



Judy Randall
Legislative Auditor
658 Cedar Street, Room 140
St Paul, MN 55155

March 13, 2023

Dear Ms. Randall:

Thank you for the opportunity to review and respond to the *Office of the Legislative Auditor's report on the Southwest Light Rail Transit (SWLRT) Construction: Metropolitan Council Decision Making*. We appreciate the time spent by the audit staff to develop a deeper understanding of the Metropolitan Council's development of this significant transitway project.

The report minimizes the Metropolitan Council's transparency and accountability to our funding partners for shared decision making. While project funding is shared between multiple parties, risk and accountability resides with the Met Council.

We agree with the auditor's recommendation to align funding responsibility with the government entity responsible for light rail transit construction. Transitway finance governance has been a long discussed and debated issue in our region. Under the current framework, decisions that drive future costs are susceptible to leverage by parties with funding control, which can introduce project completion risks and future operating risks. The auditor's report, however, minimizes the Met Council's transparency and accountability to our funding partners. Decision making is well documented within grant agreements and board actions and is practiced through regular decision meetings by embedded partner representatives in daily project activities.

The Metropolitan Council adopted a Transitway Advancement Policy to address and manage risk with our regional partners for advancing transitway projects.

The Met Council generally agrees with the recommendations regarding scheduling and delays and had begun taking steps to address them well before this audit began. Our actions on Orange Line, D Line, Gold Line, and the current Blue Line Extension demonstrate we have implemented changes that are in line with the recommendations of this report and the recent MnDOT Peer Report.

The Council adopted a Transitway Advancement Policy that strengthens the Council's process for advancing projects by jointly clarifying risks, roles, and responsibilities in mitigating project and life cycle risks ahead of significant regional investment and critical project decision points.

The policy applies to both future transitway projects seeking entry into the region's Transportation Policy Plan (TPP) and to transitway projects in the TPP but at different stages of development, including the SWLRT project.

Project cost comparisons omit other mega projects.

The SWLRT project is a mega project that includes 29 bridges, 2 LRT tunnels, 6 pedestrian tunnels, co-location with freight rail, 6 miles of retaining walls and more than 14 miles of guideway. The conclusions in the report's comparison section of the SWLRT Project to other national projects omits several mega projects with similar levels of complexity and therefore does not support a conclusion that cost increases during construction have been higher than other projects. Despite the unique and complex nature of the SWLRT, data in the report does show the SWLRT project is more cost-effective per track mile than other projects of varying size.

Resequencing construction schedule mitigated cost and schedule risk.

The Met Council's work to negotiate a re-sequenced schedule with the civil contractor followed industry best practice and effectively streamlined the turnover sequence to the follow-on contractor mitigating further delay to the revenue service date. The Council's claims and schedule consultant, whose expertise is nationally recognized, estimates that the re-sequenced schedule mitigated the overall delay to the Project by at least two years. The Met Council has also held its contractors accountable and utilized appropriate contract provisions to withhold payment to hold the construction contractor accountable to the schedule specifications.

Characterization of change orders after solicitation of bids does not accurately reflect limitations.

The Met Council agrees adding the BNSF Barrier Wall and the Eden Prairie Town Center Station resulted in significant change orders to the project and that efforts should be made to limit such changes after the bidding period concludes.

However, in a December 2022 peer review of the Project, MnDOT concurred with the Met Council's conclusion that neither the Barrier Wall nor Eden Prairie Town Center Station could be included at the time of bid. The Met Council disagrees with the assertion presented in the report that competitive pricing for the Barrier Wall would outweigh the cost of delaying the project until it could be included in the bid. The report states that it is "unknowable whether delaying the bidding in order to include the corridor protection barrier would have been a more cost-effective approach."

The Council and its funding partners weighed several options before determining to add the barrier wall to the existing contract. The Council believed the decision was the right one at the time, and in hindsight still believes it was the right decision for minimizing costs and delay to the project.

The report also inaccurately characterizes the City of Eden Prairie's application for federal grant funding for construction of the station as a funding commitment to the Project. The Council does not recognize a contractual commitment of local funds secured by a grant application, but rather requires the grant be awarded.

Complexities of long-term planning and development of transitway projects impact decisions.

Decisions regarding the planning and development of transitway projects span decades, impacting future costs and risk. The SWLRT project, with all its complexities, is more than 70% complete in implementing the Locally Preferred Alternative approved by municipalities along the route and developed over multiple administrations.

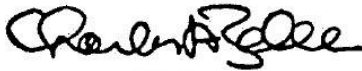
As the project has encountered construction and financial challenges, the Met Council has addressed issues and options with funding partners who have repeatedly rejected an option to shutter or delay the project. Funding partners continue to commit to finding solutions as the project progresses.

Once complete, the SWLRT project will add 14.5 miles to the existing METRO Green Line and connect major activity centers in the region. The Project has already attracted more than \$2 billion in new and planned development along its route.

As the regional planning entity and operator of the transit system, the Met Council, as the report suggests, is a reasonable choice to manage the construction of light rail lines. The Met Council has a proven track record for delivering significant transit infrastructure projects with the METRO Blue Line LRT (Hiawatha Project in partnership with MnDOT), METRO Green Line LRT (Central Corridor Project), Orange Line Bus Rapid Transit (BRT), and A/C/D Arterial BRT lines all built within budget and schedule. While more complex than previous lines, the SWLRT project extension of the METRO Green Line reflects strategic investment in regional infrastructure that will promote economic competitiveness and create prosperity for the region.

Thank you for the opportunity to respond and we appreciate the auditor's recommendation to align funding and construction responsibility to strengthen accountability and minimize risk for future transitway projects. Transitway projects are significant investments that improve our transportation system and advance the region's vision for the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles A. Zelle". The signature is fluid and cursive, with the first name "Charles" being the most prominent.

Charles A. Zelle
Chair