

# Business Item

Management Committee



**Committee Meeting Date:** February 8, 2023

**For the Metropolitan Council:** February 22, 2023

## Business Item: 2023-44

METRO Green Line Extension Systems Contract Change Order to Add 00810 Supplemental Conditions for Re-Baselined Systems Schedule Cost Claims Resolution

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| <b>District(s), Member(s):</b>   | All  |
| <b>Policy/Legal Reference:</b>   | Minnesota Statutes section 473.3999<br>FM 14-1a Procurement Procedure, section 2.1.2.23  |
| <b>Staff Prepared/Presented:</b> | Lesley Kandaras, Acting General Manager 612-349-7513<br>Nick Thompson, Deputy General Manager 612-349-7507<br>Jim Alexander, Project Director, 612-373-3880<br>Joan Hollick, Deputy Project Director, 612-373-3820<br>Dan Abelson, Associate General Counsel, 651-602-1713 |
| <b>Division/Department:</b>      | Office of General Counsel, Metro Transit / Green Line Extension Project Office   |

### Proposed Action

That the Metropolitan Council authorize the Regional Administrator to negotiate and execute a change order to the Systems Contract (Contract No. 17P000) with Aldridge-Parsons, a Joint Venture (APJV), to add the 00810 Supplemental Conditions for Re-Baselined Systems Schedule Cost Claims Resolution.

### Background

APJV is the systems contractor for the METRO Green Line Extension Project (Project). APJV submitted the low, responsive, responsible bid to the Council on June 6, 2019. The Council and APJV entered into the Systems Contract in the amount of \$194,411,000 on September 24, 2019.

After Project construction began, there were changes to the civil construction contract that were not part of the original project scope. These changes included:

- The addition of the corridor protection barrier as part of an agreement with BNSF Railway;
- The addition of the Eden Prairie Town Center Station; and
- Substantial changes to the design and construction of the Kenilworth LRT tunnel.

These changes increased the cost and delayed the completion dates for the civil construction contract with the Lunda McCrossan Joint Venture (LMJV) by approximately 34 months and the Systems Contract with APJV by approximately 28 months. In January 2022, the Council approved a settlement agreement with LMJV which approved certain payments to LMJV and approved a claims resolution process to resolve disputed matters through an alternative dispute resolution process. The Council and LMJV also executed a change order extending the contract time for the

civil construction contract.

To address the cost and time impacts to the Systems Contract, Council staff worked with APJV to revise its schedule and modify the sequence of the work and to create an enhanced claims resolution process to address the cost impacts of the revised schedule. The enhanced claims resolution process will provide a more robust process to address claims than what is currently in the Systems Contract. The types of costs to be resolved in the enhanced claims resolution process related to the revised schedule include: labor and equipment costs for the additional time to perform the work; labor and material escalation; subcontractor costs; and impacts to the productivity of the work. This claims resolution process will ensure that the additional costs are reasonable and supported by data while avoiding the potential for litigation. The claims resolution process, which is similar to the LMJV claims resolution process, will be integrated into the existing Systems Contract as supplemental conditions through a change order.

Key terms of the claims resolution process include:

- Implementation of APJV's re-baselined schedule.
- APJV will cap the amount it is seeking from the Council at \$64,084,378.51.
- After a thorough review by the Council's experts of APJV's documentation, the Council will provide APJV with an initial claim settlement number.
- The parties will work to resolve the difference between their claim numbers in step negotiations. If the parties are unable to resolve their disputes through step negotiations, they will engage in evaluative mediation.
- The evaluative mediator will work with the parties to resolve any differences. If no resolution is reached, the evaluative mediator will issue an opinion.
- If there are issues for which the parties cannot reach agreement after evaluative mediation, the parties will submit these issues to binding arbitration. The arbitrator will issue a binding award.
- If all disputes are resolved in step negotiations, the Council will make the settlement payment to APJV through a lump sum change order.
- If all disputes are not resolved in step negotiations, the parties will enter into a part 1 change order in the amount of the Council's initial settlement number plus any additional amounts settled in step negotiations. After evaluative mediation, the parties will enter into a part 2 change order for any additional agreed on settlement amounts. If any disputes go to arbitration, the parties will enter into a lump sum change order in the amount of the arbitration award.
- If required, approvals for any settlement payments by change orders will go to the Council and the Executive Change Control Board.

## Rationale

This claims resolution change order is necessary to implement the re-baselined systems schedule and expeditiously resolve the claims related to the additional cost required to perform the work while ensuring that APJV's claimed costs are fully vetted and documented. The claims resolution process in this change order will also reduce the potential for litigation with APJV. The revised completion date for systems construction will inform an update to the start of revenue operations.

## Thrive Lens Analysis

Successful completion of the METRO Green Line Extension will advance the following Thrive MSP 2040 outcomes:

**Stewardship:** Transit investment provides an opportunity to reinvest and grow the capacity of our communities, with more inclusive development and intentional investment. It encourages businesses to invest in communities, which means access to resources, community amenities, jobs, and other community assets.



Equity: Connections to other METRO lines and countless local bus routes will bring people to jobs, jobs to communities, and returns to communities across the region.

Livability: The METRO Green Line Extension will add 14.5 miles to the existing Line, which connects downtown Minneapolis, downtown Saint Paul, and places in-between. This segment connects Eden Prairie, Minnetonka, Hopkins, and St. Louis Park to both downtown Minneapolis and Saint Paul, and major destinations at the University of Minnesota and the State Capitol.

Prosperity: The METRO Green Line Extension reflects strategic investment in regional infrastructure that will promote economic competitiveness and create prosperity for the region. Despite being under construction, the METRO Green Line Extension has already seen more than \$1.6 billion of investment within a half-mile of the line. Another \$500 million in investment is planned.

Sustainability: As many as 700,000 more people will be living, working, and moving around the Twin Cities region by 2040. As a result, a robust transportation system is needed to provide the region choices and more mobility.

Prosperity: The METRO Green Line Extension reflects strategic investment in regional infrastructure that will promote economic competitiveness and create prosperity for the region.

## **Funding**

This is a zero-cost change order. Change orders making settlement payments under the claims resolution process are METRO Green Line Extension Project eligible costs. Funds for the work are available in the Project budget. This work is included in the Council's authorized capital budget.

## **Small Business Inclusion**

The DBE goal established for this contract is 12%. As of work completed through November 30, 2022, APJV is achieving 17.1% DBE participation. As this contract progresses, APJV will continue ongoing efforts to meet or exceed the 12% DBE participation goal for the overall contract.

