

MINUTES
NORTH AURORA ROAD (NAR) PROJECT TEAM MEETING
JULY 18, 2024, 1:30 P.M.
NAPERVILLE EMPLOYEE UNIVERSITY
CITY OF NAPERVILLE
400 S. EAGLE STREET
NAPERVILLE, IL 60540

I. CALL TO ORDER / ROLL CALL

Chairman Novack called the July 18, 2024 NAR Project Team meeting to order at 1:36 p.m. The meeting was held in the Naperville Employee University (NEU) room of the Naperville Municipal Center, 400 S. Eagle St., Naperville, IL.

Present:

(NAR Project Team Members Listed by Agency)

City of Aurora: Tim Weidner; and Brian Witkowski (by video/audio conference)

City of Naperville: Bill Novack; Andy Hynes; and Matt Calpin

Naperville Township: Eddie Bedford

Absent:

Naperville Township: Paul Santucci

Also Present:

Pat Lord, City of Naperville Legal Counsel; and Rebecca DeLarme, City of Naperville staff

II. APPROVAL OF ATTENDANCE OF NAR PROJECT TEAM MEMBERS BY OTHER MEANS (if a quorum of four members of the NAR Project Team is physically present).

Novack announced that Witkowski would need to attend the meeting electronically due to other business commitments.

A motion was made by Bedford and seconded by Weidner to approve Witkowski attending the meeting by video/audio conference, pursuant to the Rules for Electronic Attendance that were approved at the July 1, 2024 NAR Project Team meeting. MOTION PASSED UNANIMOUSLY

III. PUBLIC COMMENT

There were no public comments.

IV. APPROVAL OF MINUTES of July 1, 2024 NAR Project Team meeting.

A motion was made to approve the July 1, 2024 NAR Project Team meeting minutes by Calpin and seconded by Hynes. MOTION PASSED UNANIMOUSLY

V. OLD BUSINESS

- a. Ratification of a revision to the Construction and Management Agreement with BNSF Railway Company approved on July 1, 2024 by including the language in (i) below in replacement of the language in (ii) below in Article II, Section 2 of that Agreement.
- (i) Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or by the Contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work. BNSF shall, as soon as practicable, notify the City Engineer after emergency work has been performed. Failure to provide such notice shall not constitute a breach of this Agreement.
 - (ii) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, BNSF IS NOT A CONTRACTOR, AGENT, PARTNER, OR JOINT VENTURER OF THE STATE, THE AGENCY, OR IDOT BECAUSE OF THIS AGREEMENT OR THE PROJECT OR BECAUSE OF BNSF'S PERFORMANCE OF ITS PORTION OF THE WORK. LIKEWISE, BNSF'S EMPLOYEES, AGENTS, CONTRACTORS, AND SUBCONTRACTORS WHO MAY ASSIST BNSF IN PERFORMING ITS PORTION OF THE WORK ARE DOING SO FOR BNSF'S BENEFIT ONLY, AND ARE NOT—AND SHALL NOT BE DEEMED TO BE—EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, OR AGENTS OF THE STATE, THE AGENCY, OR IDOT. BNSF agrees to observe and comply with all applicable State and Federal laws, but only to the extent such laws may apply to BNSF's portion of the Work. Consistent with the disclaimers above, the AGENCY acknowledge that, because neither BNSF nor its employees, agents, contractors, and subcontractors are contractors, subcontractors, employees, or agents of the STATE, the AGENCY, or IDOT, such State and Federal laws may not apply under certain circumstances. Nothing in this Agreement is intended to waive, nor shall it waive, the preemptive effect of Federal law as to BNSF because of its status as a common carrier. If a conflict exists or arises between this Section 7 and any other provision of this Agreement and/or its exhibits and attachments, then this Section 7 shall control.

Lord advised that the finalized agreements were sent to BNSF who then advised that the language in (i) needed to be included. This provision was already included in the access

agreement and was previously reviewed and discussed by City of Aurora (Aurora) and Naperville Township (Township) Legal Counsel, who resigned to include this information in this agreement.

A motion was made by Weidner and seconded by Calpin to ratify the revision to the Construction and Management Agreement with BNSF Railway Company approved on July 1, 2024, by including the language in (i) in replacement of the language in (ii) in Article II, section 2 of that Agreement. MOTION PASSED by the following votes per Agency:

Aye: 3 -

City of Aurora (Weidner)
City of Naperville (Novack)
Naperville Township (Bedford)

VI. NEW BUSINESS

a. Discussion of Project costs and new funding.

Calpin discussed the cost increases for Wisconsin Central Ltd. (WCL), BNSF and ComEd that were previously not accounted for and reported on discussions he had with Kama Dobbs with the Chicago Metropolitan Agency for Planning (CMAP). Ms. Dobbs inquired if additional funding would help to move the project along faster with Calpin responding it would. In addition to assisting each local agency with funding less money, Calpin noted it would help with the timeline as there would not have to be an amendment made to the 5th Intergovernmental Agreement (IGA), or the need to extend the project letting timeline into 2025 to cover the cost increases.

Calpin advised that the WCL Forced Account cost estimate was amended by an approximate \$500K decrease for material surcharges and additive rates. He stated that WCL's previous cost estimate did not include flaggers, which is estimated at \$675K, and is in addition to their total cost of \$5.3M. He noted that costs were originally estimated around \$3.9M for WCL and BNSF and that BNSF came in approximately \$125K higher as well. He discussed the \$2M that was originally estimated for ComEd, noting that after Phase 1 Engineering was done, their estimate for completion is at \$2.7M, with a plus or minus 25%, based on the level of clarity of the estimate at this time. ComEd's total estimate is now at \$3.3M, which represents an increase of \$1.3M.

Calpin reported that he submitted a funding increase request to CMAP for approximately \$4.8M.

Weidner discussed updating the PPI and inquired if the BLR 05310C would need to be rescinded. Calpin noted that the PPI would need to change and that it may make sense to rescind the BLR 0531C instead of amending it. He will follow up on these items. Calpin discussed the reasons for changing to the November letting date and noted Ms. Dobbs'

approval, if necessary, to move into January or February of 2025 based on the complexity of the project and the progress that has been made.

Novack thanked Calpin for his great work with this project.

- b. Resolution of the NAR Project Team Approving Certain Wisconsin Central Ltd. Agreements Pertaining to the North Aurora Road Widening Project, namely: (i) a Construction and Maintenance Agreement; (ii) a Temporary Easement Agreement; and (iii) a Permanent Easement Agreement.

A motion to approve the resolution of the NAR Project Team approving certain agreements pertaining to the North Aurora Road Widening Project with Wisconsin Central Ltd. for the (i) Construction and Maintenance Agreement; (ii) Temporary Easement Agreement; and (iii) Permanent Easement Agreement was made by Bedford and seconded by Weidner. MOTION PASSED with the following votes per Agency:

Aye: 3 -

City of Aurora (Weidner)
City of Naperville (Novack)
Naperville Township (Bedford)

- c. Discussion of other NAR agreements.

Calpin reported that comments were provided to Enbridge Energy regarding the design and construction agreement, which they are reviewing. They have identified one question regarding lump sum payments not being allowed for larger portions of projects per the federal aid through the Federal Highway Administration (FHWA). Lord is working with the FHWA to answer this question.

Calpin advised that the draft agreement with ONEOK Pipeline has been submitted and the lump sum payment issue will have to be addressed before additional comments can be provided.

ComEd's Legal Counsel reviewed the ComEd Construction Reimbursement Agreement but comments have not been received yet. Calpin is scheduled to follow up this week. Calpin advised that we did receive formal engineering approval and the ComEd Easement Agreement is currently being reviewed. Calpin will follow up to check the status.

Discussion followed on the utility plates that have been placed on the west side of the bridge on North Aurora Road. Bedford noted that ComEd was working in the area on Monday. Calpin will follow up with Midwestern Contractors to determine who they were working for and where they obtained the permit. Bedford will also follow up with staff to see if a permit was obtained.

Calpin discussed the need for confirmation from Kinder Morgan if any work is needed in the area but has not received a response.

d. Discussion of timing of IDOT letting for the NAR Project.

For the November 8, 2024 letting date, final agreements would need to be received September 9th. For the January letting date, final agreements would be needed by November 25th.

VII. ANNOUNCEMENTS/NAR PROJECT TEAM COMMENTS

Weidner inquired about right-of-way certification with IDOT. Calpin noted that once all the agreements are in place, we will work to get the right-of-way certified with the negotiator/agent. Weidner inquired if this was set up as a working day contract. Calpin will confirm this information.

Bedford thanked Calpin for the payment schedule. He noted the Township's next Board Meeting was scheduled for Thursday, August 14th.

Lord requested that the group sign the Resolution for the WCL agreements with Witkowski expressing approval for Weidner to sign and initial on his behalf.

Novack noted that the next NAR Project Team meeting would be scheduled and notification would be sent once the other agreements were lined up.

VIII. ADJOURNMENT

A motion to adjourn the meeting was made by Weidner and seconded by Bedford. The meeting adjourned at 2:20 p.m. MOTION PASSED UNANIMOUSLY

Respectfully submitted by,
Rebecca DeLarme, City of Naperville staff