



Motion No. M2024-66

Amendment to a Construction Agreement with WSDOT on the Federal Way Link Extension

Meeting:	Date:	Type of action:	Staff contact:
System Expansion Committee	10/10/2024	Recommend to Board	Terri Mestas, Deputy CEO, Capital Delivery
Board	10/24/2024	Final action	Michael Morgan, Executive Director, Capital Delivery Linneth Riley-Hall, Executive Project Director - Federal Way Link Extension Beth Blair, Manager - Light Rail Development - FWLE

Proposed action

Authorizes the chief executive officer to execute an amendment to the Construction Agreement with the Washington State Department of Transportation (WSDOT) related to WSDOT's Phase 1 SR 509 Completion Project to extend the time period for the Federal Way Link Extension contractor to work on WSDOT right-of-way and authorize Sound Transit to pay WSDOT contractor claims including paying \$345,000, if required, for impacts to WSDOT's project after May 30, 2025.

Key features summary

- The *Construction Agreement between Sound Transit and WSDOT for Improvements of the WSDOT 509 Completion Project* was entered into in 2019 to coordinate construction of the Sound Transit Federal Way Link Extension Project (FWLE) and WSDOT's adjacent project. Per the agreement, Sound Transit must return defined turnback areas in WSDOT right-of-way by specified dates and make the areas available to the WSDOT contractor.
- Complications from Structure C construction have necessitated the FWLE contractor to work in WSDOT right of way for an extended period.
- In this Amendment, Sound Transit agrees to pay any valid WSDOT contractor claims caused solely by Sound Transit's extended use of one area of WSDOT right of way after November 1, 2024, in lieu of WSDOT assessing liquidated damages agreed in the original agreement. Staff will return to the Board for any additional funding required.
- If Sound Transit impacts this area after May 30, 2025, Sound Transit will pay WSDOT the agreed amount of \$345,000, and Sound Transit will have use of a portion of the area until November 20, 2025, and agrees to pay a valid claim for any other Sound Transit-caused impacts from its use of the other portions of the area.
- If Sound Transit is unable to return the areas by November 20, 2025, Sound Transit would pay liquidated damages pursuant to the original Agreement.

Background

The Federal Way Link Extension adds approximately 7.8 miles of light rail from the Angle Lake Station at South 200th Street in the City of SeaTac to the Federal Way Downtown Station in the City of Federal Way. The extension parallels State Route 99 and Interstate 5 and includes stations at Kent/Des Moines, South 272nd/ Star Lake Park and Ride, and the Federal Way Transit Center. In addition, new parking structures will be constructed at each of the three stations. Revenue service is anticipated to begin mid-2026.

The Federal Way Link Final Environmental Impact Statement was issued on November 18, 2016 pursuant to the State Environmental Policy Act (SEPA) and National Environmental Policy Act (NEPA), completing the SEPA process. The Federal Transit Administration issued a Record of Decision on March 6, 2017 and the Federal Highway Administration issued a Record of Decision on March 9, 2017, completing the NEPA process.

In January 2019, Sound Transit and WSDOT entered into an agreement (GCB 3019) to coordinate the work on the WSDOT SR 509 Completion Project and the Sound Transit Federal Way Link Extension project. The construction of the two projects is mostly parallel and the projects are adjacent and cross each other in one location. Sound Transit and WSDOT coordinated on design solutions, construction areas, and construction schedules.

WSDOT reimbursed Sound Transit to include the design and construction of the SR 509 Bridge and other elements of WSDOT's project into the FWLE contract. This agreement established the terms and conditions for Sound Transit to perform the work and for WSDOT to reimburse Sound Transit for the work. Amendments to the agreement added shared cost of shared-use walls and other coordinated work. Amendment 3 allowed extended Sound Transit use of identified turnback areas under the existing Temporary Construction Airspace Lease (TCAL) on WSDOT right-of-way.

The Construction Agreement identifies liquidated damages (LDs) in the amount of \$68,000 per day that could be assessed to Sound Transit if Sound Transit continues to use WSDOT right-of-way after the date WSDOT requires that it be returned, that is currently November 1, 2024.

The Sound Transit FWLE construction schedule has been extended due to complications at Structure C. The FWLE contractor has been unable to return the agreed turnback areas on WSDOT right of way by the dates WSDOT required in the TCAL. Amendment 3 to the construction Agreement allowed Sound Transit additional time to use the WSDOT right-of-way, and Sound Transit agreed to pay actual valid claims from WSDOT's contractor for Sound Transit's impact of its extended period of use, in lieu of liquidated damages.

In Amendment 4 to the Construction Agreement (the subject of this Board action), WSDOT agrees not to assess liquidated damages and authorizes Sound Transit to use this area of WSDOT right-of-way until November 20, 2025. Sound Transit agrees to pay any WSDOT contractor claims that WSDOT has determined valid and has resolved, to the extent caused by Sound Transit's extended use of Turnback Area 3 portion of the WSDOT right-of-way. If Sound Transit impacts the use of the area after May 30, 2025, Sound Transit agrees to pay the amount of \$345,000 and will have use of a portion of the Turnback Area 3, and could pay additional WSDOT contractor claims for Sound Transit impacts due to use of the rest of the area until November 20, 2025. This amount reflects the amount of the WSDOT contractor's claim for Sound Transit's impact to the WSDOT scheduled work. These costs would likely be less than payment of daily liquidated damages.

Project status

○					
Project Identification	Alternatives Identification	Conceptual Engineering/ Draft EIS	Preliminary Engineering/ Final EIS	Final Design	Construction

Projected completion date for Construction: 2025

Project scope, schedule and budget summary are located on page 50 of the June 2024 Agency Progress Report.

Fiscal information

This action is funded by the project's baseline budget and there are projected sufficient amounts in the budget remaining to fund the remaining work. The current project budget is included in the existing Financial Plan forecast.

The original estimated agreement amount for the work to be performed by Sound Transit and reimbursed by WSDOT was \$41,015,762. The amount was modified in Amendment 1 to \$46,596,062 and modified again in Amendment 2 to \$45,559,559. There was no change in the estimated agreement amount in Amendment 3.

This action will authorize Sound Transit to pay WSDOT an amount of \$345,000 in accordance with the terms of the Amendment 4 to the Construction Agreement. This amount may not be required to be paid. If Sound Transit is required to pay, there are sufficient funds available in the project's uncommitted balance to cover the payment which will be preemptively committed to ensure coverage.

The baseline budget for the Federal Way Link Extension project is \$2,451,535,000. Within the \$43,982,000 third party phase, \$5,323,500 has been allocated to WSDOT Construction Coordination. This action would commit \$345,000 to this line item and leave an uncommitted line-item balance of \$271,806.

Federal Way Link Extension

(in thousands)

Project Phase	Baseline Budget	Total Commitment to Date	This Action	Total Commitment Plus Action	Uncommitted / (Shortfall)
Agency Administration	\$104,480	\$64,107	\$0	\$64,107	\$40,373
Preliminary Engineering	46,131	46,117	-	46,117	14
Final Design	7,237	4,966	-	4,966	2,271
Third Party	43,982	31,603	345	31,948	12,034
Right of Way	324,723	241,299	-	241,299	83,424
Construction	1,768,750	1,647,465	-	1,647,465	121,284
Construction Services	156,232	139,582	-	139,582	16,651
Total Current Budget	\$2,451,535	\$2,175,139	\$345	\$2,175,484	\$276,051
Phase Detail - Third Party					
WSDOT Construction Coordination	\$5,324	\$4,707	\$345	\$5,052	\$272
Other Third Party	38,659	26,896	-	26,896	11,762
Total Phase	\$43,982	\$31,603	\$345	\$31,948	\$12,034

Amounts are expressed in Year of Expenditure \$000s.

Total Commitment = Commitment and PO Contingency Remaining as of 8/31/2024

For detailed project information, see page 114 of the 2024 Financial Plan & Adopted Budget.

Disadvantaged and small business participation

Participation by small businesses and disadvantaged business enterprises (DBEs)

Not applicable to this action.

Public involvement

Extensive public outreach efforts have taken place on behalf of the Federal Way Link Extension over the last several years. Concurrent with Sound Transit's outreach efforts regarding the FWLE alignment, WSDOT conducted similar efforts to educate the community on the SR 509 Completion Project.

Time constraints

A one-month delay would impact the project team's ability to remain on WSDOT right-of-way beyond the current TCAL date of November 1, 2024.

Prior Board/Committee actions

Motion No. M2021-02: Authorized the chief executive officer to execute an amendment to a construction and funding agreement with the Washington State Department of Transportation (WSDOT) for Sound Transit to design and construct WSDOT noise walls as part of the Federal Way Link Extension, for which WSDOT will reimburse Sound Transit.

Motion No. M2018-109: Authorized the chief executive officer to execute a construction and funding agreement with Washington State Department of Transportation for Sound Transit to design and construct certain elements related to the SR 509 project, as part of the Sound Transit Federal Way Link Extension design-build contract.

Environmental review – EG 8/23/24

Legal review – JSA 10/8/24



Motion No. M2024-66

A motion of the of Board the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to execute an amendment to the Construction Agreement with the Washington State Department of Transportation (WSDOT) related to WSDOT's Phase 1 SR 509 Completion Project to extend the time period for the Federal Way Link Extension contractor to work on WSDOT right-of-way and authorize Sound Transit to pay WSDOT contractor claims including paying \$345,000, if required, for impacts to WSDOT's project after May 30, 2025.

Background

The Federal Way Link Extension adds approximately 7.8 miles of light rail from the Angle Lake Station at South 200th Street in the City of SeaTac to the Federal Way Downtown Station in the City of Federal Way. The extension parallels State Route 99 and Interstate 5 and includes stations at Kent/Des Moines, South 272nd/ Star Lake Park and Ride, and the Federal Way Transit Center. In addition, new parking structures will be constructed at each of the three stations. Revenue service is anticipated to begin mid-2026.

The Federal Way Link Final Environmental Impact Statement was issued on November 18, 2016 pursuant to the State Environmental Policy Act (SEPA) and National Environmental Policy Act (NEPA), completing the SEPA process. The Federal Transit Administration issued a Record of Decision on March 6, 2017 and the Federal Highway Administration issued a Record of Decision on March 9, 2017, completing the NEPA process.

In January 2019, Sound Transit and WSDOT entered into an agreement (GCB 3019) to coordinate the work on the WSDOT SR 509 Completion Project and the Sound Transit Federal Way Link Extension project. The construction of the two projects is mostly parallel and the projects are adjacent and cross each other in one location. Sound Transit and WSDOT coordinated on design solutions, construction areas, and construction schedules.

WSDOT reimbursed Sound Transit to include the design and construction of the SR 509 Bridge and other elements of WSDOT's project into the FWLE contract. This agreement established the terms and conditions for Sound Transit to perform the work and for WSDOT to reimburse Sound Transit for the work. Amendments to the agreement added shared cost of shared-use walls and other coordinated work. Amendment 3 allowed extended Sound Transit use of identified turnback areas under the existing Temporary Construction Airspace Lease (TCAL) on WSDOT right-of-way.

The Construction Agreement identifies liquidated damages (LDs) in the amount of \$68,000 per day that could be assessed to Sound Transit if Sound Transit continues to use WSDOT right-of-way after the date WSDOT requires that it be returned, that is currently November 1, 2024.

The Sound Transit FWLE construction schedule has been extended due to complications at Structure C. The FWLE contractor has been unable to return the agreed turnback areas on WSDOT right of way by the dates WSDOT required in the TCAL. Amendment 3 to the construction Agreement allowed Sound Transit additional time to use the WSDOT right-of-way, and Sound Transit agreed to pay actual valid claims from WSDOT's contractor for Sound Transit's impact of its extended period of use, in lieu of liquidated damages.

In Amendment 4 to the Construction Agreement (the subject of this Board action), WSDOT agrees not to assess liquidated damages and authorizes Sound Transit to use this area of WSDOT right-of-way until November 20, 2025. Sound Transit agrees to pay any WSDOT contractor claims that WSDOT has determined valid and has resolved, to the extent caused by Sound Transit's extended use of Turnback

Area 3 portion of the WSDOT right-of-way. If Sound Transit impacts the use of the area after May 30, 2025, Sound Transit agrees to pay the amount of \$345,000 and will have use of a portion of the Turnback Area 3, and could pay additional WSDOT contractor claims for Sound Transit impacts due to use of the rest of the area until November 20, 2025. This amount reflects the amount of the WSDOT contractor's claim for Sound Transit's impact to the WSDOT scheduled work. These costs would likely be less than payment of daily liquidated damages.

The *Construction Agreement between Sound Transit and WSDOT for Improvements of the WSDOT 509 Completion Project* was entered into in 2019 to coordinate construction of the Sound Transit Federal Way Link Extension Project (FWLE) and WSDOT's adjacent project. Per the agreement, Sound Transit must return defined turnback areas in WSDOT right-of-way by specified dates and make the areas available to the WSDOT contractor.

Complications from Structure C construction have necessitated the FWLE contractor to work in WSDOT right of way for an extended period.

In this Amendment, Sound Transit agrees to pay any valid WSDOT contractor claims caused solely by Sound Transit's extended use of one area of WSDOT right of way after November 1, 2024, in lieu of WSDOT assessing liquidated damages agreed in the original agreement. Staff will return to the Board for any additional funding required.

If Sound Transit impacts this area after May 30, 2025, Sound Transit will pay WSDOT the agreed amount of \$345,000, and Sound Transit will have use of a portion of the area until November 20, 2025, and agrees to pay a valid claim for any other Sound Transit-caused impacts from its use of the other portions of the area.

If Sound Transit is unable to return the areas by November 20, 2025, Sound Transit would pay liquidated damages pursuant to the original Agreement.

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 an amendment to the Construction Agreement with the Washington State Department of Transportation (WSDOT) related to WSDOT's Phase 1 SR 509 Completion Project to extend the time period for the Federal Way Link Extension contractor to work on WSDOT right-of-way and authorize Sound Transit to pay WSDOT contractor claims including paying \$345,000, if required, for impacts to WSDOT's project after May 30, 2025.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on October 24, 2024.


Dow Constantine
Board Chair

Attest:


Kathryn Flores
Board Administrator