

Legislative-Citizen Commission on Minnesota Resources

MEMO: Agenda Item #5
DATE: January 16, 2020
SUBJECT: City of Tower Amendment Requests on two appropriations

Background

The City of Tower received a M.L. 2016 appropriation for a multi-faceted trail project. The City then received a M.L. 2017 appropriation to build a trailhead and boat landing as well as to improve habitat near the trails funded in the earlier appropriation. The appropriation language is as follows:

M.L. 2016, Chp. 186, Sec. 2, Subd. 09f **Tower Historic Harbor Trail Connections**

\$679,000 the second year is from the trust fund to the commissioner of natural resources for an agreement with the city of Tower to construct recreational trails along the harbor in Tower and to connect to the Mesabi Trail. This appropriation is available until June 30, 2019, by which time the project must be completed and final products delivered.

M.L. 2017, Chp. 96, Sec. 2, Subd. 09H **Tower Trailhead and Habitat Improvement**

\$600,000 the first year is from the trust fund to the commissioner of natural resources for an agreement with the City of Tower to construct a trailhead and boat landing and restore vegetative habitat on city-owned property. Plant and seed materials must follow the Board of Water and Soil Resources' native vegetation establishment and enhancement guidelines. This appropriation is available until June 30, 2020, by which time the project must be completed and final products delivered.

In the years after funding was awarded, LCCMR staff did not receive timely required status updates and made considerable effort tracking down the project manager to seek compliance. As the M.L. 2016 project end date of June 30, 2019 approached, LCCMR staff were assured by the project manager that the project was on track to be completed on time.

In July 2019 we learned through local news reporting and a new representative from the City of Tower that the project manager was no longer employed by the City. There were allegations the project manager participated in fraudulent activity (unrelated to the LCCMR project), and that it was possible there were inconsistencies between the funds that had been spent on the LCCMR project and the approved work plan. LCCMR staff immediately alerted members and sent the City a suspension of work on the M.L. 2017 project until further notice.

Since early July, the City of Tower's newly hired staff, under direction of an entirely new City Council and Mayor, have been working to reconstruct the history of both the M.L. 2016 and M.L. 2017 projects. LCCMR staff and DNR Grants Unit staff have closely coordinated in a review of both the programmatic and financial aspects of the projects, including in-person meetings and a site inspection in August. DNR Grants Unit has reviewed the City's fiscal policies and internal controls as part of their monitoring activities.

Status of M.L. 2016 work and payment

Based on the above mentioned reviews, it is apparent the City spent the full award amount (\$679,000) for the M.L. 2016 appropriation before the end date of June 30, 2019, however they only completed 1 of the 3 outcomes. Completed is development of the Harbor Trail. Not completed is a trail connector from the Harbor Trail to the Mesabi Trail and the kayak route trail signage. This is inconsistent with the prior project manager's reporting, which indicated all work was on track for completion.

In spending the full award amount on Outcome 1 (Harbor Trail), the City spent \$324,236 more than was authorized for this activity through their approved work plan.

The DNR Grant Unit has reviewed the City's written answers to questions about internal controls, payment requests, and verification that work had been performed according to the City's contracts with their engineering and construction firms. The City has been upfront and honest about the challenges they had encountered that led to issues with past grant performance and has put structure in place to get back into compliance.

The DNR Grant Unit also reviewed copies of all of the City's contracts and the city council minutes authorizing the work to be completed. The City produced for the DNR copies of all invoices, proof of payment from the city, and prevailing wage documents for the M.L. 2016 project. Given this and the visual inspection of the work completed by both DNR and LCCMR staff, reimbursement was provided for Outcome 1 (Harbor Trail) and Outcome 2 (Kayak Route) up to the amount that had previously been approved by LCCMR or that had been incurred, whichever was less.

The City is requesting a retroactive amendment, post- appropriation end date, to adjust outcome budgets and deliverables so they may be eligible to receive reimbursement of the additional \$324,236. They are aware there is no guarantee this amendment will be approved. This request is further discussed in the Amendment Request section below.

M.L. 2016 Appropriation Status (for funds expired June 30, 2019)

Outcome	Work Status	Approved Budget	Spent	Difference (under) or over spent	Reimbursed with ENRTF funds
1. Harbor Trail	Complete	\$339,428	\$663,664	+\$324,236	\$339,428
2. Connecting Trail	Not complete	\$319,922	\$0	(\$319,922)	\$0
3. Kayak Route & Signage	Partially complete	\$19,550	\$15,336	(\$4,214)	\$10,800

Status of M.L. 2017 work and payment

This project has been put on hold since July. The new city staff and contracted engineer have been able to determine that the previous project manager bid out and contracted for the design and engineering of some of the outcomes for the M.L. 2017 project, as well as revised unfinished outcomes from the M.L. 2016 project, to be paid for with M.L. 2017 funds. This was not consistent with either M.L. 2016 or M.L. 2017 appropriation language or work plans.

Since this M.L. 2016 and M.L. 2017 work is co-mingled, DNR and LCCMR are not able to verify what work has been completed for which outcomes and therefore has not approved reimbursement for this work without further consideration by the commission.

The City is requesting an amendment to adjust outcome budgets and deliverables. This request is further discussed in the Amendment Request section below.

M.L. 2017 Appropriation Status (for funds expiring June 30, 2020)

Outcome	Work Status	Approved Budget	Spent	Reimbursed with ENRTF funds
4. Trailhead + Kiosk + boat landing	Preliminary designs in place, permits secured	\$491,915	\$19,467*	\$0
5. 20,000 sq. ft. habitat area	Preliminary designs in place, permits secured	\$104,800	\$0	\$0
6. Signage + other		\$3,285	\$0	\$0

[Amendment Request](#)

The City of Tower seeks several amendments to their M.L. 2016 and M.L. 2017 work plans that they say will allow them to accomplish all outcomes within the combined budget of these two appropriations. The amendments are as follows:

1. M.L. 2016: Retroactive request to approve spending an additional \$324,236 M.L. 2016 on Outcome 1 (Harbor trail) than was previously approved for that outcome.
2. M.L. 2016: Retroactive request to reduce Outcome 2 (kayak trail & signage) and remove Outcome 3 (trail connection to Mesabi Trail) from M.L. 2016 work plan deliverables.
3. M.L. 2017: Request to add Outcome 2 (kayak trail & signage)
 - This will be made possible within the current budget through cost savings on other M.L. 2017 outcomes as well as through partnership with the Tower Economic Development Authority and volunteers to design and install the signs
4. M.L. 2017: Request to add Outcome 3 (trail connection to Mesabi Trail). This will be made possible because:
 - Outcome 4 (trailhead) design and engineering is expected to be less than initially anticipated.
 - Outcome 5 (habitat) is expected to be less than initially anticipated.
 - Tower Economic Development Authority has agreed to complete Outcome 4 (kiosk) construction work
 - Outcome 3 (trail connection to Mesabi Trail) will be routed adjacent to the trailhead access road instead of along the riverfront and will connect to the Mesabi Trail at a more southerly point than previously planned.

5. M.L. 2017: Request to extend M.L. 2017 from end date of June 30, 2020 to September 30, 2021. This is needed to allow formal bidding and construction, the latter of which may be complicated by short construction seasons.

M.L. 2016 and M.L. 2017 Amendment Request Summary

M.L. Year	Outcome	Work Status	Approved Budget	Proposed Revised Budget	Spent	Reimbursed with ENRTF funds
2016	1. Harbor Trail	Complete	\$339,428	<u>\$663,664</u>	\$663,664	\$339,428
2016	2. Connecting Trail to Mesabi	Not complete	\$319,922	See #4	\$0	\$0
2016	3. Kayak Route & Signage	Partially complete	\$19,550	<u>\$15,336</u>	\$15,336	\$10,800
2017	4. Trailhead + Kiosk + boat landing + <u>trail connection to Mesabi</u>	Preliminary designs in place, permits secured	\$491,915	<u>\$496,915</u>	\$19,467	\$0
2017	5. 20,000 sq. ft. habitat area	Preliminary designs in place, permits secured	\$104,800	<u>\$99,800</u>	\$0	\$0
2017	6. Signage + other + <u>Kayak signage</u>		\$3,285	\$3,285	\$0	\$0

Considerations

- Retroactive amendment requests during the life of the project are at times allowed, however they are strongly discouraged. Retroactive amendment requests at project-end are at times allowed, however most often to round budgets to match final billing (+/- \$2,000) and when outcomes have been met.
- Are the requests consistent with appropriation language for the projects? If not, does LCCMR want to entertain retroactively changing appropriation language to be consistent with work the City completed?

Action

1. Approve/Deny/Modify individual amendment requests itemized above.
2. Revise appropriation language for inclusion in M.L. 2020 LCCMR recommendations package accordingly:
 - a.

b.

Attachments

Photographs of completed M.L. 2016 Outcome 1 (Harbor Trail)

Previous design of Outcome 3 vs. Proposed design of Outcome 3

M.L. 2016 Work plan update as of 11/05/19 with amendment request—available upon request

M.L. 2017 Work plan update as of 12/23/19 with amendment request—available upon request

*Work conducted for this amount appears to include outcomes for both M.L. 2016 and M.L. 2017.