

Metropolitan Council

Meeting date: January 26, 2022

For the Metropolitan Council meeting of January 26, 2022

Subject: METRO Green Line Extension Settlement

District(s), Member(s): All

Policy/Legal Reference: Minnesota Statutes section 473.3999

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Division/Department: Metro Transit / Green Line Extension Project Office

Proposed Action

That the Metropolitan Council (Council) authorize the Regional Administrator to:

1. Negotiate and execute a settlement agreement with the Lunda McCrossan Joint Venture (LMJV);
2. Make payments in an amount not to exceed \$40,000,000 within 60 days of execution;
3. Resolve disputed matters through negotiations or an evaluative mediation process in an amount not to exceed \$210,000,000 inclusive of the \$40,000,000 payments in item number 2; and
4. Make future payments as defined in the agreement.

Background

LMJV is the civil construction contractor for the METRO Green Line Extension Project. LMJV submitted the low, responsive, responsible bid to the Council on May 3, 2018. The Council and LMJV entered into the civil construction contract on November 27, 2018. Under the contract substantial completion of civil construction was to be completed in October 2022.

After the contract was awarded to LMJV there were changes to the civil construction contract that were not part of the original contract scope. These changes include:

- The addition of the corridor protection barrier as part of an agreement with BNSF Railway;
- The addition of the Eden Prairie Town Center Station;
- Substantial changes to the design and construction of the Kenilworth tunnel; and
- Other additional impacts to the price and timing of the work under the civil construction contract.

These changes have impacted both the time required for LMJV to complete its work and the costs under the civil construction contract. These changes will also delay the systems contractor, the start of revenue operations, and result in additional costs. The Council and LMJV have agreed that an additional approximately 34 months is needed to complete the work and will enter into a zero-cost change order extending the contract time. The change order will also establish completion dates and modify the sequence that construction segments are turned over to the systems contractor. The parties agree that 30 months of the approximately 34-month

delay is due to changes by the Council. The parties dispute who is responsible for the remaining 4 months of delay.

The Council and LMJV do not agree on the total cost impacts of these disputes. The Council and LMJV are negotiating an agreement with a process to resolve the cost impacts of the new schedule and responsibility for the remaining 4 months of delay. The types of costs to be resolved include: labor and equipment costs for the additional time to perform the work, labor and material escalation, open change orders, and impacts to the productivity of the work performed to date. The process will ensure that the additional costs are reasonable and supported by data while avoiding the potential for litigation.

The key terms include:

- If the parties are unable to resolve their disputes, they will engage in an evaluative mediation process.
- The evaluative mediator will then work with the parties to resolve the differences in between submissions from the parties. If no resolution is reached, the evaluative mediator will issue an opinion.
- If there are issues for which the parties cannot reach agreement, the parties will submit these issues to binding arbitration. The arbitrator will issue a binding award on the remaining disputes.
- The Council will make two \$20 million payments to LMJV within 60 days of execution to compensate LMJV for costs that it has already incurred because of the changes described above. This amount is not disputed by the Council.
- For other costs that are agreed to by the parties or ordered through arbitration the Council will make future payments as required by in the agreement or ordered by the arbitrator.
- Liquidated damages will be revised to reflect the revised completion date for civil construction.

Rationale

This settlement is necessary to complete civil construction and expeditiously resolve the disputes related to the additional time required to perform the work while ensuring that LMJV's claimed costs are properly vetted and documented. The revised completion date to civil construction will establish a date certain turnover to the follow-on systems contractor and 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.

Funding

This is a METRO Green Line Extension Project (61001) eligible cost. Funds are available in the Project budget. This work is included in the Council's authorized capital program. Approval is contingent on approval by the Executive Change Control Board which is expected to vote on January 28, 2022.

Known Support / Opposition

There is no known opposition to this action.