

# Business Item

Transportation Committee



Committee Meeting Date: August 14, 2023

For the Metropolitan Council: August 23, 2023

## Business Item: 2023-177

METRO Green Line Extension Settlement Agreement with Lunda McCrossan Joint Venture, Contract 22M013

**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

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

### Proposed Action

That the Metropolitan Council authorize the Regional Administrator to:

- Increase the not to exceed value of the Settlement Agreement (Council Contract No. 22M013) with the Lunda McCrossan Joint Venture (LMJV) in the amount of \$75 million for a new total not to exceed amount of \$285 million; and
- 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. On November 15, 2018, the Council awarded the civil construction contract to LMJV in the amount of \$799,514,338.22.

In January 2022, the Council approved (Business Item 2022-35) to authorize the negotiation and execution of a Settlement Agreement with LMJV to resolve cost disputes related to an additional 34½ months required to perform civil construction. The Settlement Agreement established a minimum value for resolving the disputes in the amount of \$210 million.

With the support of legal counsel and construction claims and accounting experts, the Council has resolved costs totaling approximately \$209.9 million with LMJV. The cost categories resolved to date include direct costs of 194 change orders, additional overhead costs, productivity impact costs, and subcontractor costs.

An increase to the not to exceed value in the amount of \$75 million is required to resolve the remaining cost categories outlined in the Settlement Agreement and to resolve additional matters related to civil construction which the parties have agreed to resolve under the Alternative Dispute Resolution (ADR) process in the Settlement Agreement including:

- Delays to the construction of the Kenilworth LRT Tunnel and associated time impact analysis to determine the overall impact to the schedule; and
- Change orders associated with West Lake Street Station construction, dewatering near Shady Oak Station, and monitoring activities associated with the TH 212 ramp at Prairie Center Drive.

These disputes will be resolved through the ADR process in the Settlement Agreement, which 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.

### Rationale

This action is necessary to complete civil construction and expeditiously resolve the disputes related to the costs for additional time required to perform the work and other matters as described above, while ensuring that LMJV's claimed costs are properly vetted and documented. An increase in the not to exceed value will allow the Council to continue resolving matters through ADR while construction is ongoing.

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

This 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 Office of Equity and Equal Opportunity (OEEO) assigned a Disadvantaged Business Enterprise (DBE) goal of 16% for the contract. As of work completed through June 30, 2023, LMJV is achieving 22.83% DBE participation. This settlement includes payments for claims made by DBE firms. OEEO is continuing to monitor LMJV efforts to ensure that the contractor meets or exceeds 16% DBE participation for the overall contract.

