

Developer agrees to purchase railway intellectual property

Drexel-Hamilton Infrastructure Partners (DHIP) agreed on Sept. 8, to purchase the intellectual property compiled during the planning and development of the Uinta Basin Railway (UBR) for \$27.9 million, plus an additional \$500,000 per year.

A resolution adopted unanimously by the Seven County Infrastructure Coalition (SCIC) during a special meeting on Tuesday, states DHIP will pay \$27.9 million - the amount of grant funding received by SCIC from the Utah Community Impact Fund Board (CIB) for the project.

Further, DHIP agrees to pay SCIC \$500,000 per year for 30 years due at the time UBR construction commences. During the meeting, SCIC officials also announced that the draft environmental impact statement for the project is now expected by October 30.

According to the project timeline, the final environmental documents are expected this winter following a public comment period. However, SCIC officials expected the draft EIS to be ready this summer. An official for the federal

agency in charge of the EIS, the US Surface Transportation Board (STB), told UB Media the agency doesn't set specific deadlines.

Design of the project, according to the SCIC timeline posted on its website, is expected to begin in 2021, and construction is expected to commence in 2022.

UBR is an approximately 85-mile long railway connecting the Uinta Basin at Leland Bench with the existing interstate rail system near Soldier Summit. The project is expected to cost about \$1.2 billion. The project is expected to be funded through a public/private partnership. SCIC has received a \$27.9 million grant from CIB for the project. DHIP has pledged \$15 million toward the project.

A lawsuit challenging the CIB grant to SCIC was filed in early August. The suit, filed by the Center for Biological Diversity and Living Rivers, two environmental groups, claims that mineral lease funds allocated by CIB to the UBR project are not proper under the Mineral Lease Act and the money is earmarked only for projects that offset the impact of energy development on rural communities. The \$27.9 million grant awarded to SCIC is the largest CIB has ever awarded.

SCIC Attorney Eric Johnson said the new contract between the SCIC and DHIP includes a force majeure clause that will help the parties manage risk should circumstances beyond

their control arise. At present, the contract states construction will begin within five years of the adoption of the resolution on Sept. 8. However, if unforeseen problems arise, a three-year extension is available and if construction has not started within 12 years, exclusive rights to the railway would be turned over to SCIC.

In addition, Johnson advised SCIC board members that an indemnity clause is included in the contract that stipulates under certain circumstances if SCIC is named in a lawsuit, DHIP will pick up the legal tab.

SCIC Executive Director Mike McKee said CIB staff members have reviewed the contract and are "comfortable with its provisions." The CIB board will review the document during an upcoming meeting, McKee said.

The SCIC resolution, 2020-09A approving the actual contract agreed to by the two parties was posted on the SCIC website on Sept. 9. The full contract was posted later that day and can be viewed at <http://scic-utah.org/meetings>.

In addition, during Tuesday's meeting, SCIC officials amended a contract providing up to an additional \$400,000 to be spent on the EIS. According to the resolution, a third-party contractor, referred to as ICF, Jones and Stokes Inc., was selected by STB to complete the environmental work.

To date, SCIC has paid ICF \$3.4 million, but the contractor needs additional funding not to exceed \$400,000.

A third resolution passed by SCIC on Tuesday allocates an amount not to exceed \$100,000 to write a Tribal Participation Plan. That plan is needed by SCIC in order to qualify for a permit exemption under the National Historic Preservation Act.

The Ute Tribe is a partner in the UBR project and negotiated a deal last October including an option to own up to 25 percent of the railway and 49 percent of the terminals along the line. According to a term sheet, the Tribe will assume five percent ownership in the rail line with an option to purchase another 20 percent.

Regarding the terminals, one of which includes plans for a refinery capable of processing 40,000 barrels of crude oil per day, the Tribe assumes a five percent baseline interest with an option to purchase another 44 percent.

In exchange for those assets, the Tribe granted an easement for the rail line across parts of the Uintah and Ouray Reservation.