



July 23, 2008

Paula J. Hammond, P.E.  
Secretary, Washington State Department of Transportation  
Post Office Box 47316  
Olympia, Washington 98504-9710

Dear Paula,

The intent of this letter is to respond to the following question: Do the planning and financial cost and funding plans within the ST2 Plan for East Link assume that Sound Transit has responsibility for the cost and risk to construct and maintain electric light rail on the I-90 bridge? The short answer is yes.

Since the early days of Sound Move, Sound Transit and WSDOT negotiated a series of agreements that define risk allocations and protections between our two agencies. Because we have successfully implemented these risk allocation measures and protections for State owned highway facilities during the design, construction and operation of previous Sound Transit projects in the State right of way, we have no problem assuming responsibility for costs to operate and maintain light rail and for damage to the structure caused by ST activities, claims, or other risks associated with the construction and operation of light rail over the I-90 bridge.

The risk allocations and protections that WSDOT and Sound Transit have previously agreed to are found in three agreements:

- the Agreement for the Design Coordination and Review of Sound Transit Link Light Rail Projects within the WSDOT Right of Way (GCA 2941),
- the Umbrella Agreement for the Construction Administration of Sound Transit Project within WSDOT Right of way (GCA 3361) and
- the airspace form agreement under the Restated Land Bank Agreement (December 1, 2003).

The provisions of these agreements have been implemented in numerous transit projects on the State right of way, including direct access ramps on I-405, I-90, and I-5. We have also successfully implemented Initial Segment and Airport Link light rail construction either above, below or in State right of way that included engineering complexities and risks, such as crossing over I-5 to Tukwila, under I-5 at Beacon Hill, along I-5 and SR 518, to

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Joni Earl

name a few; and now we will use the same agreements for the University Link crossing under I-5 to Capitol Hill. In each and every case, the risk and cost issues have been handled through the agreements stated above.

In addition to being responsible for all the costs associated with the construction and operation of light rail in the I-90 corridor, Sound Transit commits to funding improvements to improve earthquake resistance of the structures in the corridor utilized by light rail. Structures assumed to be retrofitted include the columns, bridge seats and restrainers for the light rail portions of the D2 Roadway, Rainier Avenue Overcrossing, Approach Spans to the Floating Bridge, and the East Channel Bridge, utilizing the currently known FHWA/AASHTO policies, consistent with WSDOT's own practices for retrofitting existing structures.

In the rest of this letter I will describe in more detail the risk allocations and protections that benefit WSDOT with references to the specific sections of the agreements.

#### GCA 2941 - Design Agreement:

Even before construction begins, the State must review Sound Transit's design work. Under GCA 2941 WSDOT reviews and approves the design, documents, plans, specifications and other documents necessary to construct the light rail project. (5.2). The State's review includes bridge design plans and traffic control plans. (5.3). The State's review is at the expense of Sound Transit.

#### GCA 3361 - Construction Umbrella Agreement:

Either the State or Sound Transit can provide construction administration for Sound Transit-funded construction projects in the State right of way. Under GCA 3361, Sound Transit will indemnify, defend and hold the State harmless from any claims arising from Sound Transit's negligent acts (5.1), and Sound Transit will comply with the State's insurance coverage requirements naming the State as an additional insured. (5.3). Sound Transit will bear the owner's risk for damage to the permanent work. (5.4.2)

#### Task Order "B" of GCA 3361:

Under Task Order "B" of GCA 3361, Sound Transit will provide construction administration at its expense for Link Light Rail projects. In 2004 Task Order "B" was used for the Beacon Hill Tunnel construction. Under Task Order "B" Sound Transit acts as the construction administrator, and the State, acting as the oversight agency, reviews and approves Sound Transit's work. The cost of the State's oversight activities under Task Order "B" is Sound Transit's responsibility. (18.3). The State can order the suspension of Sound Transit work (4.6). The State has approval authority for all drawings affecting the safety, operations, and future maintenance of highway elements. (5.1). The State reviews and approves traffic control plans for the project. (5.2). Sound Transit's construction of the highway elements must conform to the designs approved by the State. (5.6). The State may require a monitoring plan for the state highway facilities. (5.7). Damage to the State highway facilities caused by Sound Transit activities will be corrected by Sound Transit at no cost to the State. (5.8). The State can review and approve changes to the project that affect the safety, operation and future maintenance of the State highway facility. (5.9). The State may participate in the final inspection of the Sound Transit work. (6.1). Finally, Sound Transit will defend the State against third party claims brought by Sound Transit's contractors. (18.3).

#### Task Order "A" of GCA 3361:

If it is appropriate for the State to construct some components of the light rail project on I-90, then Task Order "A" can be used. Under Task Order "A", the State provides construction administration services at Sound Transit's cost for improvements to the State highway system. Task Order "A" contains a process for

advertising and award of contracts (6.2), a process for change order approval (6.3), and a process for claims and protests by the contractor (6.4), and Sound Transit is obligated to pay all actual and valid costs of the State even if they may exceed the estimated costs. (5.2).

Airspace Lease under Restated Land Bank Agreement:

When construction is completed, the State is protected under the form airspace lease attached to the Restated Land Bank Agreement. This airspace lease provides an indemnity in favor of the State. Sound Transit will agree to hold the State harmless from all claims, action, costs, damages or expenses of any kind by reasons of Sound Transit's acts or activities authorized by the lease. (25). In addition, a traffic control plan and maintenance plan can also be made part of the airspace lease to protect the bridge structure. (4, 18).

Funding for R8A:

Sound Transit agrees to fund the currently un-funded portion of the R8A project, which is \$90 million (\$2007). Recognizing that the R8A project includes two-way HOV lanes in the outer roadway of the I-90 bridge which will be used by buses, vanpools and carpools, Sound Transit and WSDOT shared the costs for Stage 1 currently under construction. The 2004 Amendment to the 1976 Memorandum of Agreement for construction of the I-90 bridge identifies building R8A as the first step towards the ultimate configuration of HCT in the center roadway. WSDOT and ST now agree that the HCT mode will be light rail (East Link), and therefore, R8A must be constructed in order to implement light rail.

The ST2 Financial Plan assumes funding for \$45 million (\$2007) of the current shortfall. By this letter, and with action by a supermajority of the ST board, the 2009 budget for Sound Move will include the \$45 million balance of the project in the East King County subarea from program reserves and excess revenues. This commitment of funding is contingent upon WSDOT's commitment to work with ST collaboratively to manage project scope, consistent with the ST Board Scope Control Policy, meaning, betterments that benefit WSDOT not related to light rail construction and operation will be funded by WSDOT. In recognition of Sound Transit's commitment to fund R8A, WSDOT commits to recognize ST's contribution as part of the negotiations for the airspace lease for use of the center roadway.

Sound Transit has experienced success with other agencies, such as University of Washington (U-Link) and the Port of Seattle (Airport Link), resolving complex issues and concerns when we have both focused on making the project happen and doing so fairly and equitably in the public interests. In both cases, these were very complicated negotiations, but successful. The result has been excellent working relationships and great projects. I have every confidence that we will have the same level of success with East Link once the green light is given to actually negotiate and resolve issues.

I hope this letter clarifies that WSDOT and Sound Transit have in place agreements that provide ample protection for the State and transfer the risks associated with Sound Transit construction in the State right of way to Sound Transit. I welcome any questions or comments you may have regarding these protections.

Sincerely,



Johi Earl  
Chief Executive Officer

