



• **Board of Directors**

Finance, Audit, Insurance, and Real Property Committee

3/14/2023 Board Meeting

7-2

Subject

Authorize the General Manager to issue a new fifty-year license agreement, with options to extend for up to fifty additional years, to DesertXpress Enterprises, LLC for the purpose of a high-speed rail line traversing Metropolitan property in the city of Fontana, California; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

This action authorizes the General Manager to issue a license agreement to DesertXpress Enterprises, LLC (Brightline West) for a high-speed rail route traversing Metropolitan's fee-owned property. The proposed license agreement will encumber a small portion of Metropolitan's property (**Attachment 1**) that is already subject to a highway easement granted by Metropolitan to the California Department of Transportation (CalTrans). The rail use would be subordinate to both Metropolitan and Caltrans uses and would be located along the Interstate 15 (I-15) median in the city of Fontana, San Bernardino County. Board authorization to grant this license agreement is required since the real property interest to be conveyed exceeds five years.

Details

Background

Brightline West is seeking a railroad crossing license from Metropolitan as part of its efforts to aggregate property rights and separate approvals for a potential high-speed rail project. The request before Metropolitan is a limited crossing license that will ensure continued priority use of Metropolitan land for the water pipeline and other purposes.

Brightline West proposes to construct and operate a roughly 170-mile high-speed rail route linking Las Vegas, Nevada, to Rancho Cucamonga, California, with trains capable of reaching speeds of up to 180 miles per hour. The project is intended to provide an alternative to air and automobile travel between Southern California and Las Vegas. Approximately 135 miles of the rail corridor and associated stations would be within California and would generally follow the Interstate 15 freeway alignment, with much of the rail facilities lying in the median area of I-15.

The proposed rail route will traverse Metropolitan's Rialto Feeder Pipeline within the city of Fontana. The proposed license area would encumber between 5,300 to 7,000 square feet of Metropolitan's property, depending on the final design. Brightline's project is proceeding as a design-build project, whereby the exact license area may not be finalized until a final design is completed. Conceptual plans have been submitted to Metropolitan for review and approval, and no construction work within the licensed area will commence by Brightline West under the license until these plans have been approved. Any changes that occur midstream during the design-build process would also require Metropolitan's written approval. Brightline West's license would be subordinated to Metropolitan's continued operation and maintenance of the Rialto Pipeline and any future Metropolitan facilities and operations.

The license agreement will have the following key provisions:

- Compatible use reservations and protection of Metropolitan's paramount rights to use the land for Metropolitan water facilities, operations, and other needs.

- Conditions prohibiting the use of the crossing area until Brightline West's acquisition of all permits and approvals for its rail project, as well as the required submittal and approval by Metropolitan of complete rail facility design and construction plans for purposes of ensuring compatibility with Metropolitan water operations and facilities.
- Restrictions limiting the licensed use to passenger rail-related construction, operation, and maintenance activities. Freight or cargo train uses, and non-train uses would be prohibited.
- Brightline West's provision of both insurance and indemnification protections for Metropolitan.

The annual payment amount for the proposed license agreement is consistent with our appraisal process and nominal value determination of \$2,500. The license fee will increase annually according to applicable commodity and cost indices and will also be subject to possible base-fee reappraisals regularly in order to ensure that the license fee amount keeps pace with market conditions throughout the license term. Metropolitan will also receive a one-time processing fee of \$7,500.

Policy

Metropolitan Water District Administrative Code Section 8230: Grants of Real Property Interests

Metropolitan Water District Administrative Code Section 8231: Appraisal of Real Property Interests

Metropolitan Water District Administrative Code Section 8232: Terms and Conditions of Management

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

By Minute Item 48766, dated August 16, 2011, the Board adopted fair market value policies for managing Metropolitan's real property assets.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is categorically exempt under the provisions of CEQA and the State CEQA Guidelines. The proposed action consists of the licensing of existing public land, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Additionally, Metropolitan's action on the proposed project consists of the issuance of a license agreement for the use of Metropolitan's fee-owned property, which would not in itself result in a ground disturbing activity. Accordingly, the proposed action qualifies under Class 1 and Class 5 Categorical Exemptions (Section 15301 and Section 15305 of the State CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

Authorize issuing a license agreement to Brightline West for an initial fifty-year term with options to extend, totaling an additional fifty years.

Fiscal Impact: Metropolitan will receive an initial annual payment of \$2,500 for the license agreement and one-time processing fees of \$7,500.

Business Analysis: By issuing a license agreement and other rights of entry, cooperation with other agencies and utility companies furthers the public interest and facilitates Metropolitan's ability to obtain easements and other property rights critical for its operations. Metropolitan will also receive positive revenue from the value of the license agreement and fees.

Option #2

Do not authorize the license agreement.

Fiscal Impact: Metropolitan will forego revenue of \$2,500 per year and processing fees of \$7,500.

Business Analysis: Brightline West may be delayed or prevented from implementing its high-speed rail project. Brightline West may use eminent domain action to obtain the necessary crossing rights.

Staff Recommendation

Option #1

 2/22/2023

Shane Chapman Date
Asst. General Manager/Operations

 2/27/2023

Adel Hagekhalil Date
General Manager

Attachment 1 – Location Map

Ref# FAIRP12685344

Location Map



