

**MOTION NO. M2011-77**
**Execute an Umbrella Memorandum of Understanding and Transitway Agreement with the City of Bellevue**

<b>MEETING:</b>	<b>DATE:</b>	<b>TYPE OF ACTION:</b>	<b>STAFF CONTACT:</b>	<b>PHONE:</b>
Board	10/27/11	Final Action	Ric Ilgenfritz, PEPD Executive Director <b>Don Billen, East Link Development Manager</b>	206-398-5239 206-398-5052

**PROPOSED ACTION**

Authorizes the chief executive officer to (1) execute an Umbrella Memorandum of Understanding with the City of Bellevue to reduce Sound Transit's costs associated with the construction of a tunnel alignment in downtown Bellevue; and (2) execute a Transitway Agreement with the City of Bellevue to grant Sound Transit non-exclusive use of City right-of-way to construct, operate, and maintain the East Link project. Prior to execution by the chief executive officer, the City of Bellevue must approve the documents in a form substantially consistent with the terms and conditions described herein.

**KEY FEATURES**

- This action authorizes execution of two related agreements: an Umbrella Memorandum of Understanding (MOU), as directed by the Sound Transit Board in Resolution No. R2011-10, and a Transitway Agreement.
- The MOU provides a binding funding commitment from the City of Bellevue to reduce Sound Transit costs by up to \$160 million in 2010 dollars (2010\$) for the East Link project to offset costs associated with the construction of a tunnel alignment through downtown Bellevue.
- The funding commitment is split into two categories. An "up-front" contribution of \$100 million (2010\$) is established in the MOU. A "contingent" contribution of \$60 million (2010\$) is identified in the MOU, but could be reduced by an amount equal to estimated project cost savings at 60% baselining or after by actual cost savings after completion of the tunnel construction contract.
- The MOU also identifies the City's support for the East Link project description, project risk-sharing components, a cooperative design and permitting process, and commitments to manage the project scope, schedule, and budget.
- The Transitway Agreement grants Sound Transit non-exclusive use of City right-of-way to construct, operate, and maintain the East Link project, at no cost to Sound Transit.

**PROJECT DESCRIPTION**

East Link is a voter-approved project to expand light rail to East King County via I-90 from Downtown Seattle to Downtown Bellevue and the Overlake area of Redmond, with stations serving Rainier Avenue/I-90, Mercer Island, South Bellevue, Downtown Bellevue, Overlake Hospital, the Bel-Red corridor, Overlake Village and the Overlake Transit Center. The ST2 plan provides for environmental review for a future expansion between the Overlake Transit Center and Downtown Redmond. On July 28, 2011 the Sound Transit Board selected the project route, profiles, and station locations, including the tunnel route in downtown Bellevue, contingent upon the City of Bellevue entering into a term sheet and a binding MOU with Sound Transit to provide a financial contribution to close the affordability gap of constructing the downtown tunnel. Revenue service to the Overlake Transit Center is forecast for early 2023.

## **FISCAL INFORMATION**

Execution of the MOU would provide up to \$160 million (2010\$) in additional fiscal capacity for the East Link project along with commitments by the City to manage to scope, schedule, and budget.

## **SMALL BUSINESS PARTICIPATION**

Not applicable to this action.

## **EQUAL EMPLOYMENT WORKFORCE PROFILE**

Not applicable to this action.

## **BACKGROUND**

During the preliminary engineering phase, Sound Transit worked with the City of Bellevue to generate and evaluate alternatives for East Link. In April 2010, Sound Transit and the City executed a term sheet to support the Board modifying its choice of preferred alternative for the Final EIS to include the C9T (downtown tunnel) alternative and advance the C9T alternative into preliminary engineering. At that time, the Board identified C9T as a preferred alternative along with the C11A at-grade alternative. The April 2010 term sheet provided a framework for the City to contribute up to \$150 million (2007\$) to help close the funding gap of C9T.

After the Final EIS was published, the Board passed Resolution No. R2011-10 selecting the route, profiles, and station locations for the East Link project. Resolution No. R2011-10 identified C9T as the project to be built, contingent upon the City of Bellevue entering into a second term sheet with Sound Transit before August 10, 2011 and a binding MOU by October 25, 2011. The second term sheet providing a City of Bellevue funding commitment of up to \$160 million (2010\$) was executed on August 10, 2011, and negotiations are underway to complete the MOU by October 25, 2011. The \$160 million (2010\$) is equal to the \$150 million (2007\$) commitment in the April 2010 term sheet.

The MOU includes the following terms and conditions:

1. A firm funding commitment of up to \$160 million (2010\$) with mechanisms to share risks and benefits between the parties;
2. Support for the project selected by the Sound Transit Board throughout the City of Bellevue;
3. Commitments to develop a cooperative permitting process;
4. Use of City right-of-way for the project at no cost to Sound Transit; and
5. Joint commitments to manage to the project scope, schedule, and budget.

Per the term sheet executed on August 10, 2011 with the City of Bellevue, the City contribution is split into two categories: up-front City contributions of \$100 million and contingent contributions of up to \$60 million (2010\$).

### Up-front City Contributions of \$100 million (2010\$)

Up-front City contributions will be comprised of permanent and temporary easements on City-owned property, payment for the depreciated value of City-owned utilities relocated by the project, the purchase of certain properties needed for East Link which also could be used for other City purposes, value realized by Sound Transit from the private utility relocations occurring under City direction, the contribution of sales tax and B&O tax received by the City as a result of the project, other cash payments, and other contributions to be determined as the project progresses.

### Contingent Contributions of up to \$60 million (2010\$)

Contingent contributions will vary depending upon two factors; the baseline cost of the project in the City of Bellevue (2010\$), and the final tunnel construction costs. Following execution of the MOU Sound Transit and the City will engage in a collaborative design process intended to balance the goal of cost reduction with system functionality and quality. Prior to project baselining at 60% design, the City will also enter into a development agreement for the project that establishes all permit conditions and allows Sound Transit to manage costs within budget through the completion of the project within the City.

If the estimated costs of the project in the City of Bellevue have decreased when the project is baselined, the City contingent contribution will be reduced. If costs have increased, the City will cooperate in identifying changes to reduce project costs and the City's contingent contribution is capped at \$60 million (2010\$).

Following project baselining, the City's contingent contribution (\$60 million or less as determined at baselining) will be applied towards tunnel construction contingency, and the City would demonstrate at that time how the funding would be secured. The City and Sound Transit will thereby share the risk of tunnel construction. Sound Transit will bear the risk and receive all construction savings for the remainder of the project. The net result is to reduce Sound Transit's costs by \$160 million (2010\$) as compared to the preliminary engineering estimate.

### **ENVIRONMENTAL COMPLIANCE**

Environmental compliance pursuant to the State Environmental Policy Act (SEPA) for East Link was completed with the East Link Project Final Environmental Impact Statement (EIS) issued on July 15, 2011.

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### **PRIOR BOARD/COMMITTEE ACTIONS**

Resolution No: R2011-10: Selected the route, profiles, and station locations for the East Link Light Rail Project.

Motion No: M2011-62: Authorized the chief executive officer to enter into a term sheet with the City of Bellevue regarding the East Link Project.

Motion No. M2010-44: Modified the preferred light rail routes and stations previously identified in Motion No. M2009-41 for the East Link Light Rail Project Final Environmental Impact Statement.

### **TIME CONSTRAINTS**

Resolution No. R2011-10 gave a deadline of October 25, 2011 to complete the MOU. .

### **PUBLIC INVOLVEMENT**

Sound Transit is committed to hearing from the public about the East Link light rail project. For the past five years communities, businesses, stakeholders and agencies helped shape the project by asking questions, talking with project staff and providing ideas and comments. Since 2006 when the project kicked off, Sound Transit has hosted twenty-eight public meetings, while also holding briefings and drop-in sessions. The comments gathered at those public sessions have, and will continue to help the decision-making process for the East Link project.

**LEGAL REVIEW**

SS 10/21/11

**MOTION NO. M2011-77**

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to (1) execute an Umbrella Memorandum of Understanding with the City of Bellevue to reduce Sound Transit's costs associated with the construction of a tunnel alignment in downtown Bellevue, and (2) execute a Transitway Agreement with the City of Bellevue to grant Sound Transit non-exclusive use of City right-of-way to construct, operate, and maintain the East Link Project provided that the Bellevue City Council promptly approves and authorizes execution of the documents in a form substantially consistent with the terms and conditions described herein.

**BACKGROUND:**

During the preliminary engineering phase, Sound Transit worked with the City of Bellevue to generate and evaluate alternatives for East Link. On April 23, 2010, in Motion No. M2010-44, the Board identified C9T as a preferred alternative along with the C11A at-grade alternative and authorized the CEO to sign a term sheet with the City related to funding and scope reductions for C9T tunnel. In April 2010, Sound Transit and the City executed the term sheet to support the modified preferred alternative for the Final EIS to include the C9T (downtown tunnel) alternative and advance the C9T alternative into preliminary engineering. The April 2010 term sheet provided a framework for the City to contribute up to \$150 million (2007\$) to help close the funding gap of C9T.

After the Final EIS was published, the Board passed Resolution No. R2011-10 selecting the route, profiles, and station locations for the East Link Project. Resolution No. R2011-10 identified C9T as the Project to be built, contingent upon the City of Bellevue entering into a second term sheet with Sound Transit before August 10, 2011 and a binding Memorandum of Understanding (MOU) by October 25, 2011. The second term sheet providing a City of Bellevue funding commitment of up to \$160 million (2010\$) was executed on August 10, 2011, and negotiations are underway to complete the MOU by October 25, 2011. The \$160 million (2010\$) is equal to the \$150 million (2007\$) commitment in the April 2010 term sheet.

The MOU includes the following terms and conditions:

1. A firm funding commitment of up to \$160 million (2010\$) with mechanisms to share risks and benefits between the parties;
2. Support for the Project selected by the Sound Transit Board throughout the City of Bellevue;
3. Commitments to develop a collaborative 60% design process;
4. Joint commitments to manage to the Project scope, schedule, and budget.
5. Commits the City to process land use code amendments by the end of 2012 to establish a consolidated permit process, amend and resolve technical code requirements that are technically infeasible for the Project, accommodate light rail transit system uses, and allow for extended vesting.
6. Provides that at the time of Project baselining, the parties will confirm any adjustments to the City contingency amount and the City will provide an unconditionally binding agreement to pay the funds consistent with the MOU, if and when needed.
7. Provides that the parties may terminate if either determines that the Project is unaffordable due to increased cost or insufficient revenue legally available or if the Project becomes impractical or infeasible due to changed or unforeseen conditions.

The Transitway Agreement includes the following terms and conditions:

1. Grants Sound Transit non-exclusive use of City right-of-way to construct, operate, and maintain the East Link Project, at no cost to Sound Transit.
2. Outlines typical standards for construction, operation and maintenance of the Project in City right-of-way generally consistent with existing transitway agreements in the cities of Seattle, Tukwila and SeaTac.

Per the term sheet executed on August 10, 2011 with the City of Bellevue, the City contribution is split into two categories: up-front City contributions of \$100 million and contingent contributions of up to \$60 million (2010\$).

#### Up-front City Contributions of \$100 million (2010\$)

Up-front City contributions will be comprised of permanent and temporary easements on City-owned property, payment for the depreciated value of City-owned utilities relocated by the Project, the purchase of certain properties needed for the East Link Project which also could be used for other City purposes, value realized by Sound Transit from the private utility relocations occurring under City direction, the contribution of sales tax and B&O tax received by the City as a result of the Project, other cash payments, and other contributions to be determined as the Project progresses.

#### Contingent Contributions of up to \$60 million (2010\$)

Contingent contributions will vary depending upon two factors; the baseline cost of the Project in the City of Bellevue (2010\$), and the final tunnel construction costs. Following execution of the MOU, Sound Transit and the City will engage in a collaborative design process intended to balance the goal of cost reduction with system functionality and quality. Prior to Project baselining at 60% design, the City will also enter into a development agreement for the Project that establishes all permit conditions and allows Sound Transit to manage costs within budget through the completion of the Project within the City.

If the estimated costs of the Project in the City of Bellevue have decreased when the Project is baselined, the City contingent contribution will be reduced. If costs have increased, the City will cooperate in identifying changes to reduce Project costs and the City's contingent contribution is capped at \$60 million (2010\$).

At the time of Project baselining, the City will identify the revenue source for the City contingency and provide an unconditionally binding agreement to pay the funds. The City's contingent contribution (\$60 million or less as determined at baselining) will be applied towards tunnel construction contingency, City and Sound Transit will thereby share the risk of tunnel construction. Sound Transit will bear the risk and receive all construction savings for the remainder of the Project. The net result is to reduce Sound Transit's costs by \$160 million (2010\$) as compared to the preliminary engineering estimate.

**MOTION:**

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the chief executive officer is authorized to (1) execute an Umbrella Memorandum of Understanding with the City of Bellevue to reduce Sound Transit's costs associated with the construction of a tunnel alignment in downtown Bellevue, and (2) execute a Transitway Agreement with the City of Bellevue to grant Sound Transit non-exclusive use of City right-of-way to construct, operate, and maintain the East Link Project; provided that the Bellevue City Council promptly approves and authorizes execution of the documents in a form substantially consistent with the terms and conditions described herein.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on October 27, 2011.



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Fred Butler  
Board Vice Chair

ATTEST:



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Marcia Walker  
Board Administrator