

**RESOLUTION NO. R2011-09**
**Amend the Central Link Initial Segment Project Budget**

<b>MEETING:</b>	<b>DATE:</b>	<b>TYPE OF ACTION:</b>	<b>STAFF CONTACT:</b>
Board	07/28/2011	Final Action	<b>Ahmad Fazel, DECM Executive Director</b> Joe Gildner, Executive Project Director Tony Raben, DECM Construction Manager

**PROPOSED ACTION**

(1) Amends the Link Initial Segment Project Capital Lifetime Budget to increase it by \$32,200,000, from \$2,070,000,000 to \$2,102,200,000, (2) amends the Link Initial Segment North King County Subarea Project Reserve Lifetime Budget to reduce it by \$32,200,000, from \$90,695,270 to \$58,495,270, and (3) amends the Initial Segment Project Adopted 2011 Annual Project Budget to increase it by \$32,370,782, from \$47,775,941 to \$80,146,724.

**KEY FEATURES**

- Authorizes the transfer of \$32,200,000 from the Link Initial Segment North King County Subarea Project Reserve to the construction phase of the Initial Segment Project to allow the chief executive officer to satisfy the arbitration award relating to the construction claims asserted by RCI Herzog, the construction contractor for the MLK (C735) Segment.
- The contract with RCI Herzog for the MLK (C735) Segment construction will need to be amended to reflect the amount of the final arbitration award. This will amend the existing contract amount of \$163.3M to a final contract amount of approximately \$204.5M.
- Consistent with the arbitrators ruling and pursuant to the settlement agreement between Sound Transit and RCIH, a net payment of \$48.9M will be made to RCIH. This net amount is based upon the arbitrators' award of \$68,066,533 to RCIH, minus the previous payment of \$17.44M and less the arbitrators' award of \$1,725,000 on Sound Transit's counterclaim. This payment to RCIH will conclude the contract, allowing it to be closed.

**PROJECT DESCRIPTION**

The 14-mile Initial Segment of Central Link has a northern terminus in the Pine Street Stub Tunnel, with passenger service from Westlake Station serving downtown Seattle, the SODO industrial area, Beacon Hill, Rainier Valley, and Tukwila. Passenger stations include Westlake, University Street, Pioneer Square, International District/Chinatown, Stadium, SODO, Beacon Hill, Mount Baker, Columbia City, Othello, Rainier Beach, and Tukwila International Boulevard.

**FISCAL INFORMATION**

The Baseline Budget for the Initial Segment included a Project Reserve of \$128,300,000, funded by subarea, with \$90,695,270 from North King County and \$37,604,730 from South King County. The 2011 Transit Improvement Plan (TIP), endorsed by the Board when the 2011 Budget was adopted in December 2010, defunded the South King County share as budget savings, and the Initial Segment Project Reserve was revised to \$90,695,270, all in North King County.

**BUDGET AMENDMENT**

Initial Segment	2011 Annual Budget			Lifetime Budget		
	Adopted 2011 Project Budget	Budget Transfer	Revised Project Budget	Adopted 2011 Project Budget	Budget Transfer	Revised Project Budget
Agency Administration	\$ 698	\$ -	\$ 698	\$ 184,333	\$ -	\$ 184,333
Preliminary Engineering	\$ -	\$ -	\$ -	\$ 33,275	\$ -	\$ 33,275
Final Design	\$ -	\$ -	\$ -	\$ 144,142	\$ -	\$ 144,142
Right of Way	\$ 484	\$ -	\$ 484	\$ 206,729	\$ -	\$ 206,729
Construction	\$ 45,928	\$ 32,371	\$ 78,299	\$ 1,203,397	\$ 32,200	\$ 1,235,597
Construction Services	\$ 565	\$ -	\$ 565	\$ 104,912	\$ -	\$ 104,912
Third Party Agreements	\$ 100	\$ -	\$ 100	\$ 61,409	\$ -	\$ 61,409
Vehicles	\$ -	\$ -	\$ -	\$ 131,803	\$ -	\$ 131,803
Contingency	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>\$ 47,776</b>	<b>\$ 32,371</b>	<b>\$ 80,147</b>	<b>\$ 2,070,000</b>	<b>\$ 32,200</b>	<b>\$ 2,102,200</b>

Initial Segment Project Reserve	2011 Annual Budget			Lifetime Budget		
	Adopted 2011 Project Budget	Budget Transfer	Revised Project Budget	Adopted 2011 Project Budget	Budget Transfer	Revised Project Budget
Agency Administration	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Preliminary Engineering	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Final Design	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Right of Way	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Construction Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Third Party Agreements	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Vehicles	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Contingency	\$ -	\$ -	\$ -	\$ 90,695	\$ (32,200)	\$ 58,495
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 90,695</b>	<b>\$ (32,200)</b>	<b>\$ 58,495</b>

Notes:

Amounts are expressed in Year of Expenditure \$000.

The Initial Segment project budget is located on page 45 of the 2011 Transit Improvement Plan (TIP) plus amendments prior to adoption by the Board in December 2010.

The Initial Segment Project Reserve budget is located on page 51 of the 2011 Transit Improvement Plan (TIP).

**SMALL BUSINESS PARTICIPATION**

Not applicable to this action.

**BACKGROUND**

In January, 2008, RCI Herzog asserted construction claims in the amount of \$137 million in connection with the C735 project. The contractor alleged, among other things, that the project design was incomplete and inaccurate, that the construction management consultant had mis-managed the job, and that differing site conditions were encountered.

Sound Transit disputed many of the claims or the amounts sought, but made an advance payment of \$17,440,000 towards the resolution of those claims pursuant to the Interim Settlement Agreement entered into between the parties. The parties engaged in two unsuccessful mediations and numerous face-to-face negotiations in their attempts to resolve the issues between them. However, RCI Herzog refused to accept a settlement that Sound Transit’s evaluation deemed reasonable.

In December 2009, the Sound Transit Board authorized the chief executive officer to enter into an alternative dispute resolution agreement pursuant to which all claims would be heard and decided by a three-member arbitration panel. The parties agreed that the arbitrators’ ruling will be binding. The arbitrators were the former members of the project’s Dispute Review Board. The parties agreed that RCI Herzog’s recovery would be “bracketed”, meaning that it could not receive more than \$85 million or less than \$40 million, including amounts already paid towards the resolution of these claims. The parties submitted the claims, defenses, and counterclaims to the panel.

An eight-week arbitration hearing took place from March 14 to May 5, 2011. The arbitrators issued their interim ruling on June 20, awarding RCI Herzog \$68,066,533, from which the prior payment of \$17.44 million will be deducted. The arbitrators also awarded Sound Transit the sum of \$1,725,000 on its counterclaim for concrete cracking at the intersections. The parties have now agreed to settle all claims for the net dollar figure in the award and avoid the risks, expenses, and uncertainty involved in bringing post-award motions for interest and attorneys' fees. Therefore, the budget amendments identified in this resolution will cover the maximum amount needed to complete that settlement. Any unneeded budget will be transferred out of the project through future budget action, after project closeout occurs.

## **ENVIRONMENTAL COMPLIANCE**

Jl 7/22/2011

## **PRIOR BOARD/COMMITTEE ACTIONS**

Motion No. M2007-45 - Authorized the chief executive officer to increase the contingency for the contract with RCI Herzog, Joint Venture for construction of the Rainier Valley segment of the Central Link Light Rail Initial Segment Project in the amount of \$17,000,000, for a new total authorized contract amount not to exceed \$171,449,260.

Motion No. M2006-74 - Authorized the Chief Executive Officer to increase the contingency for the contract with RCI Herzog, Joint Venture for construction of C735 (Rainier Valley Construction) by \$7,500,000, for a new total authorized contract amount not to exceed \$154,449,260.

Motion No. M2006-70 - Authorized the Chief Executive Officer to execute an agreement with the Seattle Housing Authority to pay Sound Transit for the betterments of Seattle Housing Authority facilities as part of the light rail construction along Martin Luther King, Jr. Way South, estimated at \$2,212,317.

Resolution No. R2005-08 - Transferred uncommitted lifetime capital budget in the amount of \$4 million from the Right of Way Phase to the Construction Phase of the Link Light Rail Initial Segment adopted budget, maintaining the total adopted project capital budget of \$2.07 billion.

Motion No. M2005-28 - Executed a contract amendment with RCI Herzog, Joint Venture in the amount of \$3,250,000 for the Link Light Rail Initial Segment construction in Rainier Valley, for a new total authorized contract amount not to exceed \$146,949,260, which includes reimbursements to Sound Transit by third parties for betterments in the amount of \$14,123,336.

Motion No. M2004-03 - Authorized the Chief Executive Officer to execute a contract with RCI-Herzog, A Joint Venture for the Rainier Valley light rail construction in the amount of \$128,302,911 with a 12% contingency in the amount of \$15,396,349 for a total authorized contact amount not to exceed \$143,699,260.

Resolution No. R2001-16 - Selected the initial segment of the Central Link Light Rail Project to be constructed and operated by 2009.

## **TIME CONSTRAINTS**

Payment must be made in early August.

## **LEGAL REVIEW**

JEN, 07/22/11

**RESOLUTION NO. R2011-09**

A RESOLUTION of the Board of the Central Puget Sound Regional Transit Authority 1) amending the Initial Segment Project Capital Lifetime Budget to increase it by \$32,200,000, from \$2,070,000,000 to \$2,102,200,000, (2) amending the Link Initial Segment North King County Subarea Project Reserve Lifetime Budget to reduce it by \$32,200,000, from \$90,695,270 to \$58,495,270, and (3) amending the Initial Segment Project Adopted 2011 Annual Project Budget to increase it by \$32,370,782, from \$47,775,941 to \$80,146,724.

WHEREAS, the Central Puget Sound Regional Transit Authority, commonly known as Sound Transit, was formed under RCW Chapters 81.104 and 81.112 for the Pierce, King, and Snohomish Counties region by action of their respective county councils pursuant to RCW 81.112.030; and

WHEREAS, Sound Transit is authorized to plan, construct, and permanently operate a high-capacity system of transportation infrastructure and services to meet regional public transportation needs in the Central Puget Sound region; and

WHEREAS, in general elections held within the Central Puget Sound Regional Transit Authority district on November 5, 1996 and November 4, 2008, voters approved local funding to implement a regional high-capacity transportation system for the Central Puget Sound region; and

WHEREAS, on February 12, 2004, through Motion M2004-03, the Sound Transit Board authorized a contract with RCI-Herzog, A Joint Venture for Link Light Rail Initial Segment Construction (C735 segment); and

WHEREAS, the Sound Transit Board has adopted financial policies to govern the financing and implementation of the regional transit system and to specify budgetary guidelines for providing subarea equity in accomplishing the same; and

WHEREAS, by Resolution No. R2009-23, the Sound Transit Board adopted the 2011 Budget on December 16, 2010; and

WHEREAS, RCI Herzog asserted construction claims in connection with the C735 segment; and

WHEREAS, the Sound Transit Board authorized the chief executive officer to enter into an alternative dispute resolution agreement under which all claims would go to arbitration; and

WHEREAS, the arbitrators issued their interim ruling on June 20, awarding RCI Herzog \$68,066,533, \$17,440,000 of which has been previously paid; and

WHEREAS, there is insufficient budget in the Initial Segment project to fund the portion of the award to RCI Herzog that exceeds the current available budget; and

WHEREAS, said budget amendment is consistent with and affordable under Board-adopted financial policies as established by Resolution No. R72-1; and

WHEREAS, a two-thirds affirmative vote of the entire membership of the Sound Transit Board is required to amend the Adopted 2011 Annual Budget.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Central Puget Sound Regional Transit Authority that the Adopted Lifetime Budget and Adopted 2011 Annual Budget are amended as follows:

- 1) The Link Initial Segment Project Capital Lifetime budget is increased by \$32,200,000, from \$2,070,000,000 to \$2,102,200,000.
- 2) The Link Initial Segment North King County Subarea Project Reserve Lifetime Budget is reduced by \$32,200,000, from \$90,695,270 to \$58,495,270.
- 3) The Initial Segment Project Adopted 2011 Annual Project Budget is increased by \$32,370,782 from \$47,775,941 to \$80,146,724.

ADOPTED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on July 28, 2011.



Aaron Reardon  
Board Chair

ATTEST:



Marcia Walker  
Board Administrator