



## Motion No. M2023-42

### Contract Contingency Increase for Structure C as part of a Global Resolution with Kiewit Corporation for the F200 Federal Way Link Extension Project

Meeting:	Date:	Type of action:	Staff contact:
Board	05/25/2023	Final action	Brooke Belman, Chief Expansion Delivery Officer Ron Lewis, DECM Executive Director Linneth Riley-Hall, Executive Project Director <b>Sepehr Sobhani, Deputy Executive Project Director</b>

#### Proposed action

Authorizes the chief executive officer to increase the contract contingency for the Federal Way Link Extension F200 Design-Build contract with Kiewit Infrastructure West Co. for Structure C as part of a global resolution change order in the amount of \$110,000,000 for a new total authorized contract amount not to exceed \$1,643,497,519.

#### Key features summary

- Structure C is located in the City of Kent between the future Kent Des Moines and Star Lake stations. It is positioned west (downslope) of Southbound travel lanes of I-5 and east (upslope) of the McSorley Wetland. Structure C is the highest known risk on the FWLE project.
- A long-span structure is being constructed to address a differing site condition and demonstrated slope instability in the vicinity of Structure C.
- This action would provide sufficient contract budget by increasing the contract contingency to fund construction of Structure C as part of a global resolution change order that resolves the following contract issues:
  - All cost impacts from the differing site condition at Structure C.
  - All contract issues through March 28, 2023, with the exception of six issues that are still under evaluation. In addition, all construction time impacts related to any and all contract issues prior to March 28, 2023, including the delays arising from the differing site condition at Structure C.
  - The contract milestones will be revised to reflect the new construction schedule. The Substantial Completion milestone for all work on the contract will be November 20, 2025.
- It is anticipated that the added contract contingency is adequate to manage the remainder of the construction work on the contract including the long-span bridge design and construction at Structure C.

## Background

The Federal Way Link Extension adds approximately 7.8 miles of light rail from the Angle Lake light rail station at South 200th Street in the City of SeaTac to the City Center area in Federal Way. The extension generally parallels State Route 99 and Interstate 5, with stations in Kent/Des Moines, Star Lake in Kent, and Federal Way Downtown. New parking structures will be constructed at each of the three stations.

The Federal Way Link Final Environmental Impact Statement was issued on November 18, 2016, pursuant to the State Environmental Policy Act (SEPA) and National Environmental Policy Act (NEPA) and completing the SEPA process. On January 26, 2017, the Sound Transit (ST) Board defined and selected the Federal Way Link Extension alignment, profile, stations, and associated infrastructure to be built between Angle Lake Station at S. 200th Street and the Federal Way Transit Center in Resolution No. R2017-02. The Federal Transit Administration issued a Record of Decision on March 6, 2017, and the Federal Highway Administration issued a Record of Decision on March 9, 2017. Sound Transit and FTA evaluated potential FWLE design refinements in May 2021, including options to address differing site conditions at Structure C. Sound Transit and FTA determined the proposed design refinements would not create new probable significant adverse environmental impacts.

On September 27, 2018, the Sound Transit Board approved the Project Baseline Scope, Schedule, and Budget in Resolution No. R2018-30.

The FWLE F200 Design-Build contract with Kiewit was executed on May 30, 2019.

In November 2020, Kiewit submitted notice of a potential differing site condition (DSC) at the FWLE Structure C bridge area. Following extensive investigation and evaluation by Sound Transit staff and subject matter experts, it was determined that during the design seismic event, soil in the area would have the potential to liquefy causing the adjacent slope to fail and slide into the FWLE guideway. The analysis showed that the simple span bridge structure that was included in the original design would not meet the requirements of the Design Criteria Manual (DCM). Additionally, after consultation with Sound Transit Legal, the Construction Management Division, PSO Engineering and other subject matter experts, it was determined that the DSC claim had merit and that the Design Builder (DB) was entitled to an equitable adjustment in accordance with the contract.

To mitigate the impacts and continue to progress the work, the DB prepared an options analysis with multiple structure designs and construction methods to address the DSC. At the end of the analysis, the contractor selected a rigid-pier bridge option with no objection from Sound Transit. The guideway in the rigid-pier bridge solution would be designed to slide along bearings and remain operable during the design seismic event including the potential upslope landslide event, thus complying with the requirements of the DCM. As the rigid-pier bridge design was being finalized, construction of a temporary access road commenced. During the access road installation, the site experienced localized slope failures which necessitated design and installation of timber piles to stabilize the slope. During the installation of this ground improvement measure, an approximately 200-foot-long landslide (north-to south) occurred, stopping all work at the site with the exception of emergency slide repairs to stabilize the slope supporting I-5. Permanent repairs included the placement of quarry spalls along the slope with a buttress at the base of the hillside in accordance with WSDOT standards.

Consequently, the DB prepared a second option analysis, resulting in their selection of a long-span bridge design to span over the poor soil. Sound Transit did not object to this selection. The DB completed its design and, earlier this year, began construction of the 500-foot-long span bridge solution that spans over the poorest soil areas.

While the parties collaborated to expedite and implement a technical solution and advance this critical path work without further delay, negotiations for the cost and time impacts associated with all aspects of

the differing site condition were conducted on a parallel path. After extensive reconciliation efforts, evolving site conditions, and significant changes to the technical solution, the parties reached an impasse on a bi-lateral agreement for all Structure C cost and time impacts. Although a bilateral agreement could not be reached, Sound Transit had already determined merit for the DSC. This entitled the DB to an equitable adjustment and prompt payment for eligible costs related to work performed. To uphold this responsibility, Sound Transit initiated a unilateral change order for impacts associated with Structure C.

Prior to executing the unilateral change order, the parties re-engaged in discussions to develop a fair and reasonable resolution. To bridge the gap between the parties' relative positions on additional costs and time, and to significantly reduce Sound Transit's risk profile of the project, the concept of a global resolution of commercial issues was proposed. Global resolution negotiations began in March 2023 and mutual agreement was reached in April 2023.

The global resolution includes the following key elements:

- Resolves all known or potential change issues arising or existing prior to March 28, 2023, with the exception of six issues that are still under evaluation. The agreed resolution amount is \$109,750,000.
- Establishes a new contract milestone structure that aligns with the mitigated critical path schedule, accounting for impacts associated with Structure C delays. The substantial completion milestone for all work on the F200 contract will be November 20, 2025.
- Preserves the right for Sound Transit to recover 50 percent of any direct costs (material, labor, design, etc.) Kiewit obtains from their Builder's Risk Insurance policy and preserves Sound Transit's right to recover other costs for damages covered by Kiewit's Builder's Risk Insurance policy, under which Sound Transit is an additional insured.
- It is specifically agreed that the global resolution change order is subject to the approval of the Sound Transit Board of Directors.

The terms of this global resolution were coordinated among Sound Transit executive leadership, Operations, and Legal Counsel. While there is sufficient project budget available, approval from the Board of Directors is required because the resolution amount exceeds the current authorized contingency for the F200 contract.

Resolving Structure C impacts and all previous disputed items creates the highest level of cost and schedule certainty and risk mitigation, with a clear path forward for the project team. The cost and schedule milestones included in the global resolution are aligned with the independent cost estimates and a time impact analysis.

**Project status**

○					
<b>Project Identification</b>	<b>Alternatives Identification</b>	<b>Conceptual Engineering/ Draft EIS</b>	<b>Preliminary Engineering/ Final EIS</b>	<b>Final Design</b>	<b>Construction</b>

**Projected completion date:** The revised construction completion date in the global resolution change order will extend the current December 31, 2024, Revenue Service Date (RSD) approved by the Sound Transit Board of Directors. Construction completion does not include pre-revenue service durations or project float to manage potential issues for the remainder of the work. Approval for a revised RSD will

be requested from the Sound Transit Board in the months following the programmatic Quantitative Risk Assessment which is currently scheduled for later this year.

### Procurement information

A Request for Qualifications (RFQ) was issued on April 12, 2018. On June 7, 2018, three Statements of Qualifications (SOQ) were received. On June 27, 2018, the evaluation panel determined that the three firms that submitted SOQs were qualified and within the competitive range. On August 17, 2018, Sound Transit issued a draft Request for Proposal (RFP) to the three shortlisted proposers for their review. The final RFP was issued on September 14, 2018.

On March 20, 2019, Sound Transit received proposals from each of the three offerors. An evaluation panel was convened to review technical proposals. Scored criteria included outreach efforts and commitments to small businesses, technical approach to design and construction, organization and management, and schedule and risk. Additional pass/fail criteria included financial capacity and capability to perform the work. The evaluation of these technical criteria was performed independent of any consideration of price, as the price proposals were not opened until technical evaluations were complete and technical scores were established for each offeror. Proposal prices were scored in accordance with the price scoring equation included in the RFP. Based on the technical evaluation and the price score equation, Kiewit Infrastructure West Co. was determined to be the highest-ranked responsive and responsible proposer.

### Fiscal information

This action is within the baseline budget and sufficient monies remain after approval of this action to fund the remaining work in the construction phase. This action does not impact the affordability of any other system expansion project.

The baseline budget for the Federal Way Link Extension project is \$2,451,535,000. Within the construction services phase, \$1,606,513 has been allocated to the budget line item for F200 Design

**Federal Way Link Extension**  
(in thousands)

Project Phase	Baseline Budget	Board Approvals	This Action	Board Approved Plus Action	Uncommitted / (Shortfall)
Agency Administration	\$96,520	\$48,067		\$48,067	\$48,453
Preliminary Engineering	46,131	46,117		46,117	14
Final Design	6,137	4,190		4,190	1,947
Third Party	37,741	26,022		26,022	11,719
Right of Way	338,783	229,210		229,210	109,573
Construction	1,769,991	1,520,505	110,000	1,630,505	139,485
Construction Services	156,232	139,627		139,627	16,605
Vehicles					
<b>Total Current Budget</b>	<b>\$2,451,535</b>	<b>\$2,013,739</b>	<b>\$110,000</b>	<b>\$2,123,739</b>	<b>\$327,796</b>
<b>Phase Detail - Construction</b>					
F200 DB Angle Lake - FWTC	\$1,606,513	\$1,475,831	\$110,000	\$1,585,831	\$20,682
Other Construction	163,478	44,675		44,675	118,803
<b>Total Phase</b>	<b>\$1,769,991</b>	<b>\$1,520,505</b>	<b>\$110,000</b>	<b>\$1,630,505</b>	<b>\$139,485</b>

Contract Detail	Board Approvals to Date	Current Approved Contract Status	Proposed Action	Proposed Total for Board Approval
<b>Kiewit Infrastructure West Company</b>				
Contract Amount	\$1,246,505	\$1,402,148		\$1,246,505
Contingency - Design/Construction	128,520	63,402	110,000	238,520
Contingency - ATC/Notice to Designers	100,000	9,475		100,000
<b>Sound Transit Share</b>	<b>\$1,475,025</b>	<b>\$1,475,025</b>	<b>\$110,000</b>	<b>\$1,585,025</b>
Percent Contingency	17%	17%	100%	27%
Plus Betterments and Cost Contributions	58,473	58,473		58,473
<b>Total Contract</b>	<b>1,533,498</b>	<b>1,533,498</b>		<b>1,643,498</b>

**Notes:**  
 Amounts are expressed in Year of Expenditure \$000s.  
 Board Approvals = Committed and PO Contingency Remaining as of 5/5/2023.  
 For detailed project information, see page 115 in the 2023 Finance Plan and Adopted Budget Book.

Build Angle Lake to Federal Way Transit Center. This action would commit an additional \$110,000,000 to this line item and leave a remaining budget balance of \$20,682,196.

**Disadvantaged and small business participation**

**Participation by small businesses and disadvantaged business enterprises (DBEs)**

Sound Transit promotes and encourages small business participation, which also includes disadvantaged business enterprises (DBEs). Consistent with Sound Transit Policies and federal regulations, Sound Transit has established small business/DBE goals for this contract. These goals are based upon an examination of subcontracting opportunities contained in the work of this contract and the number of small businesses/DBEs available to perform such subcontracting work.

For this specific contract, the following goals were set and the successful Bidder/Proposer has committed to the following small business/DBE participation:

<b>Small business and disadvantaged business enterprise (DBE) goals</b>			
Contract DBE Goal	5%	Contract Small Business Goal	15%
Kiewit DBE Commitment	5%	Kiewit Small Business Commitment	15%
<b>Current DBE Attainment:</b>	<b>7.05%</b>	<b>Current Small Business Attainment:</b>	<b>12.03%</b>

**Public involvement**

Throughout the development and construction of the Federal Way Link Extension, Sound Transit conducted an extensive public involvement program including mailings, community open houses, and presentations and meetings with individuals and neighborhood groups.

**Time constraints**

The global settlement cannot be executed without Board approval of the contingency increase requested in this motion. Negotiations with Kiewit were completed just prior to the May 18, 2023 System Expansion Committee Meeting. The System Expansion Committee Chair provided staff the opportunity to present a project update with an emphasis on structure C risks, mitigation and a summary of forthcoming Board actions. Board action in May will facilitate timely change order execution consistent with the overall project schedule.

**Prior Board/Committee actions**

Motion No. M2021-24: Authorized the chief executive officer to increase the contract contingency for contributions and betterment work for the Federal Way Link Extension design-build contract with Kiewit Infrastructure West Company in the amount of \$19,777,519, for a new total authorized contract amount not to exceed \$1,533,497,519.

Motion No. M2020-54: Authorized the chief executive officer to increase the contract contingency for the Federal Way Link Extension design-build contract with Kiewit Infrastructure West Company in order to incorporate Alternative Technical Concepts and Notices to Designers through cost-effective measures that reduce construction risk, enhance operational safety, and/or improve passenger experience in the amount of \$100,000,000 for a new total authorized contract amount not to exceed \$1,513,720,000.

Motion No. M2019-49: Authorized the chief executive officer to execute a design-build contract with Kiewit Infrastructure West Co. To complete final design and construction of the Federal Way Link Extension in the amount of \$1,285,200,000 with a 10 percent contingency of \$128,520,000 for a total authorized contract amount not to exceed \$1,413,720,000.

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**Environmental review** – KH 5/12/23

**Legal review** – JEN 05/15/23



## Motion No. M2023-42

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to increase the contract contingency for the Federal Way Link Extension F200 Design-Build contract with Kiewit Infrastructure West Co. for Structure C as part of a global resolution change order in the amount of \$110,000,000 for a new total authorized contract amount not to exceed \$1,643,497,519.

### Background

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The global resolution includes the following key elements:

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- It is specifically agreed that the global resolution change order is subject to the approval of the Sound Transit Board of Directors.

The terms of this global resolution were coordinated among Sound Transit executive leadership, Operations, and Legal Counsel. While there is sufficient project budget available, approval from the Board of Directors is required because the resolution amount exceeds the current authorized contingency for the F200 contract.

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A long-span structure is being constructed to address a differing site condition and demonstrated slope instability in the vicinity of Structure C.

This action would provide sufficient contract budget by increasing the contract contingency to fund construction of Structure C as part of a global resolution change order that resolves the following contract issues:

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It is anticipated that the added contract contingency is adequate to manage the remainder of the construction work on the contract including the long-span bridge design and construction at Structure C.

### **Motion**

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the chief executive officer is authorized to increase the contract contingency for the Federal Way Link Extension F200 Design-Build contract with Kiewit Infrastructure West Co. for Structure C as part of a global resolution change order in the amount of \$110,000,000 for a new total authorized contract amount not to exceed \$1,643,497,519.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on May 25, 2023.



Dow Constantine  
Board Chair

**Attest:**



Kathryn Flores  
Board Administrator