

Metropolitan Council/Hennepin County

Meeting of the SWLRT Executive Change Control Board

February 17, 2023

Members Present: Chair Charlie Zelle Marion Greene  
Deb Barber Jeff Lunde (Alternate)

**1. CALL TO ORDER**

Chair Zelle called the February 17, 2023 meeting of the Executive Change Control Board to order at 1:25 p.m.

**2. MINUTES FROM JANUARY 13, 2023**

Council Member Barber made a motion to approve the draft minutes of January 13, 2023. Commissioner Greene seconded the motion. Following a vote, the minutes were approved.

**3. RESOLUTION 2023-004**

Nic Dial, Director of Construction, explained the resolution, which is to seek use of contingency in an amount of \$1,937,000 for an amendment to the BNSF Freight Rail Construction Agreement. The Project is located on or adjacent to BNSF's right-of-way for approximately 1.4 miles. Due to the approximately 34-month delay to the Project's civil construction contract, BNSF will be required to provide flagging and inspection services for a longer duration. The ECCB approved Resolution 22-ECCB-006 related to this extension. The additional cost also covers work that BNSF is required to perform including grouting and maintenance activities associated with the project along its relocated track.

Commissioner Greene asked if we regularly replenish this amount. Nic Dial responded that the increase is anticipated to cover costs through 2027.

Commissioner Lunde made a motion to approve Resolution 2023-04. Council Member Barber seconded the motion. Following a vote, Resolution 2023-04 was approved.

**4. RESOLUTION 2023-005**

Nic Dial explained the resolution, which is to seek use of \$300,000 of contingency for an amendment to the Canadian Pacific (CP) Connecting Track agreement. As a result of the approximately 34-month delay, CP will be required to provide flagging and inspection services for a longer duration. The additional cost also covers submittal review and construction oversight related to the construction of a maintenance pad and the redesign of the pier protection for CP's MN&S Spur bridge to use drilled shafts instead of piles that CP required due to their concerns with potential impacts to the bridge.

Commissioner Greene asked if this carries us through to 2027. Nic Dial responded yes.

Commissioner Lunde made a motion to approve Resolution 2023-05. Council Member Barber seconded the motion. Following a vote, Resolution 2023-05 was approved.

**5. RESOLUTION 2023-006**

Dan Abelson, Met Council's Associate General Counsel, explained the resolution, which is for a change order to the Aldridge Parsons Joint Venture (APJV) contract to include a re-baselined schedule, which adds approximately 28 months to the Systems construction schedule. The change order will also add an alternative disputes resolution process into the contract. Dan explained that this is similar to the

settlement agreement made with LMJV for the civil construction re-baseline schedule and dispute resolution process. The resolution process will assure that additional costs due to the re-baselined schedule are reasonable and are supported by data. The first step is to approve the change order which includes the re-baselined schedule, adding 28 months to the Systems contract. Next, the Council's consultant experts will thoroughly review APJV's documentation for their claimed cost associated with the extended time and provide the Council with an initial recommended amount. The parties will then meet to resolve any differences. If the parties cannot reach a mutual resolution, the dispute will go to a mediator. If after the mediator's opinion there are still differences, the parties will go to binding arbitration. Once settled, the Council will issue a lump sum change order. Any change orders using contingency over \$350,000 will then be brought back to ECCB for approval. This addresses any changes up to January 1, 2022. This does not address new issues since this time including delays related to the secant wall work. However, the parties could agree to use the resolution process to resolve new issues if in mutually agreement to do so.

At this time, the ECCB is not being asked to approve any use of contingency. Dan Soler reported that for ECCB the next step will be either approval of a full settlement amount or a part one change order depending on the parties' resolution of costs. Part two would then be set once the final settlement is resolved. This change order locks in the new schedule for the Systems contractor.

Joan Hollick, Deputy Project Director, explained that the additional 28 months complements the agreed-to Civil construction re-baselined schedule. Jim said there are some exclusions in this change order, with testing being one of them as there may be some additional testing that may have to be added at a future date but is currently undefined.

Commissioner Greene appreciates this progress.

Commissioner Lunde made a motion to approve Resolution 2023-06. Council Member Barber seconded the motion. Following a vote, Resolution 2023-06 was approved.

## **6. MONTHLY REPORT ON CHANGE ORDERS**

Nic Dial reviewed the report on new change orders under \$350,000. Since the last ECCB meeting, there were three new change orders to the Civil Construction contract and three for the Systems contract. All six change orders on this list had dollar amounts below the ECCB approval level.

Nic highlighted the six new changes.

Commissioner Greene made a motion to receive the monthly report on change orders. Commissioner Lunde seconded the motion. Following a vote, the report was received.

## **7. ADJOURN**

The meeting adjourned at 1:50 pm

Respectfully Submitted,

Dawn Hoffner, Recording Secretary