

Metropolitan Council/Hennepin County

Meeting of the SWLRT Executive Change Control Board

January 28, 2022

Members Present: Chair Zelle Debbie Goettel Chris LaTondresse
 Deb Barber Marion Greene Rafael Ortega (non-voting)

1. CALL TO ORDER

Chair Charlie Zelle called the January 28, 2022 meeting of the Executive Change Control Board to order at 10:00 a.m. via a conference line. After a quorum was reached, the meeting started.

2. MINUTES FROM DECEMBER 10, 2021 MEETING

Commissioner LaTondresse made a motion to approve the draft minutes of December 10, 2021. Council Member Barber seconded the motion. Following a roll call vote, the minutes were approved.

3. RESOLUTION 22-ECCB-01

Nic Dial, Acting Director of Construction, explained the resolution, which is to increase the allowance for unforeseen conditions throughout the project. Some examples for these include moving of noise and vibration monitoring equipment, changes to maintenance of traffic plans to minimize impacts, work associated with trails and pedestrian detour routes, and removing unsuitable soils and debris.

Commissioner Goettel asked as some parts of the project are completed, wouldn't this allowance no longer be needed for that area? Jim Alexander, Project Director, reported that over time as we get more constructed, we will see the number of unforeseen conditions go down, but the project will need the allowance in place for items that come up for the entire length of the civil construction work.

Commissioner Greene asked for clarification on the items that came in higher than expected, and how are these expenses reviewed? Nic responded that the contractor submits a request and staff considers the merit and reviews the contractor's estimate. If merit is confirmed the authorization is approved. If the final costs are greater than initially anticipated staff review documentation from the field to determine if the costs are fair and reasonable.

Commissioner Greene asked for a list of types of expenses to this account, and how do we make sure it isn't a catch all. Nic responded that we generally use the allowance for lower dollar issues in order to avoid schedule impacts. Types of work include addressing unsuitable soil conditions; locating private utilities; and maintenance of traffic and trails. If the issue is of a larger scope or cost, we pursue a change order.

Council Member Barber made a motion to approve Resolution 22-ECCB-01. Commissioner Greene seconded. After a roll call vote, the resolution was approved.

4. RESOLUTION 22-ECCB-02

Nic Dial explained the resolution, which is to increase the freight rail maintenance allowance. Commissioner Goettel asked if this will go away once the civil construction portion of the project is complete and we move towards systems. Jim responded that maintenance work will be a project expense until revenue service.

Commissioner Goettel made a motion to approve Resolution 22-ECCB-02. Council Member Barber seconded. After a roll call vote, the resolution was approved.

5. RESOLUTION 22-ECCB-03

Jim Alexander explained the resolution. This is to negotiate a settlement agreement with LMJV. The agreement stipulates that an assessment of worth will be agreed on by Council and LMJV either through negotiations, or through an evaluative mediation process. If the parties do not agree through mediation, then resolution will be made through binding arbitration. The agreement includes an encumbrance up to \$210M. Following negotiations on the agreement language, staff will present a separate resolution for the board's consideration to approve the agreement.

The agreement contemplates that the Council will make a \$20M payment no later than 30 days of execution of the agreement and then another \$20M no later than 60 days of execution of the agreement. Our consultants have conducted independent reviews and determined that these two \$20M payments are fair and reasonable. The two \$20M payments would be within the \$210M encumbrance. The basis of agreement is the revised schedule extends the work by approximately 34 months and the Council is responsible for 30 months of the delay. Responsibility for the remainder is to be resolved through mediation or arbitration. BNSF Corridor Protection, Kenilworth tunnel, and Eden Prairie Town Center Station are the main areas responsible for impacting the Contractor to complete work in the original time frame.

Chair Zelle mentioned the item for negotiating and executing the settlement agreement was brought before Met Council and discussed and approved.

Commissioner Greene asked for explanation on the language for having the item come back to ECCB for final approval. Jim responded that if approved today, staff would bring the agreement to ECCB for final approval before signing. After signing the agreement, we then have a process for resolving the cost. If the amount is over \$210M, it would be brought back to ECCB for consideration. If the amount is \$210M or less, no further action will be needed by ECCB. Joan Hollick, Deputy Project Director, said the \$210M should be seen as a not to exceed amount of the executed agreement. The settlement agreement lays out the process to reach agreement on cost and includes a revised construction schedule to complete the civil work.

Commissioner Goettel asked when we negotiate this, will all past change orders be included so they can't come back with them? Jim responded the goal is to get all open changes and known issues behind us.

Commissioner Goettel appreciates the very transparent process that has been used and asked that it continue as we move forward. Jim responded once the civil agreement is complete, staff will work with the Systems contractor to lock down their schedule. It is anticipated that there will be costs associated with the revised Systems schedule and staff will seek ECCB approval for use of contingency for those costs at a later date.

Commissioner Goettel stated that the \$210M of contingency is what we have already committed to. Will the payment schedule be changed and how will it move forward? Jim responded that a negotiated payment schedule will be identified in the agreement.

Council Member Barber asked about the resequencing. What are the impacts of time and cost if we do not do resequencing? Jim responded without the revised schedule locked into the contract, the contractor does not have a schedule to work with; therefore, there is no contractual means for a time certain completion of the work. Also, the Systems contractor is relying on the civil work to be completed by a specified time so they can begin their work in the field.

Commissioner LaTondresse stressed Hennepin County's commitment to this project and has shown this through funding. He has concerns about cost and the scheduling impacts and would like more details shared

with ECCB following the settlement agreement. Commissioner LaTondresse also asked for detail on how communication between Met Council and the partner cities was handled with these changes. Jim responded that the Met Council has reached out to the mayors of the cities, along with staff. A Corridor Management Committee meeting is scheduled for February 2 and staff will reconvene the Technical Project Advisory Committee.

Commissioner LaTondresse asked with the revised civil construction schedule, when do we expect all of the civil work to be completed. Jim responded the civil work is scheduled to be completed September 2025. The revised schedule will include 21 milestones, which we will generally be completed from west to east to the Kenilworth tunnel and from Target Field towards the tunnel.

Commissioner LaTondresse asked for clarification on the overall budget. What are the consequences if we do not complete the project? Jim responded it would be dramatic. Not only would we have to pay back FTA, there would be serious implications for future projects that may require FTA funding. Also, we would be subject to restoration costs to put it back to existing conditions. This project will be part of the backbone of the transit system, so we would be affecting the overall transit system for our region.

Commissioner Greene said the \$1B that would be owed back to FTA would be an obligation of the Met Council. This action today includes the funds that Hennepin County approved last August. To date, Hennepin County has committed to almost \$1B to this project. The County continues to work with Met Council and others on how to fill the unaccounted funding gap. This agreement will put the project back on solid ground. When it comes back to ECCB for final approval, she will make sure it is fully vetted.

Council Member Barber made a motion to approve Resolution 22-ECCB-03. Commissioner LaTondresse seconded. After a roll call vote, the resolution was approved.

6. RESOLUTION 22-ECCB-04

Nic Dial explained the resolution, which is for the Systems contract. It is for an adjustment of sizing and quantity of cabling for inside the TH 62 and Kenilworth tunnels.

Commissioner Goettel asked how we got this far before realizing they were undersized? Nic responded that similar design assumptions were used from Central Corridor that did not translate to these tunnels. Commissioner Goettel stated this needs to be added to lessons learned for future projects.

Commissioner Goettel made a motion to approve Resolution 22-ECCB-04. Council Member Barber seconded. After a roll call vote, the resolution was approved.

7. RESOLUTION 22-ECCB-05

Nic Dial explained the resolution, which is for the Systems contract. It is for price and escalation costs for the catenary poles. The Systems contractor was anticipating receiving the orders earlier, but due to initial civil construction delays, the procurement was put on hold until we were ready to accept the materials, which increased the cost.

Commissioner Goettel asked if we didn't cancel the order but put it on hold, didn't we have the price locked in? Jim responded that we did look into receiving the poles and storing them outside, but it is imprudent to lay steel out in winter conditions. Further, due to fluctuations in steel pricing the supplier was not willing to lock in a price if the materials were not going to be received at that time. Commissioner Goettel said this should be another lessons learned to have identified a place to store items in advance. Note that once there was more clarity on the overall civil construction delay, staff executed a change order to store subsequent systems equipment to mitigate impacts due to the volatility in commodity pricing and availability.

Commissioner Goettel asked if any prices were renegotiated for any of the building materials with the escalation costs? Nic stated staff are evaluating securing certain materials such as conduit which has experienced wide volatility in pricing and likely issuing change orders for such materials on an annual basis to mitigate costs.

Commissioner Greene made a motion to approve Resolution 22-ECCB-05. Council Member Barber seconded. After a roll call vote, the resolution was approved.

8. MONTHLY REPORT ON CHANGE ORDERS

Nic Dial reviewed the report on new change orders under \$350,000. Since the last ECCB meeting, there were 10 new change orders to the Civil Construction contract, 14 for the Franklin O&M Facility Modifications contract, and no new change orders for the Systems Construction contract. All 24 had dollar amounts below the ECCB approval level. Nic highlighted some of the change orders on the list.

Council Member Barber made a motion to receive the monthly report on change orders. Commissioner Goettel seconded the motion. Following a roll call vote, the report was received.

9. ADJOURN

The meeting adjourned at 11:10 a.m.

Respectfully Submitted

Dawn Hoffner, Recording Secretary