

EXHIBIT B

ADDITIONAL CONSIDERATIONS REGARDING THE PROJECT

1. Costs for loss claim liability or other accident-related exposure

The following are not Project costs, or operating costs (per the Master Operating Funding Agreement (“MOFA”)), to be paid by the County or the Hennepin County Regional Railroad Authority (“HCRRA”): Any loss claim liability or other accident-related exposure beyond the payment of insurance premiums and self-insured retention or deductible. The County may provide input on the Council’s LRT insurance-related decision making.

To the fullest extent permitted by law, the Council shall defend, indemnify, and save harmless the County, HCRRA, and their respective elected officials, officers, agents, and employees from any loss claim liability or other accident-related exposure beyond the payment of insurance premiums and self-insured retention or deductible, including negligent acts or omissions of the County, HCRRA, or their respective elected officials, officers, agents, or employees, arising out of the construction or operation of the Project or adjacent freight corridors. The Council’s obligation herein is not a Project cost nor an operating cost to be paid by the County or HCRRA.

2. Responsibility for Certain Freight Rail Costs and Obligations

As provided in the Joint and Cooperative Exercise of Powers Agreement Between the Metropolitan Council and the Hennepin County Regional Railroad Authority, the Council will cover the obligations of HCRRA in connection with or incidental or related to HCRRA’s holding of the common carrier obligation and associated trackage rights and easement agreements. The Council’s obligation herein is not a Project cost or an operating cost to be paid by HCRRA or the County except to the extent that the County or HCRRA has explicitly agreed to bear such cost, obligation, liability, or expense in a separate agreement.

3. Freight Rail Claims

Payments (or indemnification of others) to resolve freight railroad claims or lawsuits involving the acquisition of property or the Council’s use of the property for Project construction are Project costs. Notwithstanding the foregoing, the following are Council obligations without recourse to HCRRA or the County:

- freight related claims or lawsuits arising after commencement of revenue service;
- costs or obligations not directly caused by Project work during construction that arise out of
 - the use by freight railroads of the freight corridors or
 - HCRRA’s holding or exercising of the Common Carrier Obligation or the associated trackage rights and easement agreements.

4. Cash Flow – Federal Share

The Council shall provide cash flow financing of only the federal funding share, as set forth in the Green Line Extension Financial Management Plan, following the Council's execution of the Full Funding Grant Agreement.

5. Project Shutdown Prior To Revenue Service

If the Project is cancelled or otherwise discontinued prior to revenue service, the following are eligible expenses under the Grant Agreement: actual and verifiable project costs incurred by the Council for the following activities authorized in the capital grant agreement:

- contractual encumbrances, buyouts, and other liabilities pursuant to contracts with the Council; after the date of this Agreement, the Council must not enter into or extend any contracts agreeing to buyout, restoration obligations, penalties, or other shutdown liabilities in excess of actual or variable expenses without the County's or County designee consent;
- project costs related to the acquisition of land for the Project including direct purchase, condemnation, and relocation obligations;
- reasonable expenses of Project Office shutdown, consistent with the Council's employment policy (the County must be directly involved in decision making);
- restoration of bike trails, Glenwood Avenue, and facilities for railroad, Southwest Transit, and any other obligations as required by law or contract to restore the construction site.

In the event that shutdown costs not covered by this Agreement are identified by the Council, the parties agree to meet and discuss in good faith responsibility for the payment of such expenses. The Council shall make good faith efforts to mitigate expenses under this section.

6. Project Shutdown Post-FFGA

As the federal grantee, the Council shall be responsible for fulfilling all obligations under the FFGA without recourse to the County or HCRRA, unless agreed to in a separate agreement.

7. Shutdown Scenario: Due To “But For” Regulatory Changes

If LRT service is shut down due to regulatory changes or other requirements in freight agreements, the Council shall be responsible for all costs associated with resuming service, without recourse to HCCRA or the County, such as:

- capital or other costs to upgrade for regulatory compliance;
- capital and operating costs for bus service to bridge gaps in rail service (provided that the County is responsible for operating costs for such bus bridges after six

months so long as the Council has commenced and is diligently proceeding with all actions required for reopening); and

- costs related to railroad litigation including defense of railroads and the Project as required by the freight agreements.

8. Insurance Premiums and Deductibles

Insurance premiums and deductibles or self-insured retention that the Council incurs because of SWLRT are project costs during construction and are operating costs pursuant to the Master Operating Funding Agreement after commencement of revenue service. Notwithstanding the foregoing, the Council must pay (without recourse to HCRRA or the County) deductibles and self-insured retention expenses if the expenses arise out of the use by freight railroads of the freight corridors or HCRRA's holding or exercising of the common carrier obligation or the associated trackage rights and easement agreements, unless the expense is directly caused by

- (1) project work during construction; or
- (2) the operations of the project.

The County may provide input on the Council's LRT insurance-related decision making.

9. Incremental Tax Increases on Railroad Right-of-Way

To the extent that freight companies shift responsibility for incremental tax increases on railroad right of way or property to the Council, the Council is responsible for such costs without recourse to the County or HCRRA. The County agrees to assign separate tax parcel numbers for property tax purposes to the areas and Council improvements included in the easements granted to the Council by BNSF Railway Company.

10. Southwest Station Costs

Regular maintenance of the LRT components of the Southwest Transit Station is an operating cost to be paid pursuant to the MOFA.

11. Cash Flow -- Local Share

The County and HCRRA shall only be responsible for cash flow financing of the local funding share.

12. LRT New Line Start-Up Costs

Reasonable start-up costs for activities prior to revenue service will be funded first out of designated project funds, if any, and then from project contingency to the extent such funds are available. If such funds are not available or sufficient, the Parties will seek other funds including Regional Solicitation funds. Otherwise, such start-up costs for activities prior to revenue service will be operating costs paid pursuant to the MOFA, provided that the County has timely input before any such commitments are made by the Council.