

SOUND TRANSIT STAFF REPORT

MOTION NO. M2002-72

Umbrella Agreement for the Construction Administration of Sound Transit Projects Within the Washington State Department of Transportation Right-of-Way

Meeting:	Date:	Type of Action:	Staff Contact:	Phone:
Executive Committee	6/6/02	Discussion/Possible Action to Recommend Board Approval	Agnes Govern, Director, Regional Express	(206) 398-5037
Board	6/13/02	Action	Jim Edwards, Program Manager, Capital Projects, Regional Express Jerry Dahl, Construction Manager, Capital Projects, Regional Express	(206) 398-5436 (206) 398-5284

Contract/Agreement Type:	✓	Requested Action:	✓
Competitive Procurement		Execute New Contract/Agreement	✓
Sole Source		Amend Existing Contract/Agreement	
Memorandum of Agreement	✓	Contingency Funds Required	
Purchase/Sale Agreement		Budget Amendment Required	

✓ Applicable to proposed transaction.

OBJECTIVE OF ACTION

- Execute an umbrella agreement with the Washington State Department of Transportation (WSDOT) that provides the framework for contract administration of Sound Transit projects to be constructed within the WSDOT right-of-way and provides the general format for future project task orders.

ACTION

- Authorizes the Executive Director to negotiate and execute an umbrella agreement with WSDOT for construction administration of Sound Transit projects to be constructed on WSDOT right-of-ways ("Umbrella Agreement") in accordance with key provisions set out in this report.

KEY FEATURES

- Provides for the execution of an Umbrella Agreement and construction agreement templates (Task Orders A and B).
- Describes the key terms of the Umbrella Agreement and Exhibit Task Orders.
- Describes the framework within which all future Sound Transit projects within the WSDOT right-of-way will be administered during the construction phase.

- Provides for key terms and conditions which will enable Sound Transit and WSDOT to adopt efficient and effective construction administration procedures and reduce the need for extended contract negotiations on each project.
- Defines roles and responsibility of each agency with respect to each project.
- Describes extensive coordination effort between the agencies.
- Applicable Federal funding requirements will be applied in each project agreement.
- Allows the execution of project specific agreements (Task Orders) under the Umbrella Agreement subject to Board approval.

BUDGET IMPACT SUMMARY

No associated cost at this time.

M/W/DBE – SMALL BUSINESS PARTICIPATION

M/W/DBE goals will be established within specific project construction contracts. Task Order A, which defines project roles and responsibilities for Sound Transit projects being administered by WSDOT, commits Sound Transit and WSDOT to comply with all applicable Federal and State laws and regulations as interpreted by the Federal Highway Administration. Task Order B, which defines project roles and responsibilities for projects that will be administered by Sound Transit, include standard Sound Transit M/W/DBE provisions.

Prior Board or Committee Actions and Relevant Board Policies

Motion or Resolution Number	Summary of Action	Date of Action
R98-12	Executed a Master Agreement for Civil Support Services with WSDOT covering projects within the geographic areas of Federal Way, Mercer Island, Kirkland, and Lynnwood.	4/9/98
R99	Memorandum of Understanding Establishing a Cooperative Relationship with WSDOT establishing a cooperative relationship for construction, ownership, and operation of high capacity transportation facilities.	10/23/97

HISTORY OF PROJECT

Partnership with WSDOT

On October 23, 1997, a Memorandum of Understanding (MOU) was established that allowed Sound Transit and WSDOT to facilitate the planning, design, and construction of the Capital Projects listed in Sound Move. Goals and objectives were established and a broad framework was developed for working together.

Since the signing of that Agreement, both agencies have made a good faith effort to work cooperatively to be proactive in resolving issues. Several multi-agency action teams have been developed to implement the broad agreements contracted in the MOU. In 2001, the Construction Action Team (CAT) was formed. This team is comprised of representatives from Sound Transit Regional Express and Link Light Rail, WSDOT, the Federal Transit Administration (FTA), and the Federal Highway Administration (FHWA). The CAT's mission was to develop construction guidance on the Sound Transit Regional Express and Link programs involving WSDOT right-of-

way. Key objectives were to ensure those projects are completed safely in a high quality manner, maintain all appropriate standards, are constructed within authorized budget and within approved schedule. After several months of coordination, the CAT Committee unanimously agreed that an Umbrella Agreement with provisions for specific Task Orders between Sound Transit and the WSDOT was necessary.

The CAT in close coordination with Sound Transit Legal and Contracts staff have collectively developed the Umbrella Agreement and Task Orders ensuring appropriate guidelines, policies, and provisions will be met.

Prior to the formation of the CAT, Regional Express had negotiated two previous construction administration agreements with WSDOT for Sound Transit funded projects:

- SE 8th Street Construction Agreement, Motion No. M2001-26 (Project #145) and
- South Hill Mall Park-and-Ride Lot R98-51 (Project #358).

The South Hill Mall Park-and-Ride Lot construction agreement was negotiated in 1999 and does not meet Sound Transit current project control needs. The SE 8th Street Construction Agreement took several months to negotiate and highlighted program level issues between Sound Transit and WSDOT that needed to be resolved. The SE 8th Street agreement was the starting point for the current Umbrella Agreement and Task Order Agreements described below.

CONTRACT PROVISIONS OF THE UMBRELLA AGREEMENT

The resolution authorizes the Executive Director to negotiate and execute an Umbrella Agreement and incorporated construction agreement templates (Task Orders) to be used in the construction of Sound Transit Projects on State owned right-of-way.

1. Key provisions of the Umbrella Agreement will include the following:
 - Defines the roles and responsibilities of Sound Transit and WSDOT for the administration of Sound Transit funded projects within WSDOT right-of-way.
 - Applicable federal funding requirements including the continuing control requirement of FTA will be required under the Umbrella agreement.
 - Adopts standard templates in the form of Task Order A for WSDOT's construction administration of projects within the State right of way (REX projects) and a standard template in the form of Task Order B for Sound Transit's administration of projects within the State right of way (Link Light Rail projects).
 - Task Orders for each project under the Umbrella Agreement will be subject to Board approval under normal Sound Transit contract procedures.
 - The administration of third party contracts will be the responsibility of the party designated the construction administrator under the Task Order.
 - Describes legal rights and relationship of WSDOT and Sound Transit.
 - Establishes a dispute resolution process so that WSDOT and Sound Transit will work collaboratively to resolve disagreements arising from activities performed under this agreement.

Includes insurance and risk management provisions related to construction administration.

2. Key Features of Task Order A:

- Task Order A will be used to establish project specific agreements for those Regional Express construction projects that will be administered by WSDOT.
- Provides for detailed description of project scope of work, cost estimates, and procedures for change orders.
- Defines WSDOT project costs as function of Engineers Estimate, Construction Administration (15%) and Contingency (5%).
- Establishes Sound Transit obligation for all actual and valid costs incurred by WSDOT.
- Establishes WSDOT responsibility for acts of gross errors and negligence.
- Requires WSDOT to exercise its normal powers for relocation of utilities.
- Obligates WSDOT for maintenance of HOV Access improvements except for transit amenities.
- Requires WSDOT and Sound Transit to comply with all applicable Federal and State laws, including ADA and DBE requirements, as interpreted by the federal funding agencies.

3. Key Features of Task Order B:

- Task Order B will be used to establish project specific agreements for Sound Transit construction administration for all Link projects within WSDOT right-of-way and those Regional Express projects that WSDOT lacks resources to administer.
- Provides for WSDOT oversight.
- Requires WSDOT to exercise its normal powers for relocation of utilities.
- Obligates Sound Transit to provide funding for all project costs including WSDOT oversight.
- Stipulates Sound Transit ownership, operation and maintenance of the project unless addressed through a separate operations and maintenance agreement.
- Requires WSDOT and Sound Transit compliance with all applicable Federal and State laws, including ADA and DBE requirements, as interpreted by FHWA or FTA.

CONSEQUENCES OF DELAY

Regional Express desires to use the Umbrella Agreement and Task Order A for the administration of Project #111, I-5 Direct Access at Lynnwood which is scheduled to be advertised for bids in July of 2002. Link desires to use the Umbrella Agreement and Task Order B for Project #C700 (the line section from Royal Brougham to Airport Way South) which is scheduled to be advertised in June of 2002 and requesting bids in late summer to early fall.

The award of the #C700 contract will be made upon receipt of the Full Funding Grant Agreement (FFGA). It is important that WSDOT is involved early in the bid process so that they can assign a project engineer during the solicitation process to participate in the pre-bid meetings and also be involved in questions and answers that may arise from the contractor with respect to the construction activity. It is anticipated that the WSDOT cost under this Umbrella Agreement will be minor, but necessary prior to the receipt of the FFGA. A delay in the adoption of the Umbrella Agreement will impact the bids and delay the construction schedules for their projects.

REGIONAL PARTNERSHIP AND COOPERATION

The Regional Express, Capital Projects Division established the Re-Alignment Session in the summer of 2000. The session consisted of 50+ participants from the four partner agencies; Sound Transit, WSDOT, FTA, and FHWA. The result of that Re-Alignment Session was the development of five "Action Teams". These five "Action Teams" help the partner agencies better understand all of the participating agencies roles, responsibilities, goals and objectives, and established a commitment by the agencies to work together to make the Sound Transit Program a success:

- Executive Sponsorship Team (EST) – This group deals with policy issues and provides direction to the program managers.
- Program Action Team (PAT) – This group deals with programmatic issues and monitors the efforts of the EAT, CAT and REAT.
- Environmental Action Team (EAT) – This group deals with coordinating technical, environmental procedures, processes, and standards.
- Construction Action Team (CAT) – This team was formed to develop this agreement in close coordination with the Sound Transit Legal and Contracts Staff.
- Real Estate Action Team (REAT) – This group deals with right-of-way acquisition policies and procedures.

RISK FACTORS

Sound Transit obligates itself under these agreements for the costs of the projects, including change orders, contract increases, and WSDOT oversight of Sound Transit's construction administration. Sound Transit assumes the risk for the cost of these projects regardless of the agency providing construction administration. Task Order A requires WSDOT to seek prior approval of all elective change orders, and to perform work in the same manner as WSDOT employs in its other work. WSDOT construction procedures are well documented and have been reviewed and approved by FHWA.

ALTERNATIVES

A potential alternative to the requested action would be developing construction agreements on a project by project basis and incorporating key elements of the Umbrella Agreement and Task Order into each agreement. This would add additional time to each project.

NEXT STEP

If the Executive Committee approves the Umbrella Agreement, Board approval will be sought on June 13, 2002. As future Sound Transit projects move into the construction phase, project task order agreements will be brought to the Finance Committee and Board as applicable for approval prior to execution with WSDOT.

RECOMMENDATION(S)

Staff recommends approval of the Umbrella Agreement with WSDOT.

LEGAL REVIEW

JW 4/17/02 and BN 5/24/02

SOUND TRANSIT

MOTION NO. M2002-72

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the Executive Director to negotiate and execute an umbrella agreement with WSDOT for construction administration of Sound Transit projects to be constructed on WSDOT right-of-ways in accordance with key provisions; and further directing the Executive Director to negotiate additional agreements or amend existing agreements to address outstanding issues regarding HOV speed and reliability standards, Link Light Rail use of State right of way, continuing control requirements, reimbursement of Sound Transit funding and adjustment of Land Bank credits.

Background:

- Provides for the execution of an Umbrella Agreement and construction agreement templates (Task Orders A and B).
- Describes the key terms of the Umbrella Agreement and Exhibit Task Orders.
- Describes the framework within which all future Sound Transit projects within the WSDOT right-of-way will be administered during the construction phase.
- Provides for key terms and conditions which will enable Sound Transit and WSDOT to adopt efficient and effective construction administration procedures and reduce the need for extended contract negotiations on each project.
- Defines roles and responsibility of each agency with respect to each project.
- Describes extensive coordination effort between the agencies.
- Applicable Federal funding requirements will be applied in each project agreement.
- Allows the execution of project specific agreements (Task Orders) under the Umbrella Agreement subject to Board approval.
- Directs Sound Transit staff to negotiate additional agreements or amendments to existing agreements to address among other issues: HOV speed and reliability standards; issues regarding Light Rail use of State right of way; federal continuing control requirements; provide for the reimbursement of Sound Transit funding in the event the improvement is converted to general purpose use; and provide for the adjustment of Land Bank credits.

Motion:

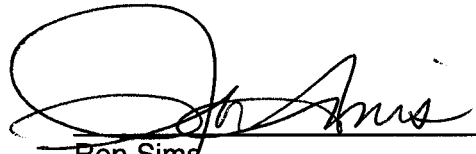
It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the Executive Director is authorized to negotiate and execute an umbrella agreement with WSDOT for construction administration of Sound Transit projects to be constructed on WSDOT right-of-ways in accordance with key provisions.

It is further moved that the Executive Director is directed through her designees to negotiate additional agreements or amendments to existing agreements with WSDOT for the purpose of resolving outstanding issues critical for the on-time, on-budget delivery of the Sound Transit program. These issues to be negotiated shall include, but are not limited to the following:

- Provide for HOV speed and reliability standards and monitoring in accordance with the 1997 Memorandum of Understanding and Sound Move, which calls for an agreement to be negotiate regarding mutually acceptable HOV speed and reliability standards.
- Provide a process for determining impacts, costs and reimbursements for the value of any Sound Transit funded improvements and for the adjustment of Land Bank credits in the event the improvement is converted to State general purpose use.
- Resolve issues regarding potential restrictions on Link Light Rail use of state highway right of way; and
- Provide for an agreement to meet the continuing control requirements of federal funding agencies.

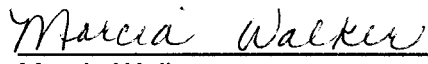
The Executive Director shall present proposed agreements to the Sound Transit Board for approval no later than January 2003.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on June 13, 2002.



Ron Sims
Board Chair

ATTEST:



Marcia Walker
Board Administrator