

**SOUND TRANSIT  
STAFF REPORT**

**MOTION NO. M2002-56**

**Risk Sharing Agreement with the City of Bellevue  
and the Washington State Department of Transportation**

<b>Meeting:</b>	<b>Date:</b>	<b>Type of Action:</b>	<b>Staff Contact:</b>	<b>Phone:</b>
Executive Committee	5/2/02	Deferred Discussion/Possible Action to Recommend Board Approval Action	<b>Agnes Govern,</b>	(206)-398-5037
Finance Committee	5/16/02		<b>Regional Express Director</b>	
Board	5/23/02		Jim Edwards, Program Manager, Capital Projects Bill Guenzler, Project Manager, Capital Projects	(206)-398-5436  (206)-398-5041

**OBJECTIVE OF ACTION**

- The development of a risk sharing agreement for the Bellevue Direct Access project was required because WSDOT cannot sign a contract with a construction company that could legally obligate them to expend money that has not been appropriated by the Legislature or underwritten by a partner agency.
- The proposed risk sharing agreement allocates the financial responsibility for potential construction cost overruns among the Bellevue Direct Access Project partners.

**ACTION**

- Authorizes the Executive Director to execute an agreement between Sound Transit, the City of Bellevue, and the Washington State Department of Transportation (WSDOT) that:
  - Specifies how construction cost overruns would be paid, in the event that an overrun occurs; and
  - Amends an existing agreement between WSDOT and Sound Transit for the construction of Bellevue Direct Access Project – Phase I (SE 8th Street Interchange modifications).

**KEY FEATURES**

- Groups all three construction phases of the Bellevue Direct Access Project for the purposes of assigning budget risks.
- Establishes a cost to complete budget showing construction phases and construction contingencies.
- Defines cost overruns as an unavoidable cost increase encountered during construction that causes the total cost of the Bellevue Direct Access Project to exceed budget.
- Establishes the hierarchy of funding sources for paying for potential cost overruns as follows:
  1. Construction contract contingency for a particular construction phase of the Bellevue Direct Access Project. (Board approval sought at the time a particular construction contract is awarded.)
  2. Overall contingency established for the Bellevue Direct Access Project. (Prior Board approval needed when the funds are committed from contingency.)

3. Funds budgeted by WSDOT, City of Bellevue or Sound Transit for the Bellevue Direct Access Project, but not yet contractually committed to the project. (Prior Board approval needed when the funds are committed from contingency.)
  4. Supplemental revenue not yet budgeted by any of the partners for the project. (If necessary, Board would need to consider appropriating additional revenues from either East King County Capital Program Reserve or East King County unanticipated revenues.)
- Assigns each partner a share of the responsibility for appropriating additional resources if the first three categories of contingency are not adequate to satisfy construction cost overruns:
    - Sound Transit 66%
    - WSDOT 17%
    - City of Bellevue 17%
  - Modifies the assigned shares of the partners if the Legislature does not approve a "New Law Budget" and/or voters do not approve a statewide revenue program prior to the completion of the Bellevue Direct Access Project:
    - Sound Transit 79.5%
    - WSDOT 0.0%
    - City of Bellevue 20.5%

### **BUDGET IMPACT SUMMARY**

**Project Description:** Bellevue HOV Direct Access Project.

**Current Status:** Preliminary Engineering Complete, Final Design and ROW Acquisitions in progress.

**Projected Completion Date:** 2005

<b>Action Outside of Adopted Budget:</b>	<b>Y/N</b>	<b>Y Requires Comment</b>
This Line of Business	N	
This Project	N	
This Phase	N/A	
This Task	N/A	
Budget amendment required	N	
<b>Key Financial Indicators:</b>	<b>Y/N</b>	<b>Y Requires Comment</b>
Contingency funds required	N	No impact at this time but contingency may be required if construction cost overrun occurred.
Subarea impacts	N	No impact at this time
Funding required from other parties other than what is already assumed in financial plan	N	

N = Action is assumed in current Board-adopted budget. Requires no budget action or adjustment to financial plan

### **BUDGET DISCUSSION**

<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>
<b>Total Project Budget</b>	<b>Budget for Construction</b>	<b>Obligated to Date for Construction</b>	<b>Total Amount Requested</b>	<b>Budget Remaining (B-[C+D])</b>
\$107,903,000	\$77,860,000	\$1,908,610	N/A	\$75,951,390

Sound Transit has budgeted a total of \$107.9M (not including STart) for the Bellevue Direct Access Project. The total project budget, including funding from partners is \$164.5M.

## **REVENUE, SUBAREA, AND FINANCIAL PLAN IMPACTS**

The budget for this project provides contingency amounts that are considered ample at this stage of development. A second engineering firm has checked cost estimates for large expenditures to ensure accuracy. The proposed agreement describes how routine and extraordinary risks are to be shared by the financial partners for this project. Supplemental funds for this project, if necessary, would require Board action to transfer funds from another project within the East King County subarea, from unanticipated East King County revenues, or from the East King County Capital Program Reserve.

## **M/W/DBE – SMALL BUSINESS PARTICIPATION**

Construction agreements for the first two construction phases have been negotiated and the third phase will be negotiated prior to bid advertisement in September 2002.

- Construction contract for SE 8th Street Interchange modifications: M/W/DBE 16%, training 1200 hours.
- Construction contract for NE 8th Street Bridge reconstruction: M/W/DBE 20%, training 2000 hours.
- Construction contract for 4th/6th Street Interchanges: M/W/DBE – TBD.

## **HISTORY OF PROJECT**

### **Prior Board or Committee Actions and Relevant Board Policies**

<b>Motion or Resolution Number</b>	<b>Summary of Action</b>	<b>Date of Action</b>
M2001-90	Amendments to the SE 8th Street design agreement between WSDOT and Sound Transit providing funds to respond to the appeal of the shoreline development permit.	September 2001
M2001-30	Cooperative agreement between Bellevue and Sound Transit for acquiring and transferring rights-of-way.	April 2001
M2001-29	Cooperative agreement between Bellevue and Sound Transit providing a plan for using the partners funds on future expenditures.	April 2001
M2001-27	Provided 20% of the funds needed by WSDOT to design the second and third phases	April 2001
M2001-26	Provided 20% of the funds needed by WSDOT to construct modifications to the SE 8th Street Interchange—Phase 1.	April 2001
Discussion paper	Project briefing on upcoming actions.	March 2001
R2001-02	Authorized acquisition of property rights.	January 2001

M2000-76	Allocated \$18M of unanticipated East King County revenues to the project.	October 2000
M99-73	Provided Funds to WSDOT for the Final Design of SE 8th Street Interchange Improvements—Phase 1.	October 1999
R98-32	Provided Funds to WSDOT for Design File Services.	August 1998

### **CONSEQUENCES OF DELAY**

- Sound Transit will continue to have 100% exposure to cost overruns on the SE 8th Street Interchange Modifications – Phase 1 until the agreement is superceded.
- City of Bellevue and WSDOT consider the Risk Sharing Agreement to be a prerequisite to agreements for constructing phase 3, which includes the direct access ramp to the Bellevue Transit Center.

### **REGIONAL PARTNERSHIP AND COOPERATION**

Sound Transit has budgeted \$108M for the Bellevue Downtown HOV Direct Access Project. The balance of the \$164M budget is being provided by WSDOT and the City of Bellevue. The cooperative agreement approved in April 2001 has provided the framework for assigning revenues from the three agencies to particular contracts throughout the project schedule. The costs of environmental approvals, design and right-of-way acquisition have been committed in a series of contracts. The first construction phase (modifications to the SE 8th Interchange) was funded by a city grant with Sound Transit providing the match and guaranteeing that overruns that exceed the contingency will be paid by Sound Transit.

It now becomes necessary to consider all three phases of construction and determine how overruns will be paid, should that be necessary. The Bellevue Direct Access Executive Committee has established a detailed budget and has assigned the entire project budget to all of the contract categories. At this time, there is high certainty that the funds set-aside for project expenses and non-construction expenses will be adequate. The construction budgets for the three construction phases were prepared so that normal quantity adjustments and routine project changes could be accommodated with the construction budget and a 10% contingency has been provided for each construction contract. The contingency for each construction phase will provide a 90% certainty that a particular construction phase can be completed without exceeding the construction phase contingency. If costs exceed that contingency, payment will be made from the overall project contingency for the Bellevue Direct Access Project, based on Board action as outlined above.

If the designated project contingency is exhausted, then the project budget would exceed the approved \$164M. In this event, each partner agency would be expected to determine whether it has revenues appropriated for this project, but not contractually committed to the project budget. If such monies were found, then they would be made available to pay for overruns prior to considering supplemental appropriations.

Supplemental revenues would be sought only if all of the preceding steps have been taken and the budgeted revenue would still not be able to pay for overruns. Sound Transit Board would be responsible for 66% of the need for supplemental revenue. That share would increase to 79.5% if the revenues of WSDOT are not supplemented through a “new law budget” or voter-approved transportation taxes.

## **PUBLIC INVOLVEMENT**

The City of Bellevue has taken lead on public outreach. Over the course of this project, there have been numerous public meetings and public presentations before the City Council and community groups. Formal hearings have been held for the environmental process and for the access control. Bellevue has a communications committee made up of Council representatives and leaders of community groups to provide feedback on the adequacy of the outreach process.

The project is now entering the construction phase with multiple approaches to keep people informed about the changing nature of the construction activities. Some of these efforts are:

- Access Downtown Web Page (AccessDowntown.com)
- Newspaper supplements
- News advisories
- Video used on public TV Channels
- Variable message signs
- Construction zone radio broadcasts

## **DESCRIPTION OF POLICY**

Shall the risk sharing agreement between the City of Bellevue, WSDOT, and Sound Transit exempt WSDOT from reimbursing Sound Transit for a particular budget overrun in conflict with a pending reimbursement policy being considered by the Board?

## **IMPLICATIONS OF POLICY**

Under a separate action, the Board will be considering a policy seeking reimbursement by a jurisdiction or agency requesting work of Sound Transit, when the timing of the work and the requesting agency's budget do not allow it to pay, under the following circumstances:

- The additional work is based on substantially changed conditions and/or new assumptions not specified by our partner agency at the time of the original scope which causes Sound Transit's work done to date be obsolete or irrelevant.
- The parties agree that the additional work should be funded by the requesting jurisdiction/agency, but that jurisdiction/agency does not have sufficient current budget capacity.
- Sound Transit shall seek agreements whereby the timing of the reimbursement is specified and where Sound Transit's up front costs are reimbursed by the requesting jurisdiction/agency in equivalent of YOY\$ to the year Sound Transit expended the funds.

## **FACTORS TO CONSIDER**

In determining whether the pending policy would or should apply to the risk sharing agreement for the Bellevue Access Project, the Board may consider the following:


- The three partners have taken all prudent precautions to ensure that the project can be completed with the revenues already budgeted by the three partners.
- State Legislature has made a specific appropriation for WSDOT's share of this project. The risk sharing agreement was drafted to commit all of WSDOT's budgeted funds as WSDOT's share of the projected construction costs; only a proportional share of normal contingency was allocated against WSDOT's appropriation. None of the WSDOT funds were reserved to pay for cost overruns, which exceed the project budget.

- The agreement proposes, in the event of a cost overrun exceeding the total amount appropriated by the three partner agencies, that WSDOT would pay its proportional share of 17% (if the Legislature or voters approve funding above the “current law” budget). If no added money is approved, the State’s obligation to pay for such overruns is reduced to zero and the other two partners’ (Bellevue and Sound Transit) share of responsibility are increased proportionally. The agreement provides that the promise for WSDOT to seek additional appropriation would sunset if the project is completed and no new funding programs have been approved.
- The agreement does not allow WSDOT the choice of not funding cost overruns for this specific project if new monies are approved for WSDOT’s overall program.

## **ALTERNATIVES**

WSDOT is acting as the partners’ collective agent in awarding the construction contracts for the Bellevue Direct Access Project. In executing the contract with the construction firm, WSDOT is legally responsible to pay all legitimate claims. Public works contracts typically make the “owner” responsible for costs arising from conditions that are different than described in the bid documents. Since the collective partners are the “owners” it becomes necessary to assign the responsibility for overruns before the discovery of changed conditions.

Alternatives include:

- The agreement could be re-drafted to reserve some of the funds appropriated to WSDOT to pay for construction overruns that exceed the project budget.
-  Sound Transit could award the contracts and accept the responsibility directly.
- One of the partners could assume the risk on each contract segment. (Sound Transit initially accepted the risk on the SE 8th Street Interchange construction contract.)

## **RECOMMENDATION**

It is recommended that the Sound Transit Board agree to pay for 66% of cost overruns for the three construction phases of the Bellevue Direct Access Project; increase that share to 79.5% if WSDOT has not been provided a new revenue program by the Legislature or voters before the completion of the project.

## **LEGAL REVIEW**

JW 4-17-02

## SOUND TRANSIT

### MOTION NO. M2002-56

A motion of the Board of the Central Puget Sound Regional Transit Authority to authorize the Executive Director to execute an agreement between Sound Transit, the City of Bellevue, and the Washington State Department of Transportation (WSDOT) for the purposes of (1) allocating financial responsibility for cost over-runs in the Bellevue Direct Access Project; and (2) amending the SE 8th Street Construction Agreement by adopting the allocation of financial responsibility provisions of this agreement.

#### Background:

The Bellevue Direct Access Project is being jointly funded by the City of Bellevue, WSDOT, and Sound Transit. Construction is divided into three phases for which Washington State Department will execute contracts with three construction firms. The budget for the Bellevue Direct Access Project has contingency that is sufficient to pay for changes normal to a project at this stage of development.

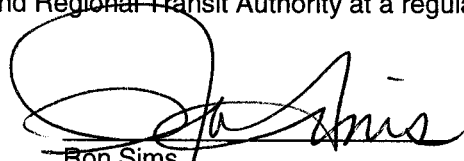
As the contracting agent for all three partners, WSDOT could become responsible for cost over-runs that exceed the amounts budgeted for the Bellevue Direct Access Project. An agreement has been negotiated that describes how cost over-runs, should any occur, will be shared among the three financial partners. The agreement would require Sound Transit to pay 66% as its proportional share of cost over-runs, should they occur. The Sound Transit share would increase to 79.5% if the Washington State Legislature or voters do not provide a new revenue program for the Washington State Department of Transportation before the completion of the Bellevue Direct Access Project.

Approval by the Sound Transit Board of Directors would be required to commit funds budgeted for the project which have not been approved by the Board previously, or to appropriate supplemental revenues should they be needed from either the East King County Capital Program Reserve or East King County unanticipated revenues.

#### Motion:

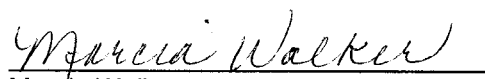
It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority to authorize the Executive Director to execute an agreement between Sound Transit, the City of Bellevue, and WSDOT for the purposes of (1) allocating financial responsibility for cost over-runs to the Bellevue Direct Access Project; and (2) amending the SE 8th Street Construction Agreement by adopting the allocation of financial responsibility provisions of this agreement.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on May 23, 2002.



Ron Sims  
Board Chair

#### ATTEST:



Marcia Walker  
Board Administrator