

T Transportation Committee

Meeting date: January 17, 2007

ADVISORY INFORMATION

Date:	January 16, 2007
Subject:	Northstar Master Cooperation and Delegation Agreement and BNSF Railway Company Agreements Presentation and Authorization to Negotiate and Execute Said Agreements
District(s), Member(s):	All
Policy/Legal Reference:	Mn Statutes, Chapters 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:

- The Northstar Master Cooperation and Delegation Agreement with the Minnesota Department of Transportation (MnDOT), Northstar Corridor Development Authority (NCDA), Anoka County Regional Railroad Authority, Hennepin County Regional Railroad Authority and the Sherburne County Regional Railroad Authority;
- The Joint Use Agreement with BNSF Railway Company in late May 2007; and
- Commuter Service Agreement with BNSF Railway Company in late May 2007.

Issue(s)

- Need to memorialize roles and responsibilities for acquisition of certain property interests, construction of facilities, purchase of rolling stock and financial contributions in a formal master agreement including designation of the Council as signatory to the BNSF Joint Use and Commuter Service Agreements and delegation of commuter rail service operating authority from MnDOT to Metropolitan Council, subject to a definitive operating agreement to be separately negotiated and executed.
- Need to begin phased process of executing agreements with BNSF Railway Company to enable BNSF to begin mobilizing its forces and facilities to accommodate the introduction of commuter rail service in the Northstar Corridor.

Overview and Funding

Prior Met Council Participation

To date, Metropolitan Council has partnered with the Northstar Project in three ways to effectuate its timely and cost-effective project delivery. In August 2004, Met Council authorized providing the Northstar Project \$2.5 million toward right-of-way acquisition for property rights in the metropolitan

transit taxing district. This funding provides the necessary local match for a \$10 million federal grant for right-of-way acquisition and final design.

In January 2005, the Council executed a cooperative funding agreement with the Hennepin County Regional Railroad Authority (HCRRA) enabling the Council to execute an option for two light rail vehicles for \$6.3 million funded solely by HCRRA. (A four block extension of the Hiawatha light rail transit line from its existing termination to a connection with the BNSF right-of-way is part of the Northstar Project and thus purchase of these two vehicles qualifies as a match for the commuter rail project.) This advance contribution is the major portion of HCRRA's local funding contribution for the Northstar Project.

Third, the Council has authorized cooperative agreements with MnDOT and NCDA to provide staff resources to the Northstar Project Office each year since 2005. The total authorized value of staff resources for the three years is \$2.73 million. Actual Met Council staff costs incurred are then fully reimbursed by the Northstar Corridor Development Authority.

Master Cooperation and Delegation Agreement / Governance

The Northstar Master Cooperation and Delegation Agreement sets forth the roles and responsibilities of all project partners for acquisition of certain property interests, construction of facilities, purchase of rolling stock and financial contributions. The Council's major responsibilities for development and construction of the project under the agreement would consist of acquisition of rolling stock and certain property interests (such as platform leases and overpass/underpass agreements) necessary for construction of the project, subject to definitive agreements for carrying out and funding such work.

The Master Cooperation and Delegation Agreement also addresses the eventual operation of the Northstar Commuter service. Metropolitan Council under Minnesota Statutes, Chapter 473 is responsible for coordinating transit operations within the metropolitan area. Over the last three years, the Council's Metro Transit has gained rail operating expertise with the operation of Hiawatha Light Rail. The Minnesota Department of Transportation under Minnesota Statutes, Chapter 174.82, is responsible for the planning, developing, constructing, operating and maintaining of commuter rail. MnDOT does not have passenger rail operating experience. Minnesota Statutes, Chapter 174.90, provides that MnDOT may contract for operation of commuter rail facilities with the Met Council or other public or private entities.

Based on discussions with the Northstar Project partners, the partners agree that MnDOT should contract with Met Council to operate commuter rail facilities constructed by the project. The primary rationale is Met Council's passenger rail expertise and the Council's ability to indemnify BNSF Railway under the Joint Use Agreement - a prerequisite for BNSF to permit Northstar commuter trains on its railroad. Pursuant to the Master Cooperation and Delegation Agreement, the Metropolitan Council would be designated as the signatory to the Joint Use and Commuter Service Agreements described below. The Council would also be designated as the eventual operator of the service, subject to a definitive agreement between MNDOT and the Council for such operation.

BNSF Railway Agreements

Northstar Project partners have been engaged in negotiations with BNSF Railway for many years and actively engaged for the past two years. These discussions first produced the Memorandum of Understanding in May 2006 establishing the purchase price for twelve weekday and six weekend day permanent commuter rail easements, i.e., train trips, in the amount of \$107.5 million.

There are three primary agreements necessary to formalize the Northstar relationship with BNSF Railway. Minnesota Department of Transportation serving as the federal grantee will be the signatory to the Purchase and Sale Agreement. The Purchase and Sale Agreement sets the timeframe and amounts to be paid to BNSF in order to acquire the permanent easements on BNSF right-of-way necessary to operate Northstar Commuter Rail service. NCDA Funding Partner, the Anoka County Regional Railroad Authority (ACRRA), will advance a \$10 million earnest payment to BNSF upon MnDOT execution of the Purchase and Sale Agreement scheduled for the first week of February 2007. In late December, the ACRRA approved the payment of the \$10 million earnest money and has authorized issuance of bonds. This payment early in 2007 will enable BNSF to proceed with assigning work crews and purchasing materials to upgrade its track and signals during the 2007 construction season.

Northstar Project partners have also been negotiating the Joint Use and Commuter Service implementing agreements with BNSF that will be in substantially final form as exhibits to the Purchase and Sale Agreement although unexecuted at this time. These agreements will not be executed until the time of the first easement closing currently scheduled for May 31, 2007. These agreements name the Council as the signatory party, as operator of the commuter rail service, since the Council would have that responsibility under the proposed Master Cooperation and Delegation Agreement and is presumed to be the eventual operator of the commuter rail service.

The Joint Use Agreement establishes the terms and conditions governing the use of the commuter rail corridor by BNSF and Northstar. BNSF will be responsible for all freight and passenger train movements on its railroad. BNSF will provide dispatching for all Northstar trains and will maintain and repair track, signals and switches on its right-of-way. Metropolitan Council, as delegated by MnDOT, will be responsible for maintaining rolling stock, station platforms and park and rides, providing security, collecting and enforcing fares, marketing and customer relations.

The Joint Use Agreement also requires the Council to secure and maintain railroad general liability insurance in an amount of \$200,000,000. This amount reflects the passenger rail tort liability cap based on certain liability limits found in federal law. The Council will be required to adjust up or down the insurance coverage amount should Congress change that law. The Council expects to self insure for the first \$5 million of losses. The Council will also be required to indemnify BNSF for any claims against BNSF for loss or damage for which Northstar is liable.

The Commuter Service Agreement is the third of three primary implementing agreements with BNSF. This agreement governs the crewing and operating of the commuter trains. BNSF will provide two person crews for each train set, a conductor and an engineer. Met Council will be responsible for storing trains during the midday and providing midday layover accommodations for crews. This agreement establishes an on-time performance goal of 95%. Progressive on-time performance incentive payments are provided for between 90% and 100% on-time ranging from 1% to 12% of the Joint Use costs estimated to be approximately \$4 million (2006 dollars). The term of the Commuter Service Agreement is ten years with five year renewable options. The agreement permits the Council to terminate for convenience with six months notice to BNSF.

The Joint Use and Commuter Service Agreements will be provided only as exhibits to the Purchase and Sale Agreement when it is executed the first week of February. Execution of the Joint Use and Commuter Service Agreements will not occur until May 31 when the first closing for easements is planned. At first closing, MnDOT will be required to make a nonrefundable payment of \$24 million to be provided by the NCDA Funding Partners. In the intervening period, MnDOT as federal grantee will

continue to negotiate a Full Funding Grant Agreement with the Federal Transit Administration. FTA is fully aware of the critical path for making its recommendation to Congress by late May prior to the scheduled closing and payment.

Summary Recommendations

Staff recommends that the Regional Administrator be authorized to negotiate and execute a Northstar Master Cooperation and Delegation Agreement to clearly set forth the roles and responsibilities of all project partners for acquisition of certain property interests, construction of facilities, purchase of rolling stock and financial contributions. Furthermore, designate the Council as signatory of the Joint Use and Commuter Service Agreements and the eventual operator of the service, subject to a definitive agreement between MNDOT and the Council for such operation.

Staff recommends that the Regional Administrator be authorized to negotiate and execute a Joint Use Agreement and a Commuter Service Agreement with BNSF Railway Company in late May 2007.

Next Steps

MnDOT and BNSF will execute the Purchase and Sale Agreement in early February 2007.

Concurrently, Northstar Corridor Development Authority Funding Partner, Anoka County Regional Rail Authority, will pay BNSF \$10 million earnest money enabling BNSF to mobilize forces and purchase materials for 2007 Northstar corridor enhancements.

Northstar and BNSF will continue to finalize drafts of the platform, track and overpass agreements during February and March. These agreements between the Council and BNSF will allow the Council to acquire these property rights for the project at a nominal \$1 cost from BNSF. The Council will authorize MnDOT and its contractors to utilize the property rights for construction purposes. Once construction is complete, the Council will retain ownership rights for operation. Staff will return to the Council seeking authorization to execute these supporting agreements.

Northstar will consider exercising a contract option with the Utah Transit Authority for purchase of four remanufactured MP 36 locomotives during March. Staff will return to the Council seeking authority to exercise the option.

Northstar Project partners will continue to respond to FTA inquiries and demands to enable FTA to assemble its' Full Funding Grant recommendation to Congress by mid May 2007.

FTA forwards its' recommendation for the Full Funding Grant to Congress in mid May for the mandatory 60 day review.

Metropolitan Council and BNSF scheduled to execute the Joint Use and Commuter Service Agreements in late May.

Concurrently, NCDA makes \$24 million payment to BNSF for first closing for perpetual easements.

Federal Transit Administration and MnDOT execute the Full Funding Grant Agreement in late July 2007.