

Management Committee

Meeting date: March 14, 2018

For the Metropolitan Council meeting of March 21, 2018

Subject: Southwest Light Rail Transit (Green Line Extension) Freight Rail Agreements, Surface Transportation Board Filings, and Any Settlement or Other Agreement with TC&W Railroad

District(s), Member(s): All

Policy/Legal Reference: Minn. Stat. § 473.3999

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Division/Department: Metro Transit/Green Line Extension Project Office

Proposed Action

That the Metropolitan Council (Council) authorize the Regional Administrator to:

- Negotiate and execute a Real Estate Purchase Agreement between the Council and Canadian Pacific (CP) related to the acquisition of the Bass Lake Spur for an amount not-to-exceed \$27.45M;
- Negotiate and execute a Property Transfer Agreement between the Council and Hennepin County Regional Railroad Authority (HCRRA) related to the transfer of ownership of the Kenilworth Corridor as a permanent, in-kind property transfer for the SWLRT Project;
- Negotiate and execute ancillary documents necessary for closing on the Bass Lake Spur and Kenilworth Corridor
- Petition the Surface Transportation Board (STB) to acquire the rights-of-way and physical freight rail assets of the Bass Lake Spur and Kenilworth Corridor (collectively referred to herein as "Corridors") subject to the freight rail easements and existing trackage rights agreements; and
- Negotiate any settlement or other agreement with TC&W related to the acquisition of these properties or utilization for the construction of the SWLRT Project.

Background

CP owns a 6.8-mile corridor known as the Bass Lake Spur in the cities of St. Louis Park, Hopkins, and Minnetonka that is required for the SWLRT Project. CP is willing to sell the right-of-way and physical assets of the Bass Lake Spur to the Council and grant a freight rail easement to HCRRA. HCRRA will replace CP as a party to the existing Trackage Rights Agreement (TRA).

HCRRA owns a 2.5-mile corridor known as the Kenilworth Corridor in the city of Minneapolis that is required for the SWLRT Project. HCRRA is willing to transfer the right-of-way and physical assets of the Kenilworth Corridor to the Council and remain a party to the existing TRA. TC&W will continue to operate in the Corridors under the existing TRAs.

As part of these transactions, the Council will petition the STB to allow the Council to acquire the rights-of-way and physical freight rail assets subject to the freight rail easements and trackage rights agreements.

On November 9, 2016, the Council approved an action to authorize the Regional Administrator to negotiate a Real Estate Purchase Agreement with CP and Property Transfer Agreement with HCRRA and petition the Surface

Transportation Board (Business Item 2016-200) to allow the Council to acquire the Corridors without the common carrier obligation.

These actions were taken under the premise that the existing TRAs would be replaced with an Operations and Maintenance Agreement between TC&W and the Council. Business Item 2016-200 authorized the Regional Administrator to negotiate and execute the Operations and Maintenance Agreement with TC&W. Further, on August 16, 2017, the Council approved an action to authorize the Regional Administrator to negotiate and execute a Construction Agreement with TC&W in an amount not-to-exceed \$16.1 million (Business Item No. 2017-150 SW). However, shortly after the Council approved the agreed-upon terms, TC&W laid out new additional conditions that would have required the Council to take on broad corporate liability. In light of these new conditions set forth by TC&W, the Council could not execute the Agreement approved by the Council.

To avoid further delay, which would jeopardize the Project schedule, the Council will acquire the Corridors subject to the freight rail easements and TRAs. TC&W will continue to operate in the Corridors under the existing TRAs.

An agreement with TC&W resolving potential claims against the Council, Hennepin County, HCRRA, and CP, and setting terms for cooperation and coordination during construction, would avoid potential SWLRT Project delays and the expense of potential litigation.

The Council intends to honor many of the provisions it originally agreed to with TC&W including constructing the planned improvements to the freight rail infrastructure and implementing the construction protocols that accomplish construction in a safe manner and limit disruption to TC&W's operation.

The Council and HCRRA will enter into a Joint and Cooperative Exercise of Powers Agreement to assign responsibilities related to the common carrier obligation and the existing TRAs in the corridors.

Rationale

These property agreements, and petitioning the STB, are necessary for the acquisition of the Corridors and construction of the SWLRT Project. The rationale for negotiating a potential agreement with TC&W is set forth in the discussion above.

Thrive Lens Analysis

Construction of the Green Line Extension will increase the region's prosperity as it will provide access to 80,900 forecasted jobs and a new transportation option for 55,000 forecasted residents within ½ mile of the planned new stations in addition to the 145,300 forecasted jobs and 35,600 forecasted residents in downtown Minneapolis.

Funding

The Real Estate Purchase Agreement between the Council and CP for the acquisition of the Bass Lake Spur is a Project cost.

The Property Transfer Agreement between the Council and HCRRA for the transfer of the Kenilworth Corridor is an in-kind property transfer from HCRRA to the Council for the SWLRT Project.

Any settlement agreement or other agreement between the Council and TC&W that assists in the acquisition or utilization of the properties for the construction of SWLRT Project is a Project cost.

Known Support / Opposition

This proposed action is supported by CP and HCRRA.