

Management Committee

Meeting date: August 23, 2017

For the Metropolitan Council meeting of August 23, 2017

Subject: Joint Powers Agreement with Hennepin County relating to the Southwest LRT Project

District(s), Member(s): All

Policy/Legal Reference: Minnesota Statutes section 471.59

Staff Prepared/Presented: Dave Theisen, Deputy General Counsel

Division/Department: Regional Administration

Proposed Action

That the Metropolitan Council: (1) approve a joint powers agreement with Hennepin County to facilitate discussions relating to the development and construction of the Southwest LRT Project; and (2) authorize its Chair to execute the joint powers agreement.

Background

The Council is responsible for planning, designing, acquiring, constructing, and equipping the Southwest Light Rail Transit Project (the "Project"). The Project is moving into the construction phase which includes, among other things, major procurements for civil construction, an operations and maintenance facility, and "systems."

The Counties Transit Improvement Board ("CTIB"), which has provided "local" funding for the SWLRT Project, will dissolve on September 30, 2017. On June 27, 2017 the Hennepin County Board of Commissioners adopted a resolution under which Hennepin County indicated it will carry forward certain CTIB funding commitments and authorized a 0.5 percent sales and use tax and an excise tax of \$20 per motor vehicle to fund certain transit and transportation improvements.

Rationale

Hennepin County's financial support for the Project is significant. The purpose of the Joint Powers Agreement is to establish a mechanism for including Hennepin County in discussions regarding expenditures of Hennepin County funds for Project development and construction. The parties will accomplish this purpose in part by transmitting and exchanging information relating to Project development and construction. This Agreement allows the exchange of not public information.

Thrive Lens Analysis

This agreement is consistent with Thrive principals that state the Council will work cooperatively and collaboratively with other entities to achieve shared objectives.

Funding

N/A

Known Support / Opposition

The Hennepin County Board of Commissioners approved this joint powers agreement at its August 22, 2017 meeting.

Metropolitan Council No. _____

Hennepin County No. A177823

JOINT EXERCISE OF POWERS AGREEMENT
BETWEEN THE METROPOLITAN COUNCIL AND
HENNEPIN COUNTY ACTING THROUGH ITS BOARD OF COMMISSIONERS
SOUTHWEST LIGHT RAIL TRANSIT PROJECT CONSTRUCTION

THIS JOINT EXERCISE OF POWERS AGREEMENT (“Agreement”) is made between the Metropolitan Council (“Council”) and the Hennepin County Board of Commissioners (“Hennepin County”).

WHEREAS, pursuant to Minnesota Statutes section 473.3999 the Council is authorized “to plan, design, acquire, construct, and equip light rail transit facilities in the metropolitan area”; and

WHEREAS, pursuant to Minnesota Statutes section 473.3994, subdivision 1a, the Governor designated the Council as the entity responsible for planning, designing, acquiring, constructing, and equipping the Southwest Light Rail Transit Project (“the Project”); and

WHEREAS, the design phase of the Project is completed and the Project is moving into the construction phase which includes, among other things, major procurements for civil construction, an operations and maintenance facility, and “systems”; and

WHEREAS, the Counties Transit Improvement Board (“CTIB”) has provided “local” funding for the Project but CTIB will dissolve on September 30, 2017; and

WHEREAS, at its June 27, 2017, meeting the Hennepin County Board of Commissioners adopted a resolution under which Hennepin County: (a) indicated it will carry forward certain CTIB funding commitments, to the extent provided in Exhibit A of the resolution; and (b) authorized a 0.5 percent sales and use tax and an excise tax of \$20 per motor vehicle for the purposes of funding certain transit and transportation improvements in Hennepin County; and

WHEREAS, Hennepin County funding will help replace the 10 percent share of Project capital costs the State of Minnesota would have made available for the Project under Minnesota Statutes section 473.4051, subdivision 3; and

WHEREAS, Minnesota Statutes section 471.59, subdivision 8, authorizes the board of county commissioners of any county to enter into agreements with any other governmental unit to perform on behalf of that unit any service or function which that unit would be authorized to provide for itself; and

WHEREAS, Hennepin County’s financial support for the Project is significant and it is in the public’s best interest for Hennepin County to participate in discussions about the development and construction of the Project and the expenditure of Hennepin County funds for the Project; and

WHEREAS, the Hennepin County Board of Commissioners approved this Agreement by resolution at its August 22, 2017 meeting and the governing body of the Metropolitan Council approved this Agreement by action at its August 23, 2017 meeting.

NOW, THEREFORE, the Council and Hennepin County agree as follows:

1. **Purpose.** The purpose of this Agreement is to establish a mechanism for including Hennepin County in discussions regarding expenditures of Hennepin County funds for Project development and construction. The parties will accomplish this purpose in part by transmitting and exchanging information relating to Project development and construction.
2. **Data Practices.** The Council and Hennepin County and their officers, agents, and employees shall, to the extent applicable, abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13 (“MGDPA”) and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality. The Council and Hennepin County acknowledge that certain data they may transmit or exchange may be classified as “not public data” under the MGDPA. Not public data transmitted by the Council to Hennepin County may be shared only with the following authorized Hennepin County persons:
 - Hennepin County Board Chair
 - Hennepin County Regional Railroad Authority Chair
 - Public Works Committee Chair
 - Hennepin County Administrator
 - Hennepin County Attorney or his designee(s)
 - A limited number of other Hennepin County personnel who, in the reasonable discretion of the Hennepin County Board Chair, have a business reason to see any not public data, provided their access to any not public data is subject to a written confidentiality and nondisclosure agreement. Hennepin County will notify the Council of Hennepin County personnel who have access to not public data pursuant to a written confidentiality and nondisclosure agreement.

The Council and Hennepin County will not share or disclose any not public data with unauthorized persons or third parties. Should either party receive a request for any not public data that has been transmitted or exchanged between them, the party receiving the request will confer with the other party before responding to the request.

3. **Meetings.** The Council and Hennepin County will meet as necessary to exchange information relating to the development and construction of the Project and expenditures of Hennepin County funds on Project development and construction.
4. **Liability.** Neither the Council nor Hennepin County is liable for the acts or omissions of the other party as they pertain to this Agreement and neither the Council nor Hennepin County waives any immunities or liability limitations conferred on it by any applicable state or federal

law, including the immunities and liability limitations conferred on the Council and Hennepin County by the Municipal Tort Claims Act (Minnesota Statutes Chapter 466) and other laws.

5. **Termination of Agreement.** The Council or Hennepin County may rescind or terminate this Agreement by action of their respective governing bodies.
6. **Term of Agreement.** Unless terminated earlier, this Agreement will expire on the date the Project enters revenue service.

IN WITNESS WHEREOF, the Council and Hennepin County have caused this Agreement to be executed by their duly authorized representatives. This Agreement is effective on the date when this Agreement has been signed by both parties' duly authorized representatives.

METROPOLITAN COUNCIL

By: _____
Alene Tchourumoff, Chair

Date: _____

**HENNEPIN COUNTY
BOARD OF COMMISSIONERS**

By: _____
Jan Callison, Chair

Date: _____

Reviewed and approved

By: _____
Benedict J. Schweigert
Assistant County Attorney

Date: _____