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June 5, 2018

VIA E-FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: Docket No. FD 36178, Metropolitan Council - Petition for Declaratory Order

Dear Ms. Brown:

The Board's Decision served May 22, 2018 in this docket directed, among other things, that the Metropolitan Council ("Council") was to submit an operations and maintenance agreement between the Council and Hennepin County Regional Rail Authority ("HCRRA") on or before June 5, 2018. Pursuant to that Decision, the Council is submitting the attached Operating And Maintenance Agreement and requests that it be filed in the docket.

I am authorized by HCRRA to advise that it agrees to and joins in this submission.

Very truly yours,



Edward D. Greenberg
Attorney for Metropolitan Council

cc: William Mullins (via email)
Charles Spitulnik (via email)
David Rifkind (via email)
All Other Parties of Record (via mail)



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OPERATIONS AND MAINTENANCE AGREEMENT

BETWEEN

**METROPOLITAN COUNCIL AND HENNEPIN COUNTY REGIONAL RAILROAD
AUTHORITY**

Reference Numbers:

SWLRT Project:	61001
Metropolitan Council:	18I042
HCRRA:	A188932

**OPERATIONS AND MAINTENANCE AGREEMENT
BETWEEN
METROPOLITAN COUNCIL
AND HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY**

This Operations and Maintenance Agreement ("Agreement") is entered into between the Metropolitan Council, a public corporation and political subdivision of the State of Minnesota ("Council"), and the Hennepin County Regional Railroad Authority ("HCRRA"), a political subdivision of the State of Minnesota, collectively the "Parties."

Recitals

A. The Council and HCRRA filed in STB Docket Nos. FD 36177 and FD 36178, respectively, a Petition for Declaratory Order and Notice of Exemption with the Surface Transportation Board on or about April 4, 2018, to seek any required authorization for, or a determination that no such authorization is required, with respect to the transactions described therein and accompanying documents (the "Transactions"), that is: (1) the Council's acquisition of the Kenilworth Corridor and the Bass Lake Spur Corridor; and (2) HCRRA's acquisition from Soo Line Railroad Company d/b/a Canadian Pacific ("CP") of a permanent, irrevocable, exclusive rail freight operating easement over the Bass Lake Spur Corridor.

B. The Kenilworth Corridor and Bass Lake Spur Corridor connect at CP milepost 428.38/CNW milepost 16.3 to create an approximately 9.3-mile contiguous corridor.

C. The intent of this Agreement is to implement the Transactions by setting forth the terms governing coordination between the Parties with respect to certain rail operations over and inspection, maintenance, repair, and replacement of the freight rail track in the Corridor, so that the federal obligation to provide Local Freight Rail Service and permit the continuance of Overhead Freight Rail Service will be fulfilled.

D. In this Agreement, the Parties desire to set forth their respective rights and obligations with respect to dispatch, operations, inspection, maintenance, repair, and replacement of the Freight Rail Facilities and LRT Facilities in the Corridor.

AGREEMENT

NOW THEREFORE, for mutual valuable consideration, including but not limited to the Recitals, exhibit, and mutual promises which are incorporated herein as part of this Agreement, the sufficiency of which has been agreed to by the Parties, HCRRA and the Council agree as follows:

SECTION 1. DEFINITIONS

1.1 “Bass Lake Spur Corridor” means the real property and freight rail tracks that extend from Tower E-14 at CP MP 435.06 to the point of connection to the Kenilworth Corridor at Cedar Lake Junction (CP milepost 428.38, former CNW milepost 16.3) in the City of St. Louis Park and also includes the connecting track to the “Camden Line,” known locally as the CP MN&S. The Bass Lake Spur Corridor is legally described and depicted in the Transactions.

1.2 “Bass Lake Spur TRA” means the Trackage Rights Agreement dated July 26, 1991, between CP and TCWR, as modified by a Supplemental Agreement dated July 27, 1993, a Relinquishment Agreement dated July 27, 1993, and a Second Supplemental Agreement dated April 30, 1996, all as partially assigned to HCRRA.

1.3 “Corridor” means the Kenilworth Corridor and the Bass Lake Spur Corridor.

1.4 “Freight Rail Facilities” means all rails, fastenings, switches, switch mechanisms and frogs with associated materials, ties, ballast, signals and communications devices, drainage facilities, other track material, automatic warning devices, roadbed, embankments, bridges, trestles, culverts within the Corridor, and any other structures or things necessary for the support thereof and, if any portion thereof is located in a thoroughfare, the term includes pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance and operation of any of the foregoing, to the extent any of the above are necessary or related to the provision of Local Freight Rail Service or Overhead Freight Rail Service.

1.5 “Kenilworth Corridor” means the real property and freight rail tracks that extend from former CNW milepost 16.3 (CP milepost 428.38) in the City of St. Louis Park, easterly to former CNW milepost 13.7 (BNSF milepost 13.0) at a point of connection with BNSF Railway Company (“BNSF”) in the City of Minneapolis. The Kenilworth Corridor is legally described and depicted in the Transactions.

1.6 “Kenilworth TRA” means the Trackage Rights Agreement between CP, TCWR, and HCRRA entered into on August 10, 1998, denominated HCRRA Contract No. A18158, as supplemented by the Supplement to Trackage Rights Agreement, dated on or about July 30, 2002, and with reference to that certain Settlement Agreement, denominated A121128, dated on or about August 1, 2012.

1.7 “Local Freight Rail Service” means common carrier freight rail service to any customer, shipper or receiver located in the Kenilworth Corridor or Bass Lake Spur Corridor but does not include Overhead Freight Rail Service.

1.8 “LRT Facilities” means any light rail transit (“LRT”) facilities within the Corridor that serve LRT passengers or LRT operations, including, without limitation, all LRT rails, fastenings, switches, switch mechanisms and frogs with associated materials, ties, ballast, signals and communications devices (and associated equipment), drainage facilities, other track material, Automatic Warning Devices including the shared freight and LRT crossings at 5th Ave S, Blake Road, Wooddale Avenue, Beltline Blvd, and West 21st Street, roadbed, embankments, bridges, trestles, culverts, and any other structures or things necessary for the support thereof and, if any portion thereof is located in a thoroughfare, the term includes the pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance and operation of any of the foregoing, LRT stations, platforms, parking lots, LRT signals, traction power substations, overhead catenary systems, and maintenance/repair equipment, all land within the Corridor, to the extent any of the above are necessary or related to the provision of LRT Service.

1.9 “LRT Service” means the operation of LRT vehicles or equipment, with or without passengers, on the Corridor.

1.10 “Overhead Freight Rail Service” means overhead freight rail service provided by CP or TCWR pursuant to trackage rights in the Corridor.

1.11 “Overhead Trackage Rights” means CP and TCWR’s trackage rights as defined in the Kenilworth TRA, and TCWR’s trackage rights as defined in the Bass Lake Spur TRA and does not include Local Freight Rail Service to any customers, shippers or receivers located on the Corridor.

1.12 “Trackage Rights Agreements” means the Kenilworth TRA and the Bass Lake Spur TRA.

1.13 “SWLRT Project” means all construction necessary for the Southwest LRT Project as depicted in the Transactions.

SECTION 2. GENERAL RIGHTS AND OBLIGATIONS

2.1 HCRRA’s General Rights and Obligations.

HCRRA will do the following, as provided herein:

(a) Upon consummation of the Transactions, HCRRA shall have the exclusive right in its capacity as a common carrier, to provide or ensure the provision of Local Freight Rail Service on the Corridor should such service be reasonably requested over the term of this Agreement.

(b) Upon consummation of the Transactions and in accordance with the freight rail easement it is retaining on the Kenilworth Corridor, HCRRA will continue to be a party to the Kenilworth TRA and to fulfill its obligations thereunder. Similarly, HCRRA will acquire an exclusive permanent and irrevocable easement on the Bass Lake Spur and become a party to the

Bass Lake Spur TRA and will succeed to all of CP's rights and obligations under that agreement in the Bass Lake Spur Corridor.

(c) In that regard, HCRRA will ensure that the operation of LRT Service will not cause unreasonable interference with any Overhead Freight Rail Service, Overhead Trackage Rights, or Local Freight Rail Service by having the Council develop and enter into freight railroad/LRT Service coordination protocols that provide for, among other things:

(i) establishing a management plan detailing how any inspection, maintenance, repair, or replacement of the Freight Rail Facilities will be conducted;

(ii) establishing a freight railroad safety action plan that identifies areas of concern with respect to LRT Service, Local Freight Rail Service, or Overhead Freight Rail Service, and with any inspection, maintenance, repair, or replacement of the Freight Rail Facilities or LRT Facilities;

(iii) establishing freight railroad flagging procedures so that any inspection, maintenance, repair, or replacement of the Freight Rail Facilities on the Bass Lake Spur Corridor does not interfere with Local Freight Rail Service or Overhead Freight Rail Service. To implement this responsibility, the Council has arranged with CP to continue to provide flagging for inspection, maintenance, repair, and replacement of the Freight Rail Facilities in the Bass Lake Spur Corridor east of CP milepost 432.12 from consummation of the Transactions until on or about September 4, 2018, and west of CP milepost 432.12 until on or about June 30, 2019. After such dates, the Council or a qualified third-party contractor will provide flagging as described;

(iv) establishing freight railroad flagging procedures for all necessary inspection, maintenance, repair, and replacement of the Freight Rail Facilities on the Kenilworth Corridor not conducted by TCWR pursuant to the Kenilworth TRA;

(v) establishing railroad flagging procedures so that any inspection, maintenance, repair, or replacement of the LRT Facilities on the LRT track do not interfere with Local Freight Rail Service or Overhead Freight Rail Service; and

(vi) undertaking or securing appropriate third parties to create an annual program of inspection, maintenance, repair, or replacement of the Freight Rail Facilities in the Bass Lake Spur Corridor.

(d) To the extent HCRRA, or its designated operator, provides Local Freight Rail Service, that service shall be conducted in compliance with the Federal Rail Safety Act, as amended, and any other applicable federal, state and local laws, regulations and rules respecting the operation, condition, inspection and safety of those trains, locomotives, cars and equipment while being operated over the Corridor.

2.2 Council's General Rights and Obligations.

(a) The Council will have exclusive authority and obligation to manage, direct and control all activities related to LRT Service, including, without limitation, the operations of all LRT vehicles and equipment and the movement and speed of the same.

(b) Upon request of HCRRA, and at the Council's cost and expense, the Council will:

(i) secure on behalf of HCRRA qualified third parties to provide any needed Local Freight Rail Service on the Corridor as a designated rail carrier;

(ii) undertake or secure appropriate third parties to undertake, all other duties and obligations of HCRRA that may arise in the Corridor pursuant to HCRRA's common carrier obligation, the Trackage Rights Agreements or the easements it has retained or acquired, including but not limited to operations (other than the operation of freight trains referenced in Clause (i) above), inspection, maintenance, repair, or replacement of the Freight Rail Facilities; and

(iii) develop and perform, or ensure the performance by qualified third parties of, the protocols identified in 2.1(c).

(c) The Council will exercise its rights and obligations in such manner as to avoid unreasonable interference with Local Freight Rail Service or Overhead Freight Rail Service, which shall include, but not be limited to, ensuring that any movements by the LRT vehicles and equipment operated on the independent LRT trackage will be coordinated with CP or TCWR to ensure no unreasonable interference, that LRT vehicle and equipment movements on the independent LRT trackage will be coordinated with CP and TCWR to minimize undue delays, and participating in the development and implementation of protocols that establish LRT and freight railroad safety and coordination requirements with respect to all construction of the SWLRT Project and operation, inspection, maintenance, repair, or replacement of the LRT Facilities and, as appropriate, the Freight Rail Facilities.

(d) The Council will install and maintain fencing type included in the contract documents for the SWLRT Project between the Freight Rail Facilities and any adjacent permanent bicycle/pedestrian trail. The Council and HCRRA will, as needed, make further provisions assuring, consistent with the Trackage Rights Agreements, that the bicycle/pedestrian trail will be constructed, operated, or maintained so as not to interfere with Local Freight Rail Service or Overhead Freight Rail Service.

(e) The Council will schedule any LRT inspection, maintenance, repair, or replacement work with the potential to foul the freight rail tracks to minimize interference with Overhead Freight Rail Service or Local Freight Rail Service.

SECTION 3. INSPECTION, MAINTENANCE, REPAIR, AND REPLACEMENT OBLIGATIONS

3.1 General Inspection, Maintenance, Repair, and Replacement Obligations.

(a) The Council is responsible for operations, inspection, maintenance, repair, and replacement of LRT Facilities on the Corridor.

(b) At the request and on behalf of HCRRA, the Council shall be responsible for:

(i) inspection, maintenance, repair, and replacement of the Freight Rail Facilities on the Bass Lake Spur Corridor in accordance with the Bass Lake Spur TRA. To initially implement this responsibility, the Council has arranged with CP to continue to inspect, maintain, repair, and replace the Freight Rail Facilities on the Bass Lake Spur Corridor east of CP milepost 432.12 from consummation of the Transactions until on or about September 4, 2018 and west of CP milepost 432.12 until on or about June 30, 2019. After such dates, the Council or a qualified third-party contractor will provide services as described above; and

(ii) all necessary inspection, maintenance, repair, and replacement of the Freight Rail Facilities on the Kenilworth Corridor not conducted by TCWR pursuant to the Kenilworth TRA; provided, however, that the Council may with HCRRA's prior written approval delegate its responsibilities under this paragraph to a qualified third-party contractor.

(c) For the purpose of this Agreement, inspection, maintenance, repair, and replacement of the Freight Rail Facilities will be assumed to include (without limitation and subject to applicable FRA standards and in accordance with the Trackage Rights Agreements) replacing rail, checking and correcting rail gauge, adding ballast and maintaining vertical and horizontal rail alignment, replacing and/or setting spikes, cleaning and lubricating switches, restoring switch and frog points, replacing crossties as needed, removing debris and controlling vegetation and erosion and rights-of-way and maintaining signals, lights, crossings and signage.

3.2 Disabled LRT Vehicles and Equipment.

The Council shall be solely responsible for removing disabled LRT vehicles and equipment (including after derailments or wrecks).

3.3 Malfunctions and Damage.

(a) If either Party discovers any malfunction of or damage to Freight Rail Facilities and such malfunction or damage may result in an imminent and substantial danger to human health or safety or property, or unreasonable interference with Local Freight Rail Service or Overhead Freight Rail Service, it shall promptly notify the other Party by telephone.

(b) With respect to malfunction of or damage to at-grade crossing signals, consistent with the Trackage Rights Agreements, the Council is responsible for responding to at-grade roadway crossing failures, and reports of malfunctions and damage, including but not limited to, gates down with no train present, gates and lights not operating correctly, broken gates, gate knockdowns, signal light outs, or vandalism.

3.4 Emergency Notifications.

Telephone notifications described in this section or elsewhere in this Agreement will be made as follows:

Council Telephone Contact:

Metro Transit Rail Control Center
Telephone No. (612) 341-5710

HCRRA Telephone Contact:

Hennepin County Security Operations Center
Telephone No. (612) 348-5111

3.5 Access and Notice Rights.

The Parties shall permit each other access to the Corridor as necessary to fulfill their obligations. In the event of an emergency of any kind, the accessing party shall immediately notify the other party of such entry by telephone at the emergency telephone number in Section 3.4.

SECTION 4. DISPATCH

4.1 In accordance with Section 4 of the Kenilworth TRA, TCWR has the exclusive management, direction and control of the Kenilworth Corridor, including the obligation to dispatch rail traffic.

4.2 Upon consummation of the Transactions, dispatch on the Bass Lake Spur Corridor will be subject to the exclusive management, direction and control of HCRRA. To initially implement this responsibility, the Council, at HCRRA's request, has arranged with CP to continue to dispatch the Bass Lake Spur on behalf of HCRRA from consummation of the Transactions until on or about June 30, 2019, following which the Council will, if requested by HCRRA, secure other qualified third parties to provide this function.

4.3 In all events, however, freight rail operations over the Kenilworth Corridor and Bass Lake Spur Corridor will continue to be coordinated among the parties responsible for dispatch in order to accommodate and facilitate Overhead Trackage Rights or any required Local Freight Rail Service.

SECTION 5. LRT CONSTRUCTION PROTOCOLS

The Council has incorporated freight railroad coordination protocols into its SWLRT Project construction contract documents. The Council will follow the protocols during construction of the SWLRT Project. The freight railroad coordination protocols for the SWLRT Project provide for, among other things:

- (i) establishing a freight railroad management plan which includes site specific work plans detailing how the SWLRT Project contractor will accomplish work activities in a safe manner;
- (ii) establishing a freight railroad safety action plan detailing how the SWLRT Project contractor will address employee training, emergency preparedness, job safety briefings, and to address any areas of concern about construction activities in the Corridor;
- (iii) establishing freight railroad flagging procedures so that construction of the SWLRT Project on the Bass Lake Spur Corridor does not interfere with Local Freight Rail Service or Overhead Freight Rail Service. To implement this responsibility, the Council has arranged with CP to continue to provide flagging for inspection, maintenance, repair, and replacement of the Freight Rail Facilities in the Bass Lake Spur Corridor east of CP milepost 432.12 from consummation of the Transactions until on or about September 4, 2018 and west of CP milepost 432.12 until on or about June 30, 2019. After such dates, the Council or a qualified third-party contractor will provide flagging as described;
- (iv) establishing freight railroad flagging procedures so that SWLRT Project construction on the Kenilworth Corridor does not interfere with Local Freight Rail Service or Overhead Freight Rail Service;
- (v) providing a full-time freight railroad coordinator for the construction of the SWLRT Project to liaison between the SWLRT Project contractor, the Council, HCRRA, and TCWR with respect to the inspection of freight rail track and approving the track for safe passage of trains;
- (vi) constructing and maintaining temporary demarcation fences to separate and provide a physical barrier between the freight railroad track and the adjacent light rail track;
- (vii) maintaining appropriate grade crossing signals in accordance with the Code of Federal Regulations (CFR) Title 49, Part 234;
- (viii) maintaining specific track outages identified in the SWLRT Project construction contract documents that are required to accommodate construction of the SWLRT Project (Exhibit A); and

(ix) maintaining phasing plans which provide a continuous, uninterrupted single freight track alignment in the Corridor subject to Exhibit A.

SECTION 6. INSURANCE

The Parties shall secure insurance or maintain sufficient self-insurance in accordance with the obligations set forth in the Transactions documents, or as otherwise required by law.

SECTION 7. ALLOCATION OF LIABILITY

Except as may otherwise be provided in the Transactions documents, each Party is responsible for its own acts and omissions.

SECTION 8. MISCELLANEOUS PROVISIONS

8.1 Term, Amendments, and Termination. This Agreement is effective upon consummation of the Transactions. This Agreement will continue in perpetuity until superseded by the execution of another mutually acceptable operating agreement (which must to the same extent protect all Local Freight Rail Service and Overhead Freight Rail Service), or until Local Freight Rail Service and Overhead Freight Rail Service are abandoned pursuant to appropriate federal proceedings. Any amendment to this Agreement must be executed in writing by the Parties and must to the same extent protect all Local Freight Rail Service and Overhead Freight Rail Service.

8.2 Authorized Representatives; Notices. Jim Alexander, Project Director, SWLRT Project Office, (or such other person as designated in writing by the Council) is the Council's authorized representative for the purposes of administering this Agreement during construction of the SWLRT Project and pre-revenue LRT Service. The General Manager of Metro Transit (or such other person as designated in writing by the Council) is the Council's authorized representative for the purposes of administering this Agreement when the LRT commences revenue service. The Executive Director of HCRRA, (or such other person as designated in writing by HCRRA) is HCRRA's authorized representative for the purposes of administering this Agreement. Authorized representatives are not authorized to execute amendments to the Agreement except upon sufficient written delegation of such authority. Notices regarding this Agreement must be sent to the Parties as follows:

To the Council:

Metropolitan Council
Attn: Regional Administrator
390 Robert Street North
Saint Paul, Minnesota 55101

To HCRRA:

Hennepin County Regional Railroad Authority
Attn: Executive Director
A2300 Hennepin County Government Center
300 South 6th Street
Minneapolis, Minnesota 55487

8.3 Headings. The section and subsection headings in this Agreement are for convenience only and may not be used in its interpretation or considered part of this Agreement.

8.4 Waiver of Breach or Non-performance. A Party's failure to insist upon strict performance of any provision or failure to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement or a waiver of any other term or terms of the Agreement.

8.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

8.6 Not a Partnership. Nothing in this Agreement is intended nor should be construed as creating or establishing the relationship of a partnership or a joint venture between the Parties.

8.7 Not for the Benefit of Others. This Agreement is for the exclusive benefit of the Parties and not for the benefit of any third party. Nothing herein may be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the Parties.

8.8 Data Practices. HCRRA and the Council will comply with the provisions of the Minnesota Government Data Practices Act that govern data collected, created, stored, maintained, or disseminated under this Agreement.

8.9 Audits. The accounts and records of HCRRA and the Council relating to the receipt and expenditure of funds under this Agreement will be audited in the same manner as all other accounts and records of HCRRA and the Council are audited and may be audited or inspected on the Parties' respective premises or otherwise by individuals or organizations designated and authorized by HCRRA or the Council at any time, following reasonable notification to the audited Party, for a period of 6 years following the expiration or termination of this Agreement. The books, records, documents and accounting procedures and practices of HCRRA and the Council that are relevant to this Agreement are subject to examination by the Council and HCRRA, and either the Legislative Auditor or the State Auditor, as appropriate, for a minimum of 6 years.

8.10 Construction. Nothing in this Agreement is intended to supersede any right or obligation of the Parties under the Transactions.

IN WITNESS WHEREOF, the Council and HCRRA have caused this Agreement to be executed by their duly authorized representatives.

**HENNEPIN COUNTY REGIONAL
RAILROAD AUTHORITY**

Reviewed by the
County Attorney's Office

Date: _____

By: _____
Chair of Its Board

Date: _____

And: _____
Deputy/Executive Director

Date: _____

ATTEST: _____
Deputy/Clerk of HCRRA Board

METROPOLITAN COUNCIL

By _____
Weston Kooistra, Regional Administrator

Date _____

EXHIBIT A

Outage No.	BASS LAKE SPUR				KENILWORTH CORRIDOR			
	Outage Name	Phase No.	Timing	Duration of Outage	Outage Name	Phase No.	Timing	Duration of Outage
1					Cut and Throw to KW_TMP_A	2	December '18	4 Hour
2	Excelsior I	2	March '19	4 Hour	Track Shift to KW_TMP_B	4	March '19	8 Hour (possible 2x 4 Hour)
3					Cut and Throw KW_TMP_A to Proposed Track	6	July '19	4 Hour
4	TH 100 - HCRRA	5	September '19	4 Hour				
5	Wooddale - TH 100	7	September '19	4 Hour				
6	TH 100 Bridge Move, Temp No. 11 T/O at Wooddale, and Shift at Blake	9	Memorial Day Weekend '20	36 Hour	Reconstruct Track and W 21st St Crossing	7	Memorial Day Weekend '20	36 Hour
7	Southerly Connector	10	December '20	Skunk Hollow OOS 3-6 Weeks				
8	LRT Bridge - Blake	12	April '21	4 Hour				
9	Excelsior II	13	May '21	4 Hour				
10					Cut and Throw From KW_TMP_B to Proposed Track	9	September '21	6 Hour
11					Shift KW_TMP_B to Proposed Track	11	September '21	8 Hour (possible 2x 4 Hour)