

**SOUND TRANSIT
STAFF REPORT**

MOTION NO. M2004-06

Qwest Cost Sharing Agreement for Martin Luther King Jr. Way S. Undergrounding

| Meeting: | Date: | Type of Action: | Staff Contact: | Phone: |
|-------------------|---------|----------------------------|---------------------------------------------------------------------------------------------------------------------|--------------------------------------|
| Finance Committee | 1/22/04 | Discussion/Possible Action | Joe Gildner, Link Deputy Director for Technical Services Ahmad Fazel, Director Link Light Rail | (206) 689-3350 (206) 398-5389 |

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

3Applicable to proposed transaction.

OBJECTIVE OF ACTION

Establish payment obligations and schedule performance requirements for Qwest Communications, Inc. (Qwest) related to the construction of Qwest facilities along Martin Luther King Jr. Way South (MLK Way) in connection with the Rainier Valley light rail construction.

ACTION

Authorizes the Chief Executive Officer to execute an agreement with Qwest Communications, Inc. to pay Sound Transit for Qwest's share of the relocation of its facilities as part of the light rail construction along Martin Luther King Jr. Way South, consistent with the Letter of Concurrence dated July 15, 2003, and establishing construction schedule performance requirements

KEY FEATURES

- The utilities relocation agreement between Sound Transit and Qwest reflects (a) assumptions established in a Letter of Concurrence between Sound Transit and Qwest dated July 15, 2003; (b) provisions of Board Motion No. M2003-90, defining the scope, schedule, and budget for the undergrounding of overhead utilities along MLK Way and establishing cost sharing responsibilities for Qwest; and (c) payment obligations by Qwest referenced in Motion No. M2004-03 (pending Board action) in connection with the Rainier Valley light rail construction contract (Contract C735).
- Under this agreement, Sound Transit will provide the physical infrastructure (i.e., ductbank) to house the Qwest lines underground. Qwest will provide the labor, equipment, and materials for the relocation of its wires and cables. Sound Transit covers the incremental cost associated with placing the Qwest facilities underground.

- Under this agreement, Qwest is responsible for the portion of the costs that would be incurred if the Qwest facilities were relocated from one overhead location to another overhead location. This understanding reflects Qwest's rights by virtue of its co-ownership of the existing utility poles. Qwest is responsible for any costs associated with upgrades (i.e., betterments) made to its facilities. Qwest payment obligations include final design, construction management, and construction costs incurred by Sound Transit in connection with Qwest upgrades, including the underground utility infrastructure constructed by Sound Transit.
- Qwest has reviewed and accepted the construction schedule parameters established in the agreement. The agreement defines schedule performance requirements for Qwest construction crews for the relocation of the Qwest facilities, and establishes Qwest's obligation to reimburse Sound Transit for any delay costs incurred by Sound Transit as a result of Qwest's failure to meet the established performance criteria.
- This agreement secures the third party betterment reimbursement referenced in Motion No. M2004-03 (pending Board action) awarding construction Contract C735, for light rail construction in the MLK Way corridor, to RCI-Herzog, A Joint Venture.

BUDGET IMPACT SUMMARY

Project Description: Central Link Initial Segment

Current Status: Design / Construction

Projected Completion Date: 2009

| Action Outside of Adopted Budget: | Y/N | Y Requires Comment |
|------------------------------------------------------------------------------------------|-----|---------------------------------------------------------------|
| This Line of Business | N | |
| This Project | N | |
| This Phase | N | |
| This Task | N | |
| Budget amendment required | N | |
| Key Financial Indicators: | Y/N | Y Requires Comment |
| Contingency funds required | N | |
| Subarea impacts | N | |
| Funding required from other parties other than what is already assumed in financial plan | Y | Proposed action is for payment from a private utility (Qwest) |

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

BUDGET DISCUSSION

The proposed action would authorize execution of an agreement that provides for Qwest to pay Sound Transit \$292,371 (YOES) for design, construction management, and construction costs incurred by Sound Transit in connection with upgrades to Qwest facilities, including the underground infrastructure to be constructed by Sound Transit.

The funding obligation established under this agreement is in line with the budget parameters defined in Motion No. M2003-90 for the undergrounding of utilities along MLK Way, and Qwest's funding participation for the Rainier Valley light rail construction Contract C735 outlined in Motion No. M2004-03 (pending Board action).

SUMMARY TABLE:

| MLK Undergrounding | Approved Board Motion M2003-90 | Proposed Contracts Under Review | Proposed Action | Proposed Total Contract Value | Revised TOTAL |
|-----------------------------------------------------------------|---------------------------------------|----------------------------------------|------------------------|--------------------------------------|----------------------|
| Contract Amount: | | | | | |
| Qwest Payment | | | \$292,371 | \$292,371 | \$292,371 |
| | | | | | |
| Contracts Under Review: | | | | | |
| Comcast Payment | | \$1,804,629 | | | \$1,804,629 |
| | | | | | |
| MLK Undergrounding Budget (including payment by others): | | | | | |
| Sound Transit | \$13,479,000 | | | | \$13,479,000 |
| Payments by others: | | | | | |
| City of Seattle | \$15,679,000 | | | | \$15,679,000 |
| Private Utilities: | \$2,097,000 | | | | |
| Comcast | | | | | \$1,804,629 |
| Qwest | | | | | \$292,371 |
| Total payment by others | \$17,776,000 | \$0 | \$0 | \$0 | \$17,776,000 |
| Total MLK Undergrounding | \$31,255,000 | \$0 | \$0 | \$0 | \$31,255,000 |

REVENUE, SUBAREA, AND FINANCIAL PLAN IMPACTS

Costs related to the work paid for by Qwest will not be charged to the Link Initial Segment project and will be tracked separately.

M/W/DBE – SMALL BUSINESS PARTICIPATION

Not applicable for this action.

HISTORY OF PROJECT

On November 29, 2001, the Sound Transit Board adopted Resolution No. R2001-16 selecting the Initial Segment for Central Link Light Rail to be constructed and operated by 2009. The resolution stated that the project scope includes the potential for relocation of overhead utilities along MLK Way to underground ductbanks. The Sound Transit Board identified a budget of \$13,500,000 (YOES) for this purpose and committed to pursue additional funding sources to supplement this budget and fund the total cost of undergrounding utilities along MLK Way.

On April 25, 2002, the Sound Transit Board adopted Motion No. M2002-57, authorizing the Executive Director to negotiate an agreement with the City of Seattle to identify Sound Transit and City of Seattle funding responsibilities for the undergrounding of certain utilities, determine design and construction parameters in this area, and complete the design of the light rail construction to include the undergrounding of utilities. Additionally, Sound Transit recognized City of Seattle Resolution 30459, adopted on April 22, 2002, as an expression of sincere intent to enter into such an agreement with Sound Transit to share funding responsibilities for undergrounding utilities along MLK Way for up to \$19,800,000 (2002\$).

On September 12, 2002, the Sound Transit Board adopted Motion No. M2002-97, authorizing the Executive Director to execute a contract amendment with CH2M Hill to incorporate underground utilities into the final design of MLK Way in the amount of \$1,220,000 plus a 3.3% contingency of \$40,000, for a total of \$1,260,000, and a new total authorized contract amount not to exceed \$9,457,572.

Qwest and Comcast have agreed to participate in the undergrounding of utilities project. Final design for undergrounding as part of the scope of the Rainier Valley light rail construction was completed in June 2003. During final design, staff worked with the City of Seattle, Qwest, and Comcast to determine the scope and cost estimate for undergrounding. Staff has reached agreements in principle with both Qwest and Comcast for their share of the cost to underground their utilities. Qwest, a joint pole owner, is responsible for the cost of an overhead-to-overhead relocation and betterment of their overhead existing plant. Comcast, who does not have joint ownership of the poles, is responsible for all costs associated with the undergrounding of their existing overhead plant.

On September 25, 2003, the Sound Transit Board approved Motion No. M2003-90 that authorized the Chief Executive Officer to enter into a Memorandum of Agreement with the City of Seattle to construct the City's underground facilities along MLK Way.

On December 8, 2003, Sound Transit and Qwest executed an agreement in principle to allocate costs in the initial segment, North Link, and Airport Link. This action was excluded from the scope of the December 8, 2003 agreement.

Prior Board or Committee Actions and Relevant Board Policies

| Motion or Resolution Number | Summary of Action | Date of Action |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| M2003-138 | Execute a master utility relocation agreement incorporating the terms of the December 8, 2003, letter agreement. | 12/11/03 |
| M2003-90 | Execute a Memorandum of Agreement with the City of Seattle specifying the cost, terms and conditions for undergrounding utilities in the Rainier Valley along Martin Luther King Jr. Way South in an amount not to exceed \$15,576,000, which includes \$2,097,000 in reimbursements from private utilities. | 9/25/03 |
| M2002-57 | Negotiate an agreement with the City of Seattle to define terms and conditions for City of Seattle payments for undergrounding utilities on Martin Luther King Jr. Way S (Approximately South McClellan to South Beacon Street) in conjunction with the Link light rail project, and to complete the final design with undergrounding of utilities included. | 4/25/02 |
| R2001-16 | Selecting the initial segment of the Central Link Light Rail Project to be constructed and operated by 2009. <u>Section 6.</u> The light rail project scope shall include the potential for relocating and placing the utilities along Martin Luther King, Jr. Way South underground. | 11/29/01 |

CONSEQUENCES OF DELAY

Construction of the underground private property services is part of the planned authorized work of the light rail construction in the Rainier Valley (C735 Contract) and scheduled to commence in early 2004. Without approval of the agreement between Sound Transit and Qwest considered under this proposed action, the construction work by Qwest associated with the C735 Contract would not be authorized, resulting in potential delays for Sound Transit's light rail construction along MLK Way.

PUBLIC INVOLVEMENT

Not applicable.

LEGAL REVIEW

BN 1-13-04

SOUND TRANSIT

MOTION NO. M2004-06

A motion of the Finance Committee of the Central Puget Sound Regional Transit Authority authorizing the Chief Executive Officer to execute an agreement with Qwest Communications, Inc. to pay Sound Transit for Qwest's share of the relocation of its facilities as part of the light rail construction along Martin Luther King Jr. Way South, consistent with the Letter of Concurrence dated July 15, 2003, and establishing construction schedule performance requirements.

Background:

On November 29, 2001, the Sound Transit Board adopted Resolution No. R2001-16 selecting the Initial Segment for Link Light Rail to be constructed and operated by 2009. The resolution stated that the project scope includes the potential for relocation of overhead utilities along MLK Way to underground ductbanks. The Sound Transit Board identified a budget of \$13,500,000 (YOES) in the project for this purpose and committed to pursue additional funding sources to supplement this budget and fund the total cost of undergrounding utilities along MLK Way.

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On September 12, 2002, the Sound Transit Board adopted Motion No. M2002-97, authorizing the Executive Director to execute a contract amendment with CH2M Hill to incorporate underground utilities into the final design of MLK Way in the amount of \$1,220,000 plus a 3.3% contingency of \$40,000, for a total of \$1,260,000, and a new total authorized contract amount not to exceed \$9,457,572.

Qwest and Comcast have agreed to participate in the undergrounding of utilities project. Final design for undergrounding as part of the scope of the Rainier Valley light rail construction was completed in June 2003. During final design, staff worked with the City of Seattle, Qwest, and Comcast to determine the scope and cost estimate for undergrounding. Staff has reached agreements in principle with both Qwest and Comcast for their share of the cost to underground their utilities. Qwest, a joint pole owner, is responsible for the cost of an overhead-to-overhead relocation and betterment of their overhead existing plant. Comcast, who does not have joint ownership of the poles, is responsible for all costs associated with the undergrounding of their existing overhead plant.

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On December 8, 2003, Sound Transit and Qwest executed an agreement in principal to allocate costs in the initial segment, North Link and Airport Link. This action was excluded from the scope of the December 8, 2003 agreement.

On December 15, 2003, Sound Transit staff completed evaluations on the C735 Contract and determined RCI-Herzog, a Joint Venture, to be the top ranked proposer. Award of the C735 Contract is pending Board approval.

Motion:

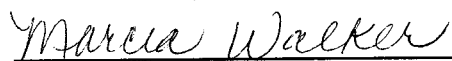
It is hereby moved by the Finance Committee of the Central Puget Sound Regional Transit Authority that the Chief Executive Officer is authorized to execute an agreement with Qwest Communications, Inc. to pay Sound Transit for Qwest's share of the relocation of its facilities as part of the light rail construction along Martin Luther King Jr. Way South, consistent with the Letter of Concurrence dated July 15, 2003, and establishing construction schedule performance requirements.

APPROVED by the Finance Committee of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on January 22, 2004.



Kevin Phelps
Finance Committee Chair

ATTEST:



Marcia Walker
Board Administrator