

RESOLUTION NO. R2011-03
Amending the Adopted 2010 Budget

MEETING:	DATE:	TYPE OF ACTION:	STAFF CONTACT:
Operations and Administration Committee	5/19/11	Recommendation to the Board	Brian McCartan, Executive Director Finance and Information Technology Desmond Brown, General Counsel
Board	6/23/11	Cancelled	
Board	07/28/11	Final Action	

PROPOSED ACTION

Amends the Adopted 2010 Budget for non-operating expenses from \$24,494,772 to \$38,494,772 to include the cost of the Rainier Valley light rail construction litigation and the cost to investigate and remediate areas where the contractor over excavated soil in constructing the Beacon Hill Tunnel.

KEY FEATURES

- This amendment adds \$14 million to the Adopted 2010 Budget for non-operating project expenses to reflect the legal fees incurred to support the construction of the Link Initial Segment project from downtown Seattle to Sea-Tac Airport, including litigation defense costs related to contractor claims, and costs associated with work to investigate, repair and mitigate over excavated areas within Beacon Hill.
- The 2010 legal defense costs were higher than originally budgeted in non-operating project expenses because Sound Transit and the contractor agreed to accelerate the schedule to resolve large and complex claims related to the Rainier Valley light rail segment.
- Costs related to the design and construction work to remediate the areas where excess excavation occurred were initially charged to the capital budget for the Link Initial Segment. Upon further review, Sound Transit has determined that Generally Accepted Accounting Principles require that these costs be expensed rather than charged to the project's capital budget.

FISCAL INFORMATION

This action will increase the 2010 annual expense budget for non-operating costs in the North King County subarea by \$14 million. This budget request is sufficient to cover all related costs identified to date, along with a small contingency to be used only if additional costs are identified before completion of the year-end closing process.

There is sufficient financial capacity within the North King County subarea to absorb these additional expenses without endangering the completion of any Board approved projects or any elements of the Agency's current long-term financial plan.

Non-Operating Expenses Adopted 2010 Budget Summary

	2010 Adopted Budget	This Action	2010 Revised Budget
Non-Operating Property Expense	\$ 699,200		\$ 699,200
Non-Operating Project Expense	\$ 5,873,460	\$ 14,000,000	\$ 19,873,460
Subtotal	\$ 6,572,660	\$ 14,000,000	\$ 20,572,660
Donations and Other non-cash Expenses	\$ 17,922,112	-	\$ 17,922,112
Total Non-Operating Costs	\$ 24,494,772	\$ 14,000,000	\$ 38,494,772

BACKGROUND

An amendment to the Adopted 2010 Annual Budget in the amount of \$14 million is needed to cover additional non-operating project expenses. The budget items are:

- (1) In 2010, the Agency budgeted \$3,490,667 for non-operating project expenses in anticipation of legal support for Link Initial Segment construction claims. The majority of the budget was allocated to the defense of the \$130 million construction claim by RCI/Herzog Joint-Venture for building the Rainier Valley light rail segment and for the \$92 million construction claim by Obayashi Construction Company for building the Beacon Hill Tunnel. The actual 2010 legal costs substantially exceeded the budgeted amount by \$7million. The majority of the additional costs were incurred to defend against the \$130 million RCI/Herzog claim. Substantial litigation support costs were also incurred to pay for multiple construction experts, geotechnical experts, surveyors, accounting experts, construction attorneys, court reporters, data storage, out-of-state witness interviews and depositions, and computer support to manage and present the evidence. Defense of RCI/Herzog Joint Venture's \$130 million claim required Sound Transit's experts, attorneys and litigation support team to analyze over 1.3 million construction documents and accounting records and to interview witnesses disbursed across the country. Because of this work to defend against the claim, RCI/Herzog Joint Venture reduced its original \$130 million claim to an amount between \$40 million and \$85 million, which is within the Link Initial Segment budget.

The cost of the litigation against RCI/Herzog substantially exceeded the amount included in the 2010 budget as a result of events that occurred after development of the 2010 budget. In late 2009, RCI/Herzog and Sound Transit agreed to resolve the claim in an accelerated arbitration proceeding. The accelerated arbitration process required the parties to incur legal fees and costs that would have normally been incurred over 2-3 years, in one year. The Board approved the arbitration process in late 2009 (Motion No. M2009-101), but the budget process was not reopened to include an estimated cost for the accelerated arbitration. A budget amendment of \$7 million is required to include the accelerated arbitration costs in the 2010 non-operating expenses budget.

- (2) The costs related to work in investigating, repairing, and remediating the areas where excess excavation occurred were originally charged to the Link Initial Segment project budget. These costs included right-of-way costs, geotechnical services and construction work. However, in

late 2010 and early 2011 a Sound Transit internal accounting audit determined that these costs could not be charged to the project (capitalized), and should be classified as operating expenses under Generally Accepted Accounting Principles. Sufficient budget existed for these costs within the Initial Segment capital budget, however, funds were not included in the 2010 non-operating expenses budget to cover them. In order to follow Generally Accepted Accounting Principles and classify the costs as operating expenses, an amendment to the 2010 non-operating expenses budget is required. The budget amount requested for these costs is \$7 million.

SMALL BUSINESS PARTICIPATION

Not applicable to this action.

EQUAL EMPLOYMENT WORKFORCE PROFILE

Not applicable to this action.

ENVIRONMENTAL COMPLIANCE

Jl 5/16/11

PRIOR BOARD/COMMITTEE ACTIONS

None.

TIME CONSTRAINTS

A one month delay would not create a significant impact.

PUBLIC INVOLVEMENT

Not applicable to this action.

LEGAL REVIEW

Desmond Brown, 5/16/11