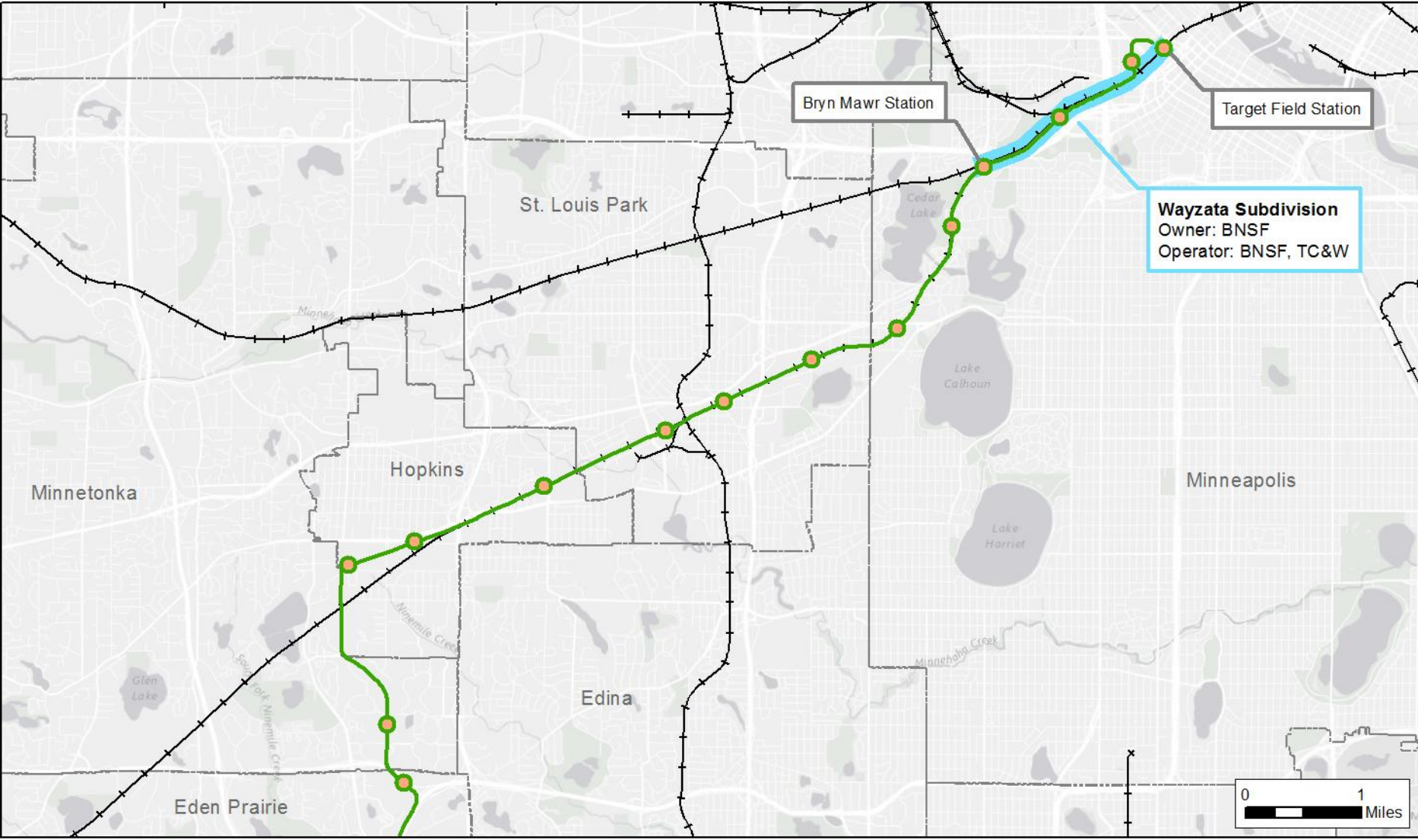


SWLRT Scope of Work

- Support negotiation, development, and legal review of freight rail agreements with BNSF
 - Design and Engineering activities
 - Coordination Reimbursement Agreement – Construction Phase
 - Operations & Maintenance
 - Risk and Liability allocation
 - Safety
- Real estate transactions including easements
- Provide expertise on operations and business practices
 - Investigation and Legal Research activities
- Interface with freight rail companies, FTA, FRA



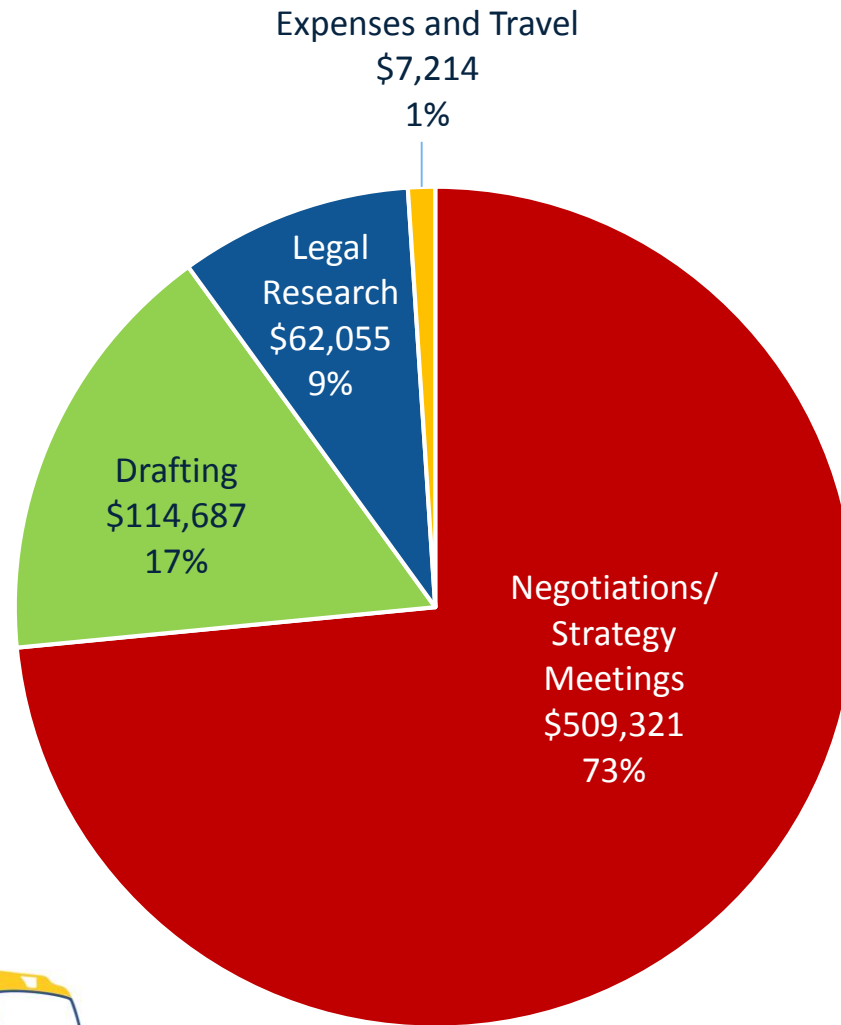
Existing Freight Rail Network



Justification for SWLRT Amendments #1 & 2

- Amendment addresses additional time needed to deliver original scope of contract
 - Engaging BNSF and initiating negotiations took longer than anticipated
 - Complex requirements took more time to negotiate
 - Form of property conveyance
 - Protection barriers
 - Indemnification and insurance
 - Freight operations in shared corridor
 - Federal Provisions
 - Number of agreements increased from 3 to 7
 - Initial: Property, Construction and Shared Use agreements
 - Added: MOU, Construction Amendment, Northstar Lease Amendment and Freight Rail Coordination Agreement

SWLRT Uses of Funds thru July: \$693,277



Scope of Work for SWLRT Amendment #3

- Address FTA comments, execute agreements
- Amend Coordination Reimbursement Agreement – Construction Phase to incorporate agreed plans, specs and schedule
- Finalize Northstar Lease Amendment
- Real Estate Closings
- Draft owners manual
- Advisory and consultation services, as requested
- Legal analysis and opinions, as requested



SWLRT Contract and Amendments Summary

	Date Executed	Term	Amount	Total Contract Amount
Original Contract	03/31/2016	12/31/2017	\$200,000	\$200,000
Amendment 1	03/27/2017	No change	\$200,000	\$400,000
Amendment 2	07/20/2017	No change	\$300,000	\$700,000
Amendment 3	TBD	12/31/2021	\$300,000	\$1,000,000



Greene Espel BLRT Contract Amendment BI #2017-235

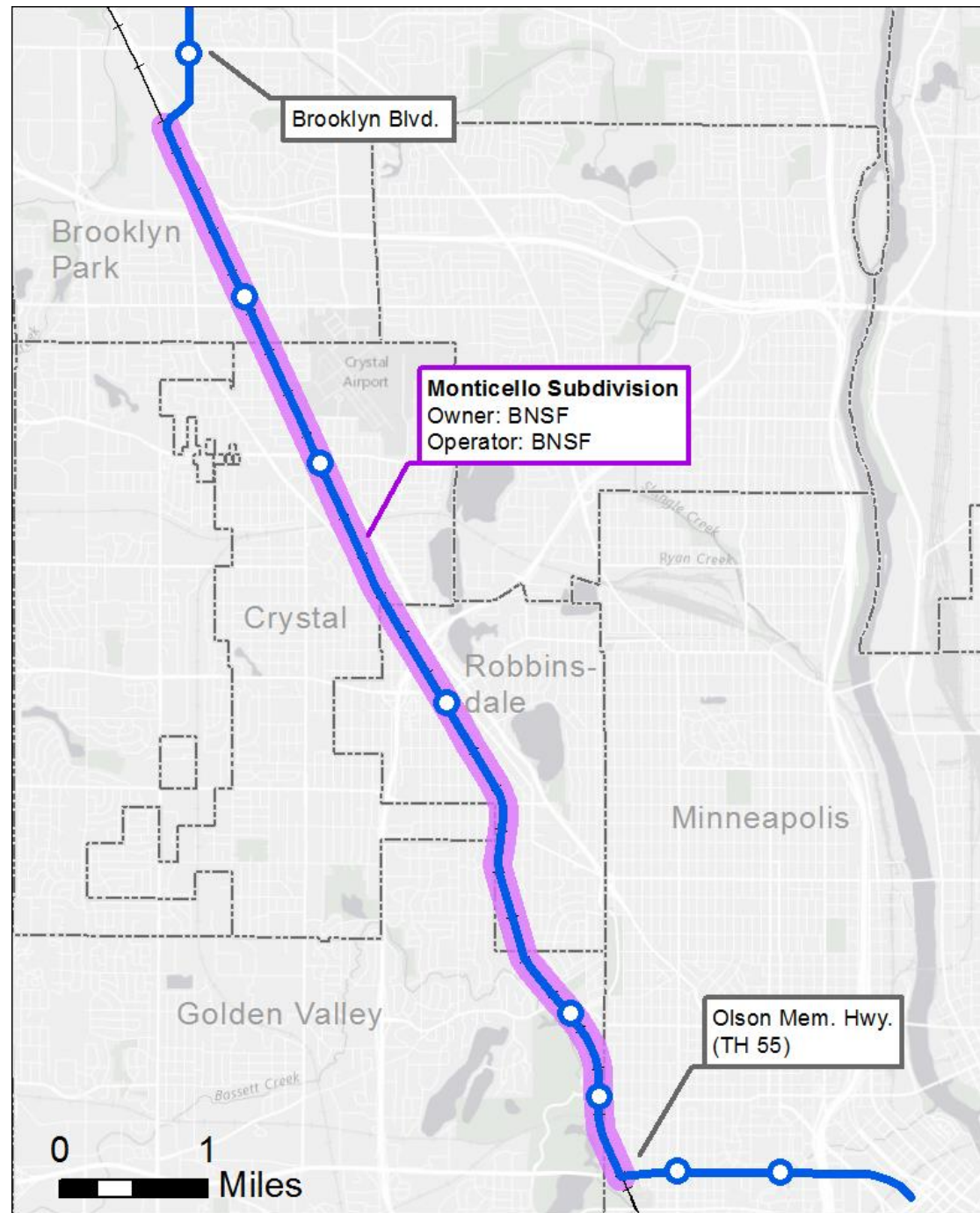


Scope of Work for BLRT Original Contract

- Agreement preliminary discussions and negotiations
 - Purchase of property rights, third party leases and easements
 - Design and engineering activities
 - Construction
 - Environmental liability
 - Operations & maintenance
 - Risk and liability allocation
 - Grade crossings and signal coordination
- Prepare and review agreement or other documents
- Research and other related legal services
- Meeting participation
- Other legal services



LRT and Freight Shared Corridor

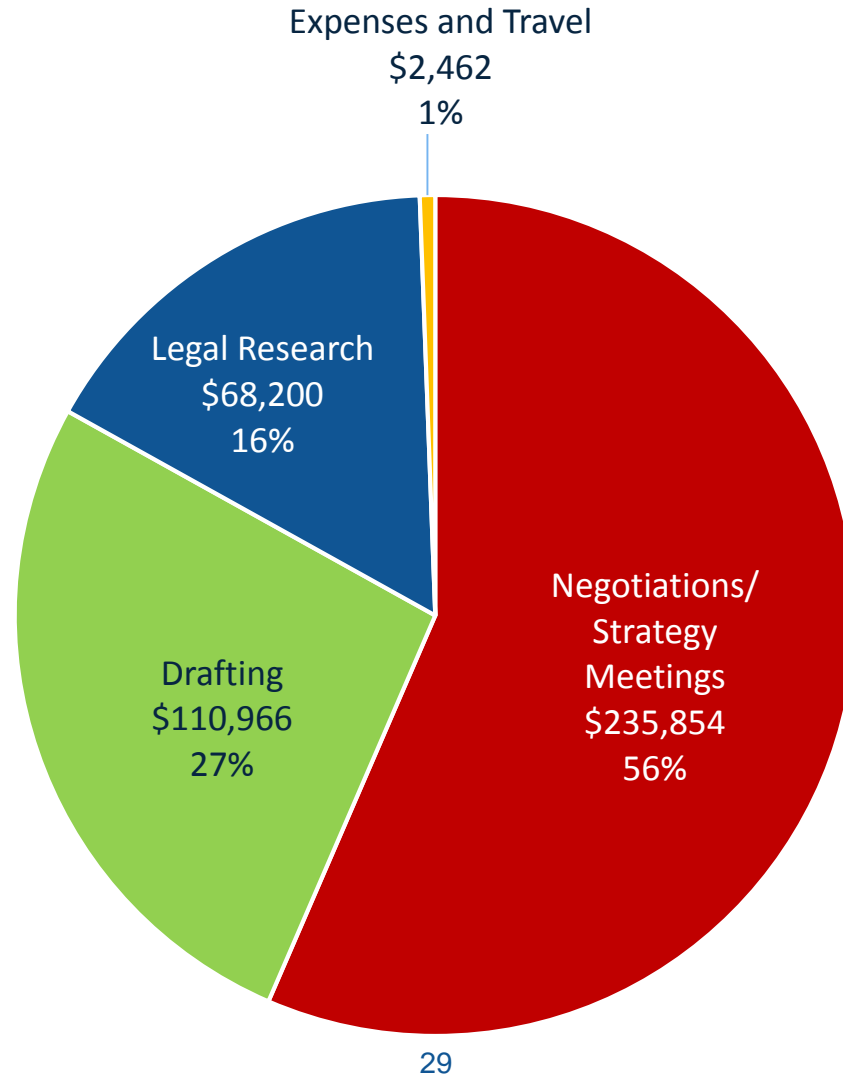


Justification for BLRT Amendment

- Original contract value based on executing 3 agreements with BNSF prior to submitting FFGA application
- Engaging BNSF required more effort than originally anticipated
- Onus on Council to do majority of work involved in communications, document preparation, research, etc.
- In late 2016, negotiations necessarily focused on SWLRT to meet that Project's earlier FFGA schedule
- FTA requested to perform legal review of definitive agreements which may result in additional changes, further postponing execution into 2018



BLRT Uses of Funds thru July: \$417,482



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Scope of Work for BLRT Amendment

- Provide additional resources focus on remaining issues unique to 8-miles of shared alignment with BLRT
 - Legal support to re-engage BNSF in negotiations
 - Legal analysis to support negotiations with BNSF, development of agreement terms for new issues, and responding to comments from BNSF



BLRT Contract and Amendments Summary

	Date Executed	Term	Amount	Total Contract Amount
Original Contract	09/17/2015	12/31/2018	\$450,000	\$450,000
Amendment 1	Anticipated in November 2017	No change	\$300,000	\$750,000





Recommendations

Recommendations

- *BI 2017-234*
 - Metropolitan Council authorize Regional Administrator to execute Amendment #3 to legal services contract (16P030) with Greene Espel, PLLP related to freight rail for **SWLRT** to add \$300,000 for a total authorized contract value of \$1 million

- *BI 2017-235*
 - Metropolitan Council authorize Regional Administrator to execute Amendment #1 to legal services contract (15P136) with Greene Espel, PLLP related to freight rail for **BLRT** to add \$300,000 for a total authorized contract value of \$750,000