



MEMORANDUM

TO: Mayor and Council Members

CC: Marc A. Ott, City Manager
Michael McDonald, Deputy City Manager
Robert Goode, Assistant City Manager

FROM: Elaine Hart, Chief Financial Officer *Elaine Hart*

DATE: December 3, 2013

SUBJECT: Update on Interlocal Agreement (ILA) with Lone Star Rail District (LSRD)

Council's November 19 work session agenda included a briefing, as directed by Council Resolution 20131107-045, on the progress of interlocal agreement negotiations between the City and Lone Star Rail District. Due to time constraints, the briefing was not presented. Council asked that staff provide the briefing via memo (attached presentation) and raised several questions to also be addressed. A briefing summary and update on the project follows.

Council's December 12 meeting agenda includes proposed action on an interlocal agreement with Lone Star Rail District for Council's consideration. We believe this ILA is responsive to the direction provided in Council Resolution 20130829-077. If it is Council's desire to move forward with an interlocal agreement with LSRD, this alternative offer provides an acceptable framework. The alternative offer is outlined in this memo.

However, there are still unresolved issues such as TIZ economic studies, support by other local governments, and Capital Metro funding. We recommend that a LSRD funding agreement be deferred for inclusion in a comprehensive analysis of the City's overall transit investments and as part of evaluating the City's first investment in near-term Project Connect initiatives. We will continue working with our regional partners, so that by Spring 2014, a timeline consistent with Council's October direction (Resolution 20131017-035), we can bring forward for Council's review a comprehensive financing plan for the City's share of Project Connect.

Briefing Summary

The briefing provided an update on work related to Resolution 20130829-077 which affirmed Council's support for the vision for a regional high capacity transit system ("Project Connect") adopted by the Transit Working Group, a subcommittee of the Capital Area Metropolitan Planning Organization (CAMPO). The resolution directed the City Manager to work with Lone Star Rail District (LSRD) and Capital Metro Transportation Authority (Capital Metro) to develop an interlocal

agreement to provide value capture revenue from station areas within Austin and allow time for adequate consideration and public input for Council action prior to a December 31 decision goal.

Council's direction also called for creating a restricted fund in which to retain value capture revenue to be disbursed only in the event LSRD's passenger rail system becomes operational. The resolution stated that the City's support is conditional upon support by other Central Texas local jurisdictions via adopted resolutions to be provided by LSRD on or before October 31. At this time, only the City of San Marcos has passed a resolution supporting the Project Connect vision for a regional high capacity transit system.

An update was presented at Council's October 22 work session including a summary of LSRD's proposed "ASK" and the City's points of disagreement. We committed to continue working through the issues with LSRD representatives. The Audit and Finance Committee met on November 5 to hear a presentation by LSRD and discuss terms of the financial agreement between the City and LSRD, interlocal agreement, and the proposed financing of Project Connect.

We have held ongoing discussions with LSRD and Capital Metro representatives. At this time, the LSRD proposed agreement is not recommended because substantive issues remain with LSRD's proposed "ASK" including, but not limited to:

- No public process is required by the Transportation Code to create the transportation infrastructure zone (TIZ) which does not align with the City's value of transparency.
- Zone economic studies are not likely to support LSRD's proposed 50% value capture indicating an earmark or set aside of tax increment revenue exceeding the amount attributable to rail induced development.
- A forty (40) year term with an automatic forty (40) year renewal (unless City provides written objection for renewal) is fifty years longer than the term of any current City tax increment zone. Only when the term ends (potentially eighty [80] years) will tax increment revenue be returned to the City for general government purposes (e.g., public safety, parks, and libraries).
- Conflicts with Council direction in Resolution 20130829-077 such as:
 - Proposes use of tax increment funds prior to rail operations, and
 - Expands allowable uses beyond operating (O&M) costs to all project costs.

Alternative Offer

As a result, we developed an alternative offer for discussion with Council that has been presented to LSRD. This alternative contemplates approval of an interlocal agreement prior to December 31 which creates the transportation infrastructure zone, sets the base value for calculating the tax increment, and sets the initial tax increment participation value at zero percent (0%). It also includes other deal points specified by the City including a term less than eighty (80) years, City control over its Rail Tax Increment Financing Fund, and restrictions on when and how that Fund may be used.

More detail on the alternative offer deal points follows:

- Interlocal agreement creates tax increment zones for Austin proposed stations using the Transportation Code (Chapter 173) for Transportation Infrastructure Zones (TIZ).
- Base assessed value set at January 1, 2013 for calculating the tax increment.

- Initial property tax increment participation value set at zero percent (0%). This value would be re-evaluated following an analysis of the City's cost for all components of Project Connect to be completed in Spring 2014. After that, the City may amend the ILA to finalize the tax increment participation percent. However, the maximum property tax increment participation level shall not exceed fifty percent (50%).
- LSRD shall provide data required for the ILA by the Transportation Code including a project description, project location, and estimated project cost.
- A term of thirty-six (36) years with an extension option for an additional twenty (20) years. In Year 34, the Council shall consider and vote on the extension option, notifying LSRD whether an extension is approved.
- Definition of a trigger or "measure for determining viability" of LSRD's project:
 - LSRD has a contractual agreement with Union Pacific for transfer of ownership of its existing rail right of way to LSRD and
 - LSRD has secured all capital funding to build the proposed rail bypass and proposed passenger rail transportation facilities and
 - LSRD has a financial plan and commitment for funding for operations, capital projects, and repayment for all debt or loans.
- Key dates at which the City may exercise its right to early withdrawal from LSRD's project and close the City's related tax increment zones.
 - Two years – If by January 1, 2016, interlocal agreements are not approved by cities of San Marcos and Kyle and counties of Hays and Travis, then the City, at its option, may terminate the agreement and all funds accumulated in the City's Rail Tax Increment Financing Fund will be available for Council to redirect for any lawful municipal purpose.
 - Six years - If by January 1, 2020, the proposed "measure for determining viability" of LSRD's project is not met, then the City, at its option, may terminate the agreement and all funds accumulated in the City's Rail Tax Increment Financing Fund will be available for Council to redirect for any lawful municipal purpose.
- The City shall establish and control its Rail Tax Increment Financing Fund into which the property tax increment revenue for the TIZ shall be deposited. Property tax increment shall be the only funding source for the City's participation in LSRD's project. No other City funding sources will be provided (e.g., parking).
- Allowable uses of the City's Rail Tax Increment Financing Fund are outlined below:
 - No monies shall be disbursed until the "measure for determining viability" of LSRD's project is met.
 - LSRD shall comply with provisions of the Transportation Code (Ch. 173) which provides that monies may be used (1) To provide a local match for acquisition of right-of-way in territory of the local government; or (2) For design, construction, operation, or maintenance of transportation facilities in local government's territory.

These deal points are preliminary and subject to further change. We continue to review and think through additional deal points considered necessary to protect the City's interest that reflect the long-term nature of this alternative offer.

Responses to Council's Questions

Although there was not sufficient time at the November 19th Council work session to discuss a potential City/LSRD interlocal agreement, staff was asked to answer several questions. These responses follow:

REQUEST (Morrison): Provide a description from staff's perspective of the financial difference to the TIZ if the TIZ were implemented this year versus next year.

RESPONSE: Preliminary value capture revenue estimates have been provided by LSRD, but not the underlying zone economic studies. Based upon LSRD's preliminary estimated revenue from TIZ value capture (early years shown in the following chart), a one year delay in implementing the TIZ would result in foregone revenue of \$138,336 which would not be available to deposit into the City's Rail Tax Increment Financing Fund. This is not a substantial amount. While we do not yet have their detailed tax increment projections, our experience with other tax increment studies indicates that delaying the start year for a zone by one year, and thus moving the end year out by one year, has little or no revenue impact.

Estimated Revenue from TIZ Value Capture	2015	2016	2017	2018
CITY OF AUSTIN (50% Participation Level)				
Rail Influenced Growth	\$ 30,520	\$ 100,320	\$ 262,407	\$ 461,331
Non-Rail Influence Growth	\$ 107,816	\$ 207,401	\$ 296,431	\$ 404,227
	\$ 138,336	\$ 307,721	\$ 558,838	\$ 865,557

LSRD plans to use the City's approved interlocal agreement as leverage in its discussions with other local government entities who are also being asked to participate in financial support for LSRD's project. At this point, the cities of Austin and San Marcos may consider action on an interlocal agreement with LSRD before December 31. Travis County has made no commitment.

REQUEST (Morrison): There are many other parties whose funding participation is necessary to achieve the LSRD project. One of the major parties is Capital Metro. I believe part of LSRD's plan depends on Capital Metro funding for capital or to pay off LSRD's debt. Provide a status of where Capital Metro is in discussions with LSRD and whether that is a viable scenario from Capital Metro's point of view.

RESPONSE: Capital Metro representatives have routinely been attending our meetings with LSRD. Cap Metro staff has indicated there have been no conversations between LSRD and Capital Metro's Board about funding requests for LSRD's project. Capital Metro's current seven-year financial plan does not include funding for LSRD capital or debt payments.

As part of the urban rail financing plan presented to Council in May 2012, the City requested funding by Capital Metro for operating and maintenance costs. As a result of those planning discussions, Capital Metro is developing a longer range financial forecast (twenty years) to determine if Capital Metro has the financial capacity to fund the urban rail project operations and other non-Capital Metro transit investments, in addition to their own financial needs.

REQUEST (Cole): Explain the extent to which LSRD will work with the Project Connect effort. How should LSRD work with respect to Project Connect?

RESPONSE: Project Connect is a partnership between Central Texas transportation agencies aimed at implementing the high-capacity transit component of the CAMPO2035 Plan adopted by regional government representatives in 2010. The initial Project Connect partnership includes Capital Metro, the City of Austin, Lone Star Rail District, and CAMPO.

The Project Connect Vision Map for a regional high-capacity transit system shows where MetroRail, Regional Rail, Urban Rail, Bus Rapid Transit, and Express Bus on Express Lanes services will potentially be developed in Central Texas. Express lanes on highways, existing and new rail service, and rapid transit are all components of the regional vision that, when connected to the local bus network, will improve the region's mobility.

Three regional transportation partners are currently operating or pursuing potential development investments in passenger rail infrastructure as components of Project Connect. Lone Star Rail District's LSTAR project is one component of this regional rail system.

- **Capital Metro** operates the MetroRail Red Line providing commuter rail service from Leander to downtown Austin and has proposed future commuter rail service from Elgin to downtown Austin. It is evaluating options for high capacity transit service through its Project Connect North Corridor study.
- The **City of Austin** is studying the potential design and feasibility of an initial Urban Rail line in Downtown Austin that would link the Capital Metro and Lone Star Rail District rail services to form a single regional rail system.
- **Lone Star Rail District** is planning a regional LSTAR passenger rail line with potential stations between Georgetown and San Antonio and is working with Union Pacific Railroad on relocation of its freight line.

Council recently approved Resolution 20131017-035 which directs the City Manager to provide a financing plan for the City's share of Project Connect, including, but not limited to, the use of value capture revenue. The City Manager was directed to work with relevant service providers to develop any necessary draft interlocal agreements for the funding of Project Connect. The City Manager should ensure that any revenue sources provided by the City are retained in a restricted fund. We expect this work to be completed in the Spring 2014.

Timeline and Recommendation

We are in active discussions with LSRD and Cap Metro representatives on this alternative offer. As stated previously, we continue to review and think through additional deal points considered necessary to protect the City's interest that reflect the long-term nature of this alternative offer. The draft ILA is being revised as necessary. At this date, LSRD has not provided data required by the Transportation Code for the ILA including a project description, project location, and estimated project cost. Results of our final discussions with LSRD are subject to legal review by both parties.

In order to meet Council's December 31 decision goal set in Resolution 20130829-077, the Transportation Code (Chapter 173) for **Transportation Infrastructure Zones (TIZ)** will be used because there is not sufficient time remaining to use the Tax Code (TIRZ) as the City has in the past.

Council action would need to occur on December 12 or a special called meeting. Public process will be limited to speakers who sign up to speak on the December 12 agenda item for the ILA.

On the December 12 Council agenda, the alternative offer outlined herein will be presented as an interlocal agreement for Council consideration. We believe this ILA is responsive to the direction provided in Council Resolution 20130829-077, described previously in this memo. If it is Council's desire to move forward with an interlocal agreement with LSRD, this alternative offer provides an acceptable framework.

However, there are still unresolved issues such as TIZ economic studies, support by other local governments, and Capital Metro funding. We recommend that a LSRD funding agreement be deferred for inclusion in a comprehensive analysis of the City's overall transit investments and as part of evaluating the City's first investment in near-term Project Connect initiatives. We will continue working with our regional partners, so that by Spring 2014, a timeline consistent with Council's October direction (Resolution 20131017-035), we can bring forward for Council's review a comprehensive financing plan for the City's share of Project Connect. I am available to answer any questions you may have.



Update on Interlocal Agreement (ILA) Lone Star Rail District (LSRD)

Financial Services Department
November 19, 2013 – Council Work Session
Council Resolutions 20131107_045 and 20130829-077

[1]

AFC

Council Actions and Briefings



- Resolution 20130829-077
 - Work with LSRD and Capital Metro to **develop interlocal agreement and ordinances to provide value capture revenue** from station areas within Austin
- October 22, 2013 update at Council work session
 - Overview of LSRD “ASK”
 - COA Points of Disagreement
- November 5, 2013 Audit & Finance Committee
 - Terms of financial agreement between COA and LSRD, interlocal agreement, and proposed financing of Project Connect (LSRD)
- Resolution 20131107-045 requested today’s briefing

[2]

AFC

LSRD ILA Status

- Ongoing discussions between COA, LSRD and Capital Metro
- Current LSRD proposed agreement is not recommended
- Substantive issues remain with LSRD's proposed "ASK"
 - No public process required by Transportation Code to create zone
 - Zone economic studies not likely to support 50% value capture
 - 40 year term; automatic 40 year renewal
 - Conflicts with Council direction
 - Use of Tax Increment Fund prior to rail operations
 - Expands allowable uses beyond O&M costs to all project costs

Alternative offer for Council's consideration
that has been presented to LSRD.



[3]

AFC

Alternative COA Offer to LSRD

- Interlocal agreement creates tax increment zones or TIZ for Austin proposed stations
- Base value set at January 1, 2014 for calculating tax increment
- Initial tax increment participation value **at 0%**
 - Re-evaluate after analysis of City's Project Connect cost
 - May amend ILA to finalize tax increment participation percent
- LSRD to provide data required by Transportation Code for ILA
 - Project description, location, estimated cost
- Term of 36 years; extension option for additional 20 years
 - Year 34 Council considers and votes on extension option
- Other deal points specified by COA



[4]

AFC

Alternate COA Offer-Timeline

- To meet Council's December 31 decision goal
 - Use **Transportation Infrastructure Zone (TIZ)** legislative guidance; insufficient time remaining to use Tax Code (TIRZ)
 - Council action on December 12 or special called meeting
 - Public process - speakers on December 12 Council RCA for resolution approving interlocal agreement



[5]

AFC

Alternate COA Offer-Deal Points

- Proposed measure for determining LSRD project viability
 - LSRD has contractual agreement with Union Pacific to relocate its rail operations and
 - LSRD has secured all capital funding to build proposed rail bypass and commuter rail transportation facilities and
 - LSRD has financial plan for repayment for all debt or loans
- Key Dates
 - Two years – if by January 1, 2016, interlocal agreements are not approved by cities of Kyle and San Marcos and counties of Hays and Travis, COA may at its option exit
 - Six years - if by January 1, 2020, proposed measure for determining LSRD project viability is not met, COA may at its option exit



[6]

AFC

Alternate COA Offer-Deal Points

- City to establish and control Rail Tax Increment Financing Fund
 - Property tax increment - only funding source for COA participation
 - Property tax increment participation level shall not exceed 50%
- No other COA funding sources will be provided (e.g., parking)
- Uses of Rail Tax Increment Financing Fund
 - No monies disbursed until proposed measure for determining LSRD project viability is met
 - LSRD complies with Transportation Code (Ch. 173) - use of monies
 - To provide a local match for acquisition of right-of-way in territory of the local government; or
 - For design, construction, operation, or maintenance of transportation facilities in local government's territory



[7]

AFC

Next Steps

- Continue discussions with LSRD and Capital Metro to fully develop City's offer into an interlocal agreement and RCA for December 12 Council agenda



[8]

AFC

Questions / Discussion

Resolution 20130829-077

- Council supports CAMPO Transit Working Group's regional vision
- Directs City Manager to work with Lone Star Rail District (LSRD) and Capital Metro Transportation Authority to **develop interlocal agreement and ordinances to provide value capture revenue** from station areas within Austin
 - LSRD's consideration - include Austin's stations in rail project's environmental impact study for Federal approval in a Record of Decision
 - Allow time for adequate consideration and public input for Council action prior to December 31, 2013 decision goal
- Directs City Manager to create a restricted fund to retain value capture revenue to be **disbursed only if LSRD's passenger rail system becomes operational**
- **City support conditional upon support by other Central Texas local jurisdictions** via adopted resolutions provided by LSRD on or before October 31, 2013



[9]

