

## Motion No. M2023-56

### Contract Contingency Increase for Global Construction Claim Resolution with Max J. Kuney for Contract E340 as part of the East Link Extension

Meeting:	Date:	Type of action:	Staff contact:
Systems Expansion Committee Board	07/13/2023 07/27/2023	Recommend to Board Final action	Brooke Belman, Deputy CEO, Chief Expansion Delivery Officer Ron Lewis, DECM Executive Director <b>Jon Lebo, Executive Project Director</b>

### Proposed action

Authorizes the chief executive officer to increase the contract contingency for the construction contract with Max J. Kuney Company, for a global construction claim resolution for the Bel-Red Segment of the East Link Extension, in the amount of \$5,516,242 for a new total authorized contract amount of \$113,003,253, all within the Board approved project budget.

### Key features summary

- This action provides additional contract contingency required to execute a construction claim settlement on the East Link – E340 Bel-Red Segment with Max J. Kuney Company (MJK) in the amount of \$12,000,000.
- This settlement resolves all existing disputes, claims, and issues involving Sound Transit and MJK and its subcontractors arising from the E340 segment. The contract claims asserted included demands for costs related to owner caused delays, COVID-19 impacts, design deficiencies, and owner directed changes.
- Approval of this action will allow Sound Transit to effectively close out this contract. Sound Transit reserves its rights for claims for warranty work, latent defects, and third-party claims.
- This settlement encompasses all claims for Liquidated Damages accrued under the E340 contract.
- This action does not increase the Board adopted baseline budget for the project.

### Background

In December 2016, Sound Transit (ST) entered into a construction contract with MJK for work on the E340 segment of the East Link Extension project from Spring District in Bellevue to NE 20th Street (Bel-Red). Work includes construction of approximately one mile of dual track that includes one quarter mile of elevated guideway, roadway construction, installation of utilities and the Bel-Red Station.

During the project, MJK submitted Requests for Change (RFCs), Notices of Delay, and Claims. Following evaluation and analysis by ST staff and outside experts of the issues raised in these claims and the potential exposure presented, the Parties agreed to pursue a negotiated settlement. To help facilitate a settlement, a mediation was held on June 6, 2023; no settlement was reached at that time.

The parties continued negotiations thereafter with the continued assistance of the mediator. On July 7, 2023, ST and MJK agreed to settle and resolve all claims, disputes and issues, past and future, The sum of \$100,000 will be withheld pending completion of a few remaining warranty work items.

### Project status

<b>Project Identification</b>	<b>Project Refinements</b>	<b>Conceptual Engineering/ Environmental Review</b>	<b>Preliminary Engineering</b>	<b>Final Design</b>	<b>Construction</b>

Projected completion date for Revenue Service: 2Q 2023 (Baseline) – under review

Project scope, schedule and budget summary are located on page 29-48 of the May 2023 Agency Progress Report.

### 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 affect the affordability of any other system expansion project.

The baseline budget for the East Link project is \$3,677,150,000. Within the construction phase, \$112,500,000 has been allocated to the budget line item for the E340 Bel-Red Segment construction. The action would commit an additional \$5,516,242 to this line item and leave a remaining budget balance of \$567,072.

#### East Link Extension

(in thousands)	Total Baseline Budget	Board Approvals*	This Action	Board Approved Plus Action	Uncommitted / (Shortfall)
Operations and Maintenance	\$7,106	\$7,106	\$	\$7,106	\$
Administration	183,174	130,871		130,871	52,302
Preliminary Engineering	50,874	54,776		54,776	(3,902)
Final Design	268,888	257,450		257,450	11,438
Third Parties	49,473	42,253		42,253	7,220
Right of Way	288,516	280,353		280,353	8,163
Construction	2,518,224	2,411,701	5,516	2,417,217	101,007
Construction Services	277,177	268,508		268,508	8,669
System Testing-Start Up	33,718	24,771		24,771	8,947
<b>Total Current Budget</b>	<b>\$3,677,150</b>	<b>\$3,477,789</b>	<b>\$5,516</b>	<b>\$3,483,305</b>	<b>\$193,845</b>

Phase Detail - Construction					
E340 Bel-Red	\$112,500	\$106,417	\$5,516	\$111,933	\$567
Other Construction	2,405,724	2,305,284		\$2,305,284	\$100,440
<b>Total Phase</b>	<b>\$2,518,224</b>	<b>\$2,411,701</b>	<b>\$5,516</b>	<b>\$2,417,217</b>	<b>\$101,007</b>

	Board Approvals to Date	Proposed Action	Proposed Total for Board Approval	Current Approved Contract Status
<b>Max J Kuney Company</b>				
Contract Amount	\$101,003	\$	\$101,003	\$101,003
Contingency	6,484	5,516	12,000	6,484
<b>Total Contract Amount</b>	<b>\$107,487</b>	<b>\$5,516</b>	<b>\$113,003</b>	<b>\$107,487</b>
Percent Contingency	6%	100%	12%	6%

**Notes:**

Amounts are expressed in Year of Expenditure \$000s.  
 For detailed project information, see page 78 of the 2023 Financial Plan & Adopted Budget.  
 \* Board Approvals = Commitment and PO Contingency Remaining as of 7/10/2023.

## 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>CN 0168-15: E340- Bel-Red Station and Light Rail Guideway Small Business and DBE Goals</b>	
Sound Transit DBE goal: 5%	Sound Transit Small business goal: 10%
DBE commitment: 5.14%	Small Business commitment: 10.96%
<b>Current DBE Attainment: 11.66%</b>	<b>Current Small Business Attainment: 22.35%</b>

### Public involvement

Not applicable to this action.

### Time constraints

Approval of this action in July 2023 will allow prompt payment of this claim in accordance with the settlement agreement.

### Prior Board/Committee actions

Motion No. M2021-06: Authorized the chief executive officer to increase the contingency for contract with Max J. Kuney Company, for construction of the Bel-Red Segment (E340) within the East Link Extension in the amount of \$5,000,000, for a new total authorized contract amount not to exceed \$107,487,012, all within the Board approved project budget.

Motion No. M2017-07: Authorized the chief executive officer to execute a contract with Max J. Kuney Company to construct the Bel-Red contract within the East Link Extension in the amount of \$93,170,012, with a 10% contingency of \$9,317,000, for a total authorized contract amount not to exceed \$102,487,012.

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**Environmental review** – KH 6/28/23

**Legal review** – JEN 07/10/23



## **Motion No. M2023-56**

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 construction contract with Max J. Kuney Company, for a global construction claim resolution for the Bel-Red Segment of the East Link Extension, in the amount of \$5,516,242 for a new total authorized contract amount of \$113,003,253, all within the Board approved project budget.

### **Background**

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This action provides additional contract contingency required to execute a construction claim settlement on the East Link – E340 Bel-Red Segment with Max J. Kuney Company (MJK) in the amount of \$12,000,000.

This settlement resolves all existing disputes, claims, and issues involving Sound Transit and MJK and its subcontractors arising from the E340 segment. The contract claims asserted included demands for costs related to owner caused delays, COVID-19 impacts, design deficiencies, and owner directed changes.

Approval of this action will allow Sound Transit to effectively close out this contract. Sound Transit reserves its rights for claims for warranty work, latent defects, and third-party claims.

This settlement encompasses all claims for Liquidated Damages accrued under the E340 contract.

This action does not increase the Board adopted baseline budget for the project.

**Motion**

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that (1) the chief executive officer is authorized to increase the contract contingency for the construction contract with Max J. Kuney Company, for a global construction claim resolution for the Bel-Red Segment of the East Link Extension, in the amount of \$5,516,242 for a new total authorized contract amount of \$113,003,253, all within the Board approved project budget.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on July 27, 2023.



Dow Constantine  
Board Chair

**Attest:**



Adam Montee, on behalf of  
Kathryn Flores  
Board Administrator