

Meeting date: March 26, 2007

ADVISORY INFORMATION	
<b>Date:</b>	March 17, 2007
<b>Subject:</b>	Northstar Locomotive Procurement
<b>District(s), Member(s)</b>	All
<b>Policy/Legal Reference:</b>	Northstar Corridor Project Master Cooperation and Delegation Agreement
<b>Staff Prepared/Presented</b>	Brian J. Lamb, General Manager, 612-349-7510 Mark W. Fuhrmann, Deputy General Manager, 612-349-7513 Rich M. Rovang, Assistant General Manager-TSD, 612-215-8254
<b>Division/Department:</b>	Metro Transit

### Proposed Action/Motion

That the Metropolitan Council authorize the Regional Administrator to:

- Negotiate and execute funding agreements with MnDOT for reimbursement of locomotive payments and interest expense from Full Funding Grant proceeds and with the Northstar Corridor Development Authority (NCDA) for reimbursement of local match funds.
- Negotiate and execute an Intergovernmental, Joint Powers, and Assignment Agreement with Utah Transit Authority assigning the rights for the Council to exercise an option to purchase remanufactured locomotives.
- Exercise a Northstar option under the Utah Transit Authority (UTA) contract with Motive Power Inc. for four remanufactured MP-36 locomotives in an amount not to exceed \$10,973,000 with the following conditions
  - execution of the reimbursement agreements with Mn DOT and NCDA
  - receipt of a Letter of No Prejudice (LONP) from the Federal Transit Administration;
  - inclusion of a no-cost cancellation clause in the contract.

That the Metropolitan Council direct the Regional Administrator to cancel by May 31, 2007 the option contract with Motive Power under the no-cost cancellation clause unless the Council has taken specific action to allow the option contract to continue past May 31, 2007.

### Issue(s)

- The most favorable terms of the Northstar option under the UTA contract with Motive Power expire April 13, 2007.
- Because the federal government has not approved a Full Funding Grant Agreement for the Northstar project, Council transit bond funds are the only source of revenue available to pledge to the option agreement. The pledge would be released when the Full Funding Grant Agreement is executed.
- Receipt of the Letter of No Prejudice from the Federal Transit Administration is a precondition for the Council to exercise the Northstar locomotive option.
- Funding agreements with MnDOT and NCDA must include reimbursement for any interest expense incurred by the Council if locomotive payments are made before federal funds are received.
- Each year the Council requests bond authorization from the legislature and a list of projects expected to be funded from the authority is included. Northstar locomotives have not been on any project lists given to the legislature.

## Overview and Funding

The Northstar Corridor Project Master Cooperation and Delegation Agreement has been executed as authorized by the Council on January 24, 2007. This agreement delegates MnDOT's authority to operate the Northstar line to the Council and provides for the Council to purchase locomotives for the Northstar line to facilitate such operations. This delegation authority along with inclusion of the Northstar line in the Council's Transportation Policy Plan and specific budget authority for the locomotive in the Council's Capital Improvement Plan allow use/pledge of council transit bond funds for Northstar locomotives.

The Northstar Commuter Rail Project is eligible to exercise an option for remanufactured locomotives under the executed Utah Transit Authority locomotive contract with Motive Power, Inc. The current option price per unit is \$2,743,220. After April 13, the option price will increase. Staff estimates that delaying exercising the option until later in 2007 will increase total cost of the four locomotives by an amount between \$459,000 to \$1,136,000.

MnDOT, the federal grantee, has requested FTA to issue a Letter of No Prejudice for local expenditures made toward the locomotives in advance of execution of the Full Funding Grant Agreement. The Letter of No Prejudice allows payments made prior to execution of the Full Funding Agreement eligible for reimbursement when the Full Funding Grant Agreement is executed. Exercise of the locomotive option will be contingent upon receipt of the Letter of No Prejudice and execution of reimbursement agreements with MnDOT and NCDA.

Although the Council will be pledging bond dollars with this action, it is not intended that the bonds will be used for the purpose. Staff expects the Full Funding Grant Agreement will be executed by fall. Once the agreement is executed the pledge on the bonds will be released. Summarized below are several actions staff has identified to mitigate the risk of pledging bond funds.

Motive Power has agreed to allow the Council to cancel the option with no penalty payment through May 31, 2007. Staff will return to the Council prior to May 31 updating the status of the Northstar Full Funding Grant Agreement and seek Council authorization for the option to remain in force. The Council may cancel the option order with a one percent penalty through July 14, 2007.

The Utah Transit Authority has agreed that it will accept assignment of Northstar's four locomotives to Utah's option it is preparing to exercise for eleven locomotives later this year. Utah would exercise an option for seven locomotives rather than eleven and accept assignment of the four Northstar locomotives.

If the Council takes actions that result in the Council taking delivery of the four locomotives, the Council would hold a valuable asset that could be leased or sold to other commuter rail operators or short haul freight railroads to recoup much of the expense.

Approval of this business item will require the 2007 Authorized Capital Program and Budget to be amended. If this item is approved, the necessary changes will be incorporated into Business Item 2007-66, March 2007 Unified Capital Program Amendment, to be submitted to the Management Committee and presented to the Metropolitan Council on March 28, 2007.