

Business Item

Transportation Committee



Committee Meeting Date: August 14, 2023

For the Metropolitan Council: August 23, 2023

Business Item: 2023-176

METRO Green Line Extension Aldridge Parsons Joint Venture Part One Claims Resolution Change Order, Cumulative Change Order Authority Increase, and amendment to 00810 Supplemental Conditions for Re-Baselined Systems Schedule Cost Claims Resolution, Contract 17P000

District(s), Member(s):	All
Policy/Legal Reference:	Minnesota Statutes section 473.3999
Staff Prepared/Presented:	Lesley Kandaras, General Manager, 612-349-7513 Nick Thompson, Interim Executive Director, 612-349-7507 Jim Alexander, Project Director, 612-373-3880 Joan Hollick, Deputy Project Director, 612-373-3820 Nic Dial, Construction Director, 612-373-3974
Division/Department:	Metro Transit / Green Line Extension Project Office

Proposed Action

That the Metropolitan Council:

- Authorize the Regional Administrator, as part of the Systems schedule cost claims resolution process, to negotiate and execute a Part 1 change order for Contract 17P000 with Aldridge – Parsons, a Joint Venture (APJV) in an amount not to exceed \$20,388,680;
- Authorize an additional 10.49% (\$20 million) to the current 17.48% (\$34 million) cumulative change authority for Contract 17P000 with APJV, resulting in 27.97% (\$54 million) cumulative change order authority; and
- Authorize the Regional Administrator to negotiate and execute an amendment to the 00810 Supplemental Conditions for Re-Baselined Systems Schedule Cost Claims Resolution to modify the payment process to allow for more frequent payment of resolved claims as the Council and APJV resolve disputes.

Background

APJV is the Systems construction contractor for the METRO Green Line Extension Project. APJV submitted the low, responsive, responsible bid to the Council on June 6, 2019. On September 18, 2019, the Council awarded the Systems construction contract to APJV in the amount of \$194,411,000. APJV is responsible for the manufacture, delivery, installation, and testing of the Green Line Extension light rail system components.

On March 1, 2023, the Council approved the 00810 Supplemental Conditions for Re-Baselined Systems Schedule Cost Claims Resolution (Business Item 2023-44) (“Claims Resolution Agreement”) to extend the contract time and address claims for costs related to the delay to the systems construction through an alternative dispute resolution (ADR) process which ensures that

additional costs associated with the delay are reasonable and supported by data while avoiding the potential for litigation. The types of cost claims to be resolved through the ADR process relate to the revised schedule including labor and equipment costs for the additional time to perform the work, labor and material escalation, associated subcontractor costs, and impacts to the productivity of the work.

The ADR process includes:

- Step negotiations where the parties resolve disputes directly.
- Evaluative mediation for disputes not resolved in step negotiations. The evaluative mediator works with the parties to resolve the differences. If no resolution is reached, the evaluative mediator will issue an opinion.
- Any issues not resolved in evaluative mediation will go to binding arbitration. The arbitrator will issue a binding award on these disputes.

The payment mechanism for claims resolved in the ADR process is a change order. With the support of legal counsel and construction claims and accounting experts, staff is seeking approval to execute an initial Part 1 change order in the amount of \$20,388,680 for the claims.

Staff is also seeking to increase the cumulative change order authority to execute this Part 1 change order on Systems Construction Contract 17P000 with APJV.

Council policy FM 14-1 authorizes contract amendments greater than 10% be supported by a sole source approval and FM 14-2 authorizes the Regional Administrator to amend contracts and increase contract prices as delegated by the Metropolitan Council. Council Procurement Procedure 14-1a Section 2.1.2.23 provides 10% cumulative change order authority on construction contracts without further authorization by the Council.

Under the authority in FM 14-1 and FM 14-2, staff is requesting that the Council authorize an additional cumulative change order authority for the APJV Contract as follows:

Description	Amount	Change Order Authorization
Original contract value (Contract 17P000)	\$194,411,000.00	--
Current authorized cumulative change order authority	\$33,983,646.70	17.48%
Value of change orders executed as of August 2, 2023	\$14,748,680.92	7.59%
Current balance of remaining cumulative change order authority	\$19,234,965.78	9.89%
Value of pending change order for TPSS Foundation Modifications (BI 2023-105)	\$4,524,243.46	2.33%
Additional change order authority requested with BI 2023-176	\$20,388,680.00	10.49%
Total authorized cumulative change order authority with BI 2023-176	\$54,372,326.70	27.97%
Balance of total cumulative change order authority <u>after</u> execution of the Part 1 change order and TPSS Foundation Modification change order.	\$14,710,722.32	7.57%

The Claims Resolution Agreement provides for a single Part 1 change order at the conclusion of step negotiations and a Part 2 change order after the completion of evaluative mediation. Staff recommends the Claims Resolution Agreement be amended to allow for more frequent payment of resolved claims through amended Part 1 change orders to ensure prompt resolution of disputes and payment for resolved disputes. This amendment will not change the total amount that APJV is paid.

Rationale

Authorization to execute the Part 1 change order, to increase the cumulative change order authority, and to amend the Claims Resolution Agreement to allow for more frequent payments is necessary to complete systems construction and expeditiously resolve the remaining disputes related to the additional time required to perform the work.

The ADR process will ensure that costs are reasonable, supported by data and properly vetted while reducing the potential for litigation.

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, education, resources and connect diverse and vibrant 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 \$2 billion of existing and planned development investment within a half-mile of the line.

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

The work for this change order is a METRO Green Line Extension Project (No. 61001) eligible cost. Funds are available in the Project (No. 61001) budget and included in the Council's authorized capital budget. The Council's approval is contingent on approval by the Executive Change Control Board which is expected to vote on this action on August 16, 2023.

Small Business Inclusion

The DBE goal established for this Contract is 12%. As of June 30, 2023, APJV is achieving 17.1% DBE participation. The Office of Equity and Equal Opportunity will continue monitoring the contract's progress and communicate with APJV to meet or exceed the 12% DBE participation for the overall contract.

