

SOUND TRANSIT

MOTION NO. M2009-101

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to execute a contract amendment with RCI/Herzog to authorize binding arbitration to resolve construction claims.

Background:

Sound Transit contracted with RCI/Herzog to construct the Rainier Valley segment of the at-grade light-rail transit system from South Walden Street to South Norfolk Street on MLK Way South. Stations were constructed at Edmunds Street (Columbia City Station), Othello Street (Othello Station), and Henderson Street (Rainier Beach Station). The work also included construction of new lanes, curbs, gutters, sidewalks, pedestrian crossings, and signalized intersections. Most sewer, storm drainage, and water utility lines were relocated or replaced. Overhead utilities were placed underground.

During the project, RCI/Herzog submitted a number of claims for additional compensation, asserting that differing site conditions (e.g. contaminated soils), inadequate design/construction specifications, and other problems increased their construction costs and time necessary to complete the contract. RCI/Herzog's claims total approximately \$130 million. In addition to increased construction costs, the claims include additional profit, overhead, and third-party expenses. Sound Transit denies liability for the majority of RCI/Herzog's claims. However, because these construction claims have not been resolved through negotiation or mediation, it is in Sound Transit's best interest that the claims be decided in binding arbitration rather than through a more expensive and less certain litigation process. The arbitrators are the members of the dispute resolution board jointly selected by Sound Transit and RCI/Herzog to responsibly decide construction claims on this contract.

By agreement, the compensation awarded to RCI/Herzog cannot exceed \$85 million and cannot be less than \$40 million. The amount awarded RCI/Herzog will be reduced by approximately \$17.5 million paid to RCI/Herzog as an interim settlement in 2007. The arbitration will resolve all claims between the parties.

Motion:

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the chief executive officer is authorized to execute a contract amendment with RCI/Herzog to provide for binding arbitration to decide RCI/Herzog's \$130 million claim. The arbitration panel is authorized to award RCI/Herzog an amount between \$40 million and \$85 million. The arbitration award will be reduced by approximately \$17.5 million. Sound Transit will pay the reduced amount (arbitration award minus \$17.5 million) to resolve all claims between the parties.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on November 12, 2009.

ATTEST:



Marcia Walker
Board Administrator



Greg Nickels
Board Chair