

# **EXHIBIT A**

## **EXECUTIVE CHANGE CONTROL BOARD (ECCB) OPERATING PROCEDURES (REVISED)**

### **1.0 Name**

The name of this board shall be the Executive Change Control Board (“ECCB”).

### **2.0 Purpose**

The purpose of the ECCB is to ensure orderly and appropriate coordination of significant changes to the project baseline cost, including the use of Project Cost Contingency, relating to the Southwest Light Rail Transit Project and the Bottineau Light Rail Transit Project (collectively, the “Projects”). Specifically, the purpose of the ECCB is to:

- A. Approve all change orders, project requirements, contracts, and all other contract cost increases of \$350,000 or more, as well as changes to Project schedule that will delay the revenue service date.
- B. Review at least monthly all change orders, project requirements, contracts, and all other contract cost increases less than \$350,000.
- C. At least quarterly, to review a report on the progress of construction and the financial status of the project.

The total of all change orders, project requirements, contracts, and contract cost increases under clauses (A) and (B) above shall not exceed 50% of the Project contingency funds (whether or not subject to ECCB approval), without approval from the Hennepin County Board of Commissioners.

### **3.0 Guiding Principles**

- A. The ECCB will act in a timely manner to avoid delays in Project delivery.
- B. When considering approval of the use of contingency funds, the ECCB may consider such factors as the ECCB deems relevant, including but not limited to: known and potential project costs or schedule risks, safety, operational reliability, current circumstances, the potential need for contingency funds to complete the project, the amount of remaining contingency and known or potential competing demands for the funds. Project staff shall provide a report on these factors to the ECCB whenever a Project requests approval to use contingency funds.
- C. Use of any contingency will be authorized only if necessary to complete the project. Hennepin County and HCRRA will retain their respective shares of

contingency funding during construction with disbursements as set forth in the Grant Agreement and will continue to hold their respective shares until such time as Project close-out is completed, or as required by the FTA.

## 4.0 Effect of Operating Procedures

These Operating Procedures (“Procedures”) are intended to give effect to the Procedures for SWLRT Project Contingency Management, adopted on August 15, 2014 by the Counties Transit Improvement Board (CTIB) in Resolution #49-CTIB-2014, and on August 6, 2014 by the Hennepin County Regional Railroad Authority (HCRRA) in Resolution No. 14-HCRRA-0050, and to the Procedures for Bottineau LRT Project Contingency Management, adopted by CTIB in Resolution #39-CTIB-2016 on August 17, 2016 and by HCRRA in Resolution #16-HCRRA-0026. Hennepin County approved the assumption of CTIB Resolutions #49-CTIB-2014 and #39-CTIB-2016 on June 13, 2017 through Resolution #17-0207.

## 5.0 Structure of ECCB

### 5.1.1 Representatives

Representation on the ECCB shall include the following voting representatives:

#### VOTING REPRESENTATIVES

Two Hennepin County Commissioners
One Hennepin County Regional Railroad Authority (HCRRA) Commissioner
Two Metropolitan Council Members including the Chair of the Metropolitan Council and One Metropolitan Council (Council) Member designated by the Chair

#### NON-VOTING REPRESENTATIVES

SWLRT Project: One Ramsey County Commissioner
---

Hennepin County, HCRRA, the Metropolitan Council, and Ramsey County shall appoint representatives, as specified above, and one or more alternates to serve in the event the representative is absent or unable to fulfill his or her duties. The Hennepin County, HCRRA, and Ramsey County alternates shall be county commissioners. The Council alternates shall be council members.

### 5.1.2 Quorum

A minimum of two of the three Hennepin County or HCRRA representatives and one of the two Metropolitan Council representatives (or alternate serving on behalf of the representative) shall constitute a quorum, except as stated in 6.1.2 Emergencies.

### 5.1.3 Voting

The ECCB shall function by majority vote of the quorum present at the meeting. Each voting representative shall be entitled to one vote. If a voting representative

is absent, the appointed alternate may exercise the voting rights for the absent voting representative.

#### **5.1.4 Officers**

The Chair of the Metropolitan Council shall be the Chair of the ECCB. The ECCB may elect a Vice-Chair from the membership of the ECCB.

These officers shall perform the duties prescribed below and by the Parliamentary Authority pursuant to Section 7. Such duties shall include:

- The Chair shall provide, or cause to be provided, notice of meetings or cancellations, set the agenda, and preside at all meetings.
- The Vice-Chair shall perform the duties of the Chair in the absence of the Chair.

#### **5.1.5 Project Change Control Group**

The ECCB will be advised by the Project Change Control Group established by the Project office, which will include staff from Hennepin County. The Project Change Control Group will recommend change orders in at least two categories: requested modifications, and unforeseen conditions.

## **6.0 Meetings and Notice**

### **6.1.1 Regular Meetings**

The ECCB shall establish a calendar of regular meeting dates and location, which may from time to time be changed at the discretion of the ECCB.

The Chair may, at his or her discretion, cancel a regular meeting upon furnishing reasonable notice to each representative and upon posting of the cancellation notice consistent with Minnesota Statutes § 13D.04.

### **6.1.2 Emergency Change Orders or Other Emergency Uses of Contingency Funds**

**6.1.2.1 Emergency Meetings.** The Chair may, at his or her discretion, call an emergency meeting where: (1) in the Chair's judgment, circumstances require immediate consideration by the ECCB of a matter subject to the ECCB's jurisdiction; (2) Council staff have identified a change order or any other requested use of contingency funds where the total amount exceeds \$350,000; and (3) the Chair believes that (a) the health and safety of the public, contractors, and/or employees is compromised or likely to be compromised without immediate remedial action or the structural integrity of facilities or infrastructure is threatened and requires immediate action to correct, (b) the change may impact the contractor's critical path schedule and the change must proceed immediately to avoid a substantial likelihood that a contractor may have a meritorious and substantial delay claim, or (c) immediate action is critical in order to avoid a significant cost increase to the Project.

Notice shall be provided as required in the Minnesota Open Meeting Law, Minn. Stat. § 13D.04, subd. 3. A quorum for an emergency meeting is a minimum of two voting representatives of ECCB, including at least one Hennepin County or HCRRA representative.

Process for emergency meetings:

1. A likely emergency situation is encountered and the Chair determines that there should be an emergency meeting based on the criteria in the first paragraph of this subsection 6.1.2.1.
2. The Project Director of the affected Project shall immediately cause notice of the meeting to be provided as required in Minn. Stat. §13D.04, subd. 3.
3. The ECCB meeting shall be held as soon as reasonably possible based on the facts and circumstances, but not later than three days after notification is sent to the ECCB voting representatives.

**6.1.2.2 Emergency Authorization Without ECCB Action Where a Quorum Cannot Be Timely Assembled.** In the event that a quorum cannot be timely assembled for emergency action under subsection 6.1.2.1, change orders or contracts will be subject to approval using a Two Part Change Order system according to the requirements of this subsection 6.1.2.2. The Two Part Change Order system is defined as follows, and will also apply to the use of contingency for contracts in an emergency situation:

A Two-Part Change Order is a change order that is issued where the exact scope of the extra work is unpredictable or the cost is indeterminate in nature at the time when the Contractor is directed to proceed with the work. Any changes to Contract Price and/or Contract Time are made and agreed to upon completion of changed work or before completion of the changed work, if possible. Part 1 of the change order authorizes the change in scope up to a not-to-exceed price. Part 2 of the change order authorizes the change in contract price and/or contract time based on either a negotiated price or time and materials expended to complete the work scope.

The ECCB shall designate one of its Hennepin County or HCRRA representatives to have approval authority for a Part 1 change order or contract request in the following situation: (a) a quorum for an emergency meeting cannot be timely assembled; and (b) in the judgment of the Project Director a decision must be made before a quorum can be assembled to avoid or remediate (i) an imminent threat to the health and safety of the public, contractors, and/or employees or to the structural integrity of facilities or infrastructure, (ii) a substantial likelihood that a contractor may have a meritorious and substantial delay claim, or (iii) or immediate action is critical in order to avoid a significant cost increase to the Project.

If the above criteria in this subsection 6.1.2.2 are met, a Part 1 change order or contract request may proceed if the ECCB representative with designated approval authority provides authorization that the Project Director may execute a Part 1

change order. Such authorization is effective if provided by telephone or email so long as a written signature is obtained within 72 hours of receipt of the emailed or telephonic authorization. The Project Director shall immediately provide all ECCB representatives and designated staff notice of such authorization. The ECCB shall also designate, in ranked order, additional Hennepin County or HCRRA representatives to have such approval authority in the event that the designated ECCB representative cannot be timely reached. After any authorization of a Part 1 change order or contract request under this paragraph, the Part 1 change order or contract request shall otherwise proceed by following appropriate procedures established by the Council. At its next meeting, the ECCB shall ratify the actions taken. ECCB approval through its regular process is still required before any Part 2 (final) change order or contract request is approved.

### **6.1.3 Special Meetings**

Special meetings may be called at any time by the Chair, upon notice consistent with Minn. Stat. §13D.04, subd. 2, to consider a use of contingency prior to the next regular meeting.

### **6.1.4 Minutes and Records**

Minutes shall be taken at each regular, special or emergency meeting. The minutes shall document all ECCB actions and shall be approved by the ECCB. The Council shall be responsible for maintaining a complete and accurate set of all minutes and records.

### **6.1.5 Books and Records**

All books shall be retained by the Council and be available for review during normal business hours.

### **6.1.6 Open Meeting Law**

ECCB meetings shall be noticed and conducted consistent with the requirements of the Minnesota Open Meeting Law, Minn. Stat. § 13D.04.

## **7.0 Parliamentary Authority**

The Rules of Parliamentary Procedure and Practice contained in the most recent edition of Robert's Rules of Order Revised shall govern the ECCB in all cases to which they are applicable and in which they are not inconsistent with these Procedures or any special rules of order the ECCB may adopt and any statutes applicable to the ECCB or its representatives. The Chair shall rule on any disputed parliamentary matter, which ruling shall stand unless appealed by a representative of the ECCB present and overruled by a majority vote of those ECCB representatives present.

## **8.0 Termination and Expiration**

These Procedures govern the use of contingency funds through the close out of the Projects. Upon completion of the close-out process, the Procedures shall automatically expire with respect to each Project.