

T Transportation Committee

Meeting date: May 14, 2007

ADVISORY INFORMATION

Date:	May 7, 2007
Subject:	Metropolitan Council / BNSF Railway Platform Leases, Track Agreements and Overpass Agreements and Delegation and Funding Agreement with Minnesota Department of Transportation
District(s), Member(s):	All
Policy/Legal Reference:	MN Statutes, Chapter 174.82, 174.90 and 473.399
Staff Prepared/Presented:	Brian Lamb, General Manager, 612-349-7510 Mark Fuhrmann, Deputy General Manager, 612-349-7513 Phil Walljasper, Risk Manager, 651-602-1787
Division/Department:	Metro Transit

Proposed Action/Motion

That the Metropolitan Council authorize the Regional Administrator to negotiate and execute with BNSF Railway:

- Platform leases for Big Lake, Elk River, Anoka, Coon Rapids and Minneapolis Stations;
- Track agreements for Big Lake (2) and Minneapolis (2) Stations;
- Overpass agreements for Coon Rapids and Minneapolis Stations, and

That the Metropolitan Council authorize the Regional Administrator to negotiate and execute a Delegation and Funding Agreement with Minnesota Department of Transportation for the acquisition of certain property interests from BNSF for construction and operation of Northstar.

Issue(s)

- Northstar will construct, operate and maintain platforms partially on BNSF owned right-of-way.
- Northstar will construct, operate and maintain track segments on BNSF owned right-of-way.
- Northstar will construct and operate a pedestrian overpass linking platforms at Coon Rapids Station and the Hiawatha LRT bridge over BNSF owned right-of-way downtown Minneapolis.
- Metropolitan Council will need to indemnify and insure BNSF for Northstar Commuter rail construction and operations.

Overview and Funding

Metropolitan Council authorized the Regional Administrator to negotiate and execute the Northstar Master Cooperation and Delegation Agreement with MnDOT, Northstar Corridor Development Authority (NCDA) and the Anoka, Hennepin and Sherburne County Regional Railroad Authorities on January 24, 2007. The agreement was fully executed March 6, 2007.

The Council's major responsibilities under this agreement include acquisition of locomotives and passenger coaches, acquisition of certain property interests such as platform leases, track agreements and overpass agreements as well as eventual operation of Northstar Commuter Rail service. Minnesota Statutes, Chapter 174.90 provides that MnDOT may contract for operation of commuter rail facilities with Met Council or other public or private entities.

The Master Cooperation and Delegation Agreement stipulates prior to Met Council executing the platform leases, track agreements and overpass agreements, a separate delegation and funding agreement between Met

Council and MnDOT must be executed. This agreement provides project funding to the Council for any costs incurred by the Council in acquiring the BNSF property interests and any other obligations including procuring insurance. Once the agreements are executed with BNSF, Met Council may make these property interests available to MnDOT and its contractors for use in constructing the Northstar Project.

Platform Leases – A platform lease is required where construction of a platform and operation of a platform will occur on BNSF’s right-of-way. BNSF will retain ownership of the right-of-way for a portion or all of eight Northstar platforms.

Track Agreements – A pair of track agreements is required at both Big Lake and Minneapolis Stations. The first track agreement is in the form of a land lease and will allow track to be constructed on BNSF’s right-of-way. The other track agreement for both Big Lake and Minneapolis will address the operation and maintenance of the track itself.

Overpass Agreements - Two overpass agreements will be required by BNSF, one for the pedestrian overpass linking the two platforms at Coon Rapids Station and the other for the Hiawatha LRT bridge in downtown Minneapolis.

Indemnification and Insurance - In all three cases, the contractor(s) will be required to procure General Liability insurance during construction with a \$25 million limit. This policy will not only protect the contractor, but also the Met Council, MnDOT, NCDA and BNSF. In addition to this contractor insurance, Northstar will also procure a General Liability policy, covering construction related to all three types of Agreements, with a limit of \$25 million that is excess of the contractor’s insurance. The Met Council will be a Named Insured on this “excess” policy.

Met Council’s indemnification of BNSF in the platform leases, track agreements and overpass agreements is capped at \$25 million of insurance during construction. Once pre-revenue operations commences, the indemnification and insurance provided in the Joint Use Agreement will govern these leases and agreements. The cost of operating insurance premiums and deductibles will be an eligible operating cost and will be included as part of the Northstar operating subsidy which Anoka, Hennepin and Sherburne County Regional Railroad Authorities will be obligated to fund one-half.

The Council’s obligation to execute the Joint Use Agreement and Commuter Service Agreement with BNSF and the supporting platform leases, track agreements and overpass agreements in late May 2007 is contingent on negotiation and execution of a separate funding agreement acceptable to the Regional Administrator per the Council’s action January 24, 2007.