

SOUND TRANSIT

MOTION NO. M2003-138

A motion of the Board of the Central Puget Sound Regional Transit Authority ratifying the December 8, 2003, letter agreement between Sound Transit and Qwest regarding Qwest utility relocations associated with the Central Link Light Rail Program, and authorizing the Chief Executive Officer to execute a master utility relocation agreement incorporating the terms of the December 8, 2003, letter agreement.

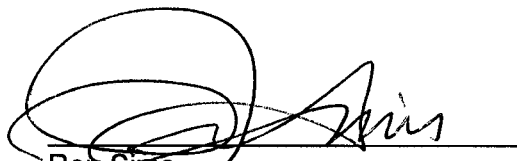
Background:

On December 8, 2003, a Cost Reimbursement Letter Agreement was sent to Qwest to provide cost and schedule certainty for both Qwest and the Link light rail program and to minimize the exposure of both parties to future litigation. The letter agreement was executed by Joni Earl, Sound Transit Chief Executive Officer on December 8, 2003, and by Kirk Nelson, President, Washington Qwest, on December 9, 2003. Within ninety days, the parties shall execute a master utility relocation agreement incorporating the terms outlined in the letter agreement (Attachment A).


Motion:

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority to ratifying the December 8, 2003, letter agreement between Sound Transit and Qwest regarding Qwest utility relocations associated with the Central Link Light Rail Program, and authorizing the Chief Executive Officer to execute a master utility relocation agreement incorporating the terms of the December 8, 2003, letter agreement.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on December 11, 2003.


Ron Sims
Board Chair

ATTEST:



Marcia Walker
Board Administrator



December 8, 2003

Kirk R. Nelson
President – Washington
Qwest
1600 7th Avenue, Suite 3205
Seattle, WA 98191

RE: Cost Reimbursement Letter Agreement, Link Light Rail

Dear Mr. Nelson:

In recent meetings, we have discussed the framework for a master utility relocation agreement for Qwest relocations associated with Link light rail. This letter agreement is intended to provide cost and schedule certainty for both Qwest and the Link program as well as minimize the exposure of both parties to future litigation. By this letter agreement the parties agree to apply the terms stated below to the Qwest relocation and protection work in the areas specified in this letter agreement (the "Qwest Relocation Work"). Upon the execution of this letter agreement, these terms shall apply to the Qwest relocation work until a master utility relocation agreement is executed by the parties. Within ninety days after execution of this letter agreement, the parties shall execute a master utility relocation agreement incorporating these terms.

1. Scope of the Qwest Relocation Work Covered.

- A. The scope of this letter agreement will include the Initial Segment, running from the Downtown Seattle Transit Tunnel south to the S. 154th Transit Station in Tukwila adjacent to International Boulevard. The Qwest Relocation Work within the Initial Segment covered by this agreement includes the work at Beacon Hill Station, Pine Street and in Tukwila along the Link alignment between the Boeing Access Road and International Boulevard. See attachment. Currently, the Sound Transit design work at the Beacon Hill Station and at Pine Street is 90% complete. The Sound Transit design work at Tukwila is 60% complete. The total Qwest relocation costs in the Initial Segment is estimated to be \$1.5 million.
- B. This agreement will not alter already existing agreements or relocation arrangements between Sound Transit and Qwest. Excluded from this agreement is the relocation work along Martin Luther King Way (associated with the C720/735 contracts), the Forest Street right of way relocation work (associated with C700/C810), both of which are covered by existing agreements, and the Tacoma relocation costs.

Central Puget Sound
Regional Transit Authority
Union Station
401 S. Jackson St.
Seattle, WA 98104-2826
Reception (206) 398-5000
Facsimile (206) 398-5499
www.soundtransit.org
Qwest Cost Reimb 12-09-03 ST Final cml2

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Chief Executive Officer

Joni Earl

- C. The scope of this agreement also includes the proposed extensions of Link light rail between the Downtown Seattle Transit Tunnel north to Northgate (North Link) and from the S. 154th Station south to S. 200th Street (Airport Link). See attachment. (The extensions to the Initial Segment are approximately at 5% design completion.)

2. Relocation Task Orders Developed by Technical Staff

- A. Technical Staff will develop a master utility relocation agreement incorporating these terms. Once executed the master utility relocation agreement shall supercede this letter agreement.
- B. The technical staff from both agencies will continue to meet to define the scope of impacted Qwest facilities and develop a cost effective strategy for protection or relocation of the Qwest facilities. When the scope of work for specific contract packages is established, the technical teams will execute a letter of concurrence. The technical teams will then execute a relocation task order pursuant to the terms of this letter agreement or the master relocation agreement when executed. The relocation task order will define: scope of work, assignment of tasks to either Qwest or the Sound Transit contractor, schedule, budget, and cost allocation.

3. Schedule

- A. Qwest will commit to the relocation schedule adopted by technical staff for each relocation task order, and Qwest will allocate adequate resources to complete design and field relocation of Qwest facilities to meet the Link light rail schedule and avoid delay impacts.
- B. Qwest and Sound Transit will designate field representatives that will attend periodic coordination meetings so the work is efficiently scheduled. The field representative will also be fully authorized to secure necessary resources, so that each agency meets its obligations under the task order commitment. If either party causes a documented delay to the relocation or the overall light rail project, the party causing the delay will reimburse the damaged party for 100% of the documented impact cost.

4. Cost Allocation

- A. Eligible relocation costs included in the cost sharing formula will include the costs of design and construction for the relocation or the protection of the Qwest facilities, restoration, and field supervision. Each party will bear the cost for program coordination, including coordination meetings and administrative costs associated with agreement execution.
- B. Sound Transit will pay 55% of the eligible cost for relocations in the Initial Segment, and Qwest will pay 45% of the eligible costs for the Initial Segment. For eligible costs that exceed \$2.0 million in the Initial Segment, Sound Transit will pay 100% of those costs. The cost allocation in this Subsection B will be applied independently of the cost allocation in Subsection C.
- C. Sound Transit will pay 55% and Qwest will pay 45% of the eligible costs for the North Link and Airport Link segments for a maximum commitment of up to \$4.2 million. For eligible costs that exceed \$4.2 million in the North Link and Airport Link segments, Sound Transit will pay 100% of those costs.
- D. The cost allocation formulas in this Section 4 are the result of the parties' mutual investigation and discussion of the potential costs of relocation of the Qwest facilities, and the commitments in this Section 4 are based on each party's evaluation of the nature and extent of the unique Qwest facilities within the proposed project light rail areas as described in the attached exhibits and at the level of design completion as stated in Section 1.

E. Eligible project costs shall not include betterments, which are defined as the work that is not necessary to functionally restore the operational capabilities of the relocated utility facilities. For example, Sound Transit will not pay for adding conduit for future service or the incremental cost of increasing cable size. The costs of undergrounding the utility facilities, if required by existing local ordinance, are not betterments and shall be included in the eligible project costs and subject to the cost allocation under this agreement.

5. Dispute Resolution

- A. If a dispute regarding arises under this agreement, the technical representatives of each party will first attempt to resolve a dispute by consensus.
- B. If the technical representatives cannot resolve, the dispute will be elevated to the Sound Transit Director of Link Light Rail and the Qwest Vice President of Network Operations for Washington.
- C. If the Director of Link Light Rail and the Qwest Vice President of Network Operations for Washington cannot resolve the dispute, the dispute will be elevated to the Sound Transit Executive Director, and the Qwest President for Washington.
- D. If these representatives cannot resolve the dispute, the parties may by mutual agreement submit the dispute to a mediator chosen from the personnel of the Judicial Mediation and Arbitration Association of Seattle, Washington, or the parties may by mutual agreement submit the dispute to binding arbitration. Neither party shall have the right to unilaterally trigger binding arbitration.

6. Voluntary Dismissal of Appeal

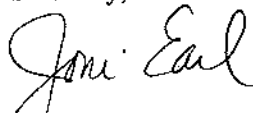
Within two weeks after its execution of this agreement, Qwest shall dismiss its appeal in the Ninth Circuit with prejudice (Docket No. 03-35631).

- 7. This agreement will be submitted for approval by the Sound Transit Board at its December 11, 2003 meeting and will become effective upon such approval.
- 8. Within two business days after Board approval, Qwest will send a letter to the Governor and the legislative leadership of the four caucuses informing them that we have reached agreement and that legislation is no longer needed by Qwest.

The parties mutually concur that each of the numbered elements identified above are integrated conditions of this letter agreement that are essential to the intent of the parties to allocate relocation costs for Link Light Rail.

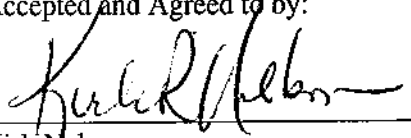
Please indicate Qwest's agreement to the terms and conditions of this letter agreement by returning a signed copy to my office. I will then assign legal and technical staff to work with Qwest representatives to incorporate the terms of this agreement into a master utility relocation agreement.

Sincerely,



Joni Earl
Chief Executive Officer
Sound Transit

Accepted and Agreed to by:

 12/9/03

Kirk Nelson
President - Washington
Qwest

JHW:BN:mmw

C: Ron Sims
Ahmad Fazel
Desmond Brown
Document Control

Attachments (2)