

July 22, 2015

Rep. Tim Kelly
Chair, House Transportation Policy and Finance Committee
559 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1298

Dear Chair Kelly,

I am writing today to respond to your June 23, 2015 letter regarding the Metropolitan Council's cash flow financing plan for Southwest Light Rail Transit (Southwest LRT).

You expressed concerns that the Southwest LRT Project should be delayed because it does not have support. I want to be clear that Governor Dayton and Metropolitan Council support keeping the project on track, as do the locally elected officials on the SWLRT Corridor Management Committee who voted July 1, 2015 to reduce the project cost by \$250 million and to contribute their own local funds to keep the project moving forward.

However, the Metropolitan Council will not commit the 10% state share for the project without approval from the Legislature. The Governor has proposed and the Senate voted for a funding mechanism to pay for the state share of Southwest LRT and make other transit investments. The House GOP chose instead to reduce state investment in metropolitan area transit. Unfortunately, there was not an opportunity to address the long-term funding needs for our transit system in the 2015 legislative session, but the Governor and Metropolitan Council remains committed to addressing this issue in the 2016 session.

In your letter, you raised several questions about the Metropolitan Council's recent action to use some of existing MVST reserves to cash flow the proposed Southwest LRT project. This action was the direct result of the Legislature's decision to cancel previously appropriated funds for Southwest LRT. The financing plan addressed challenging short-term project cash flow demands created when the Legislature canceled \$29.7 million previously appropriated and committed to Southwest LRT project and re-appropriated those funds to transit operations in state fiscal years 2016-'17. The SWLRT project office had planned to use \$13 million of the \$29.7 million funds in calendar year 2015; so the legislature's actions created an immediate shortfall for the project office.

To address this immediate cash flow issue and allow the SWLRT Corridor Management Committee to complete its work, the Council is drawing on its Motor Vehicle Sales Tax (MVST) reserves to fund the \$13 million needed by the project office in calendar year 2015. This action occurred on June 24 and resolved our short-term budget issue, but it was not a commitment to overall project financing. Our MVST reserve is a cash reserve necessary to mitigate the volatility of this revenue source in our operating budget. The Council

will replace the MVST reserve funds in its calendar 2016 operating budget with the general fund dollars that were redirected and appropriated by the legislature for State Fiscal Years 2016-17. These are the same general funds that were appropriated in 2013 to the project.

Project Development efforts must also continue in order for the project to maintain its ranking through the federal funding process. Additionally, the work must continue in order to avoid potential delays that could cost the project \$50 million per year of delay. To date, the region has committed over \$750 million in local funds and we are seeking a federal match of \$872 million. The only local money that has not been committed is the remaining \$151 million state share.

Because the Legislature has not committed the state share for the Southwest LRT project, the Metropolitan Council has begun researching other possible financing options. The Certificates of Participation (COP) financing plan is an option to keep the project on schedule with current timeframes for federal funding. Using COPs as a temporary placeholder would also allow for future consideration by the Legislature of the state's funding share.

If COP financing becomes necessary to cover cash flow needs of the project prior to receiving final go-ahead and funding from the state and federal government, the Council would issue only the amount necessary to cover those cash flows. While using this authority would provide the Council with a mechanism to keep the federal process moving without delay and would save taxpayers \$50 million for every year of delay avoided, it is not the Council's preference to fund the project in this manner. Should the Legislature ultimately choose not to fund the Southwest LRT project in a future legislative session, the project will not go forward.

Attached is information directly responding to the questions posed in your letter. The Metropolitan Council will be required to commit the 10% state share for Southwest LRT by June 2016 in order to keep the project in the federal funding pipeline and not increase the project cost due to delay. I look forward to working with you over the next year to secure the needed investments in Southwest LRT and our entire transit system to retain Minnesota's economic competitiveness.

Sincerely,



Adam Duininck

Chair, Metropolitan Council

1) Is there statutory authority allowing the Met Council to issue COPs?

Yes. Attached to this letter you will find an opinion from our bond counsel providing statutory authority for issuing COPs for a transit project and using MVST to make scheduled payments under a financing agreement.

Specifically, the statutory authority is contained within the Council's general authority provided pursuant to Minnesota Statutes, Section 473.129 subd. 7 to "acquire, own, hold, use, improve, operate, lease, exchange,

transfer, sell, or otherwise dispose of personal or real property, franchises, easements, or property rights or interests of any kind.”

Additionally, Minnesota Statutes, Section 16A.88, subd. 2 provides that the Motor Vehicle Sales Tax money in the metropolitan area transit account must be used by “the Metropolitan Council for the funding of transit systems with the metropolitan area under sections 473.384, 473.386, 473.387, 473.888, and 473.405 to 473.449.” Pursuant to Minnesota Statutes, Section 473.405, subd. 4, the Metropolitan Council “may engineer, construct, equip, and operate transit and paratransit systems, projects, or any parts thereof, including road lanes or rights-of-way, terminal facilities, maintenance and garage facilities, ramps, parking areas, and any other facilities useful for or related to any public transit or paratransit system or project.” Since Motor Vehicle Sales Tax Revenues are authorized to be used for capital purposes, it is the opinion of our bond counsel that the Metropolitan Council is authorized to enter into a revenue agreement to finance such capital projects and appropriate legally available funds, including but not limited to MVST revenues, to scheduled payments under such agreement.

2) What is the legal basis for being allowed to use COPs as a funding source for transit projects? Is there a precedent?

The first part of this question (legal basis) is answered in question #1. As to whether there is a precedent, the Council has not used COP financing for transit projects in the past but has issued COPs to reconstruct, renovate, improve and equip the Council’s central office headquarters at 390 Robert Street North.

3) Who would issue these COPs?

If the determination is made to continue the SWLRT project by financing the state’s share of the project through COPs, the Metropolitan Council can be the issuer.

4) What terms and debt service would be required to pay these obligations off?

Certificates of Participation are not a general obligation of the Council and the full faith and credit and ad valorem taxing powers of the Council are not pledged to make scheduled payments.

If the Council were to issue COPs, the Council would agree to make scheduled payments from legally available funds (in this case our intent would be to use Motor Vehicle Sales Tax Revenues) subject to a right to choose not to budget those funds in any year. In exchange, a third party would obtain those funds by offering to the financing market a certificate of participation in the revenue stream from the Council’s agreement to make those scheduled payments. The third party retains no rights or interest with respect to any property and investors would be relying primarily on the expectation that the Council would continue to make scheduled payments under the agreement.

COP financing terms are subject to market conditions at the time of issuance. The most likely scenario would be to issue over a 20 year term.

5) What transit projects will not be funded now because of the use of MVST funds being reserved to pay off these COPs?

There are no projects that will not be funded should COPs be issued for Southwest LRT project activities.

6) For what other projects, or elements of projects, does the Met Council envision COPs as proper and legitimate funding source?

In 2004, the Council issued \$13.5 million Certificates of Participation to provide funds to reconstruct, renovate, improve and equip the Council's central office headquarters at 390 Robert Street North. The COPs had a True Interest Cost (TIC) of 4.189%.

Net present value savings of \$14.5 million are estimated to be achieved over the life of the renovated office space as compared to our lease and operating costs for our previous location.

In 2014, the Council refunded the original COPs for interest rate savings. The refunding COPs (\$8.6 million) have a TIC of 2.129% and mature in 2024.

7) What precedent would be set by committing the use of funds from a state dedicated constitutional revenue stream for bonding without any legislative approval?

The Metropolitan Council will not commit the 10% state share for the project without support from the Legislature.

8) How would this impact state debt guidelines?

We do not anticipate there would be an impact on state debt guidelines.