

**SOUND TRANSIT
STAFF REPORT**

MOTION NO. M2003-113

Re-Stated Land Bank Agreement

Meeting:	Date:	Type of Action:	Staff Contact:	Phone:
Finance Committee	11/6/03	Discussion/Possible Action to Recommend Board Approval Action	Joann Francis, Chief Administrative Officer Al Lowe, Real Estate Manager	(206) 689-4934
Board	11/13/03			(206) 398-5250

Contract/Agreement Type:	✓	Requested Action:	✓
Competitive Procurement		Execute New Contract/Agreement	
Sole Source		Amend Existing Contract/Agreement	
Interlocal Agreement		Contingency Funds Required	
Purchase/Sale Agreement		Budget Amendment Required	

✓ *Applicable to proposed transaction.*

OBJECTIVE OF ACTION

Revise the existing Land Bank Agreement with the Washington State Department of Transportation to extend the term of the agreement to 40 years, and to revise the mechanism for establishing credits. The existing Land Bank Agreement has a term of 20 years, and provides for the establishment of credits upon Sound Transit's completion of improvements to WSDOT highway property, or upon direct payments to WSDOT. Credits may be used by Sound Transit to purchase or lease WSDOT surplus property.

ACTION

Authorizes the Chief Executive Officer to execute a Re-Stated Land Bank Agreement with the Washington State Department of Transportation, for a term of 40 years, that establishes credits upon construction bid. It is further authorized that the standard Airspace Lease Agreement be revised to provide for a term up to 40 years, and to address rent adjustments, termination and remedy. The Chief Executive Officer is hereby authorized to execute said Airspace Leases for up to the term stated herein.

KEY FEATURES

The current agreement:

- Has a term of 20 years.
- Allows Sound Transit to use property which is restricted (by the 18th Amendment of the Washington State Constitution) to "Highway Use" only.
- Allows Sound Transit to utilize credits of over \$300 million from budgeted Sound Transit highway improvements to acquire needed WSDOT property.
- Establishes a form of airspace lease agreement to utilize WSDOT property for a term up to 40 years.
- Credits used to pay rent are available for 20 years into the life of the lease.

- Credits used to purchase surplus WSDOT property have no expiration.
- Creates credits at the time of project completion or direct payment.

The proposed Re-Statement Agreement:

- Extends the term of the agreement to 2040.
- Extends the use of credits used to pay rent from 20 years to 40 years, the term of the agreement.
- Revises the form of Airspace Lease used to lease WSDOT property
- Creates credits at the time of project bid. This will result in adding over \$70 million in credits generated by Regional Express projects currently under construction.

BUDGET IMPACT SUMMARY

There is no action outside of the Board-adopted budget; there are no contingency funds required, no subarea impacts, or funding required from other parties other than what is already assumed in the financial plan.

BUDGET DISCUSSION

Sound Transit is entitled to land bank credits equivalent to the in-kind value of highway improvement projects constructed by Sound Transit on WSDOT right of way. These land bank credits can then be used to acquire WSDOT real property required for other Sound Transit projects, thus reducing the agency's overall project costs.

By entering into the re-stated land bank agreement, Sound Transit will improve its leveraging of highway investments. This agreement provides for extending the use of credits used to pay rent from 20 years under the current agreement, to 40 years and for triggering the use of credits at the time of bid rather than at the time construction has been completed.

This agreement does not authorize the acquisition of any property. Authority to acquire specific WSDOT properties identified for purchase is approved by separate action of the Sound Transit Board.

REVENUE, SUBAREA, AND FINANCIAL PLAN IMPACTS

The existing budgets and financial plan assumes the use of land bank credits. Thus, this agreement has no new direct impacts to the agency's current long-term financial plan and subarea financial capacity. However, by extending the terms and triggering earlier the use of the credits, the re-stated agreement increases the benefit provided to Sound Transit by the use of the land bank agreement.

M/W/DBE – Small Business Participation

Not applicable for this action.

HISTORY OF PROJECT

On July 14, 2000, Sound Transit and WSDOT entered into a Land Bank Agreement that allows Sound Transit's funding of highway improvements to be used as consideration for leasing or purchasing WSDOT property needed for Sounder Commuter Rail, Regional Express, and Link Light Rail projects. To date, the Land Bank has generated approximately \$9 million in credits that can be used to support Sound Transit projects. However, the forecasted need for credits do not match the anticipated rate of credit deposit. Because credits are established upon project completion, or upon direct payments to WSDOT, the near term needs of Sound Transit projects, especially Link light rail, will not be met. To remedy this, WSDOT and Sound Transit have agreed to establish land bank credits at the time the project is bid. At that time, expenditures for pre-construction and construction costs will be recognized for credit. Under this proposal, Sound Transit will become immediately eligible for over \$70 million in credits from Regional Express projects that are under construction.

In addition, the term of the Land Bank will be extended to 40 years. This will allow credits to be used to lease property for the useful life of the improvements, rather than the current term of 20 years.

Finally, the terms of the standard Airspace Lease agreement has been revised to address rent adjustments, termination, and remedy provisions.

Prior Board or Committee Actions and Relevant Board Policies

Motion or Resolution Number	Summary of Action	Date of Action
M2000-49	Authorizing the Executive Director to execute a Land Bank Agreement with the Washington State Department of Transportation (WSDOT)	6/8/00

CONSEQUENCES OF DELAY

Sound Transit is currently negotiating several transactions that will substantially benefit from this Agreement. Most notably, the Link light rail project must conclude a large transaction with WSDOT within the next three months and will benefit from immediate land bank funding.

PUBLIC INVOLVEMENT

The Land Bank Agreement would not be possible without the partnership with WSDOT and the Washington State Attorney General's Office.

LEGAL REVIEW

BN 10/17/03

SOUND TRANSIT

MOTION NO. M2003-113

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the Chief Executive Officer to execute a Re-Stated Land Bank Agreement with the Washington State Department of Transportation substantially in the form of the attached Exhibit A, for a term of 40 years, that establishes credits upon construction bid. It is further authorized that the standard Airspace Lease Agreement be revised to provide for a term up to 40 years, and to address rent adjustments, termination and remedy. The Chief Executive Officer is hereby authorized to execute said Airspace Leases for up to the term stated herein.

Background:

On July 14, 2000, Sound Transit and the Washington State Department of Transportation (WSDOT) entered into a Land Bank Agreement that allows Sound Transit's funding of highway improvements to be used as consideration for leasing or purchasing WSDOT property needed for Sounder, Regional Express, and Link Light Rail projects. To date the Land Bank has generated approximately \$9 million in credits that can be used to support Sound Transit projects. However, the forecasted need for credits do not match the anticipated rate of credit deposit. Because credits are established upon project completion, or upon direct payments to WSDOT, the near term needs of Sound Transit projects, especially Link Light Rail, will not be met. To remedy this, WSDOT and Sound Transit have agreed to establish land bank credits at the time the project is bid. At that time, expenditures for pre-construction and construction costs will be recognized for credit. Under this proposal, Sound Transit will become immediately eligible for over \$70 million in credits from Regional Express projects that are under construction.

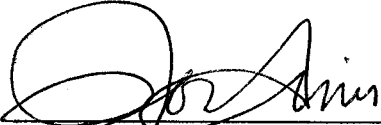
In addition, the term of the Land Bank will be extended to 40 years. This will allow credits to be used to lease property for the useful life of the improvements, rather than the current term of 20 years.

Finally, the terms of the standard Airspace Lease agreement have been revised to address rent adjustments, termination, and remedy provisions.

Motion:

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority to authorize the Chief Executive Officer to execute a Re-Stated Land Bank Agreement with the Washington State Department of Transportation substantially in the form of the attached Exhibit A, for a term of 40 years, that establishes credits upon construction bid. It is further authorized that the standard Airspace Lease Agreement be revised to provide for a term up to 40 years, and to address rent adjustments, termination and remedy. The Chief Executive Officer is hereby authorized to execute said Airspace Leases for up to the term stated herein.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on November 13, 2003.



Ron Sims
Board Chair

ATTEST:



Marcia Walker
Board Administrator

Exhibit A

RESTATED LAND BANK AGREEMENT

This Restated Land Bank Agreement (Restated Agreement) is made by the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, an agency of the State of Washington ("WSDOT") and the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a Regional Transit Authority ("Sound Transit") as of this ____ day of _____ 2003.

RECITALS:

A. WSDOT and Sound Transit are parties to a certain Land Bank Agreement dated July 14, 2000, as amended by Amendment No. 1 to Land Bank Agreement effective November 28, 2000 (collectively referred to as Agreement).

B. Section 11 of the Agreement provides for written modifications.

C. It is the intent of this Restated Agreement to amend certain terms of the Agreement and to restate all other portions of the Agreement.

D. Sound Transit is a regional transit authority of the State of Washington and is authorized by public vote and chapter 81.112 RCW to provide a high capacity transportation system which is integrated and coordinated with public transportation services currently provided by other public agencies through the Puget Sound region. Such regional transit system will include surface, underground and overhead railways, tramways, buses, rights of way, entrained and linked buses, ferries or other means of local transportation systems, passenger terminal and parking facilities and properties.

E. Sound Transit is authorized to acquire real property and real property interests through purchase or otherwise under the provisions of RCW 81.112.080. Sound Transit has acquired or will be acquiring certain real property and real property interests as may be necessary or desirable in order to own, operate, maintain, repair, improve and develop an integrated and coordinated public transportation system throughout the Sound Transit's boundaries and provide pedestrian and vehicular access to and from such properties and facilities constituting the regional transit system and to and from existing public transportation services and facilities.

F. WSDOT is a state agency created pursuant to RCW 47.01.031. The various statutory responsibilities of WSDOT include the ownership, development, lease, maintenance and operation of the state highway system. In carrying out this responsibility, WSDOT has acquired title to highway rights of way and other property (hereinafter "WSDOT Property" or "Property") throughout the State of Washington using funds specifically appropriated therefore by the state legislature from either state motor vehicle fund or from funds provided by the Federal Aid Highway Act, 23 U.S.C. § 101 et. seq. Property acquired from the funds appropriated from the state motor vehicle fund can be used only for highway purposes. Const. art. II, § 40 (amend.18). Property acquired using federal aid highway funds is subject to certain restrictions specified in 23 CFR Part 713. The net effect of these requirements is that WSDOT may allow non-highway use of its Property that is not presently needed for a highway purpose only if it receives fair market value compensation in return for such use. Likewise, WSDOT may

otherwise convey its Property for non-highway use only if it receives fair market value compensation in return for such conveyance.

G. Part of Sound Transit's program is to provide funding for construction of several improvements to highway facilities owned and operated by WSDOT.

H. Another portion of Sound Transit's program includes the development, construction and operation of both commuter rail and light rail systems in various parts of its service area. The parties contemplate that implementation of this portion of Sound Transit's system will require that Sound Transit from time to time obtain the use of portions of WSDOT Property for purposes of construction and/or maintenance and operations of its rail facilities. The parties acknowledge that such uses are not highway purposes as presently defined by the Washington State Constitution, statute and case law.

I. WSDOT recognizes that Sound Transit's funding of highway improvements can be used as consideration for allowing use of WSDOT Property for non-highway purposes. (e.g. rail facilities). The purpose of this Restated Agreement is to establish a framework within which WSDOT can from time to time convey portions of WSDOT Property to Sound Transit and to make portions of other WSDOT Property available for non-highway use by Sound Transit in consideration of Sound Transit's funding of highway purpose improvements.

J. The parties acknowledge that this Restated Agreement does not address property not owned by WSDOT that Sound Transit may need to acquire to enable its project to go forward. This Agreement does not impose any responsibility on WSDOT to acquire such property.

K. The parties acknowledge that this Restated Agreement does not address the use of property owned by WSDOT but which was acquired with funds other than motor vehicle funds.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Property Identification and Determination of Highway Purpose and Value.

1.1. As needed, Sound Transit will provide WSDOT with written notification of its need for WSDOT Property for a Sound Transit Project. The notification will describe the real property, the proposed use of the property, the proposed improvements to the property and the estimated cost of highway improvements on the property, if any.

1.2. For the purposes of this Restated Agreement "costs" shall mean reasonable design and construction cost.

1.3. WSDOT will review the written notification and make a written determination as to whether the proposed Sound Transit use constitutes a highway purpose, whether the Sound Transit use can be accommodated on the WSDOT Property, and if the property can be declared surplus to WSDOT needs

and conveyed or leased to Sound Transit pursuant to applicable law. The determinations by WSDOT as to whether the Sound Transit use can be accommodated on the WSDOT Property or whether the Sound Transit use is a highway purpose are conclusive, final and binding on the parties.

1.4. If the Sound Transit use can be accommodated on the WSDOT Property or if the Property may be declared surplus and conveyed or leased to Sound Transit, WSDOT will make a determination of the value of the Property by performing or by having performed on its behalf an appraisal of the real property, or, if the parties mutually agree in writing, by an alternative valuation method. For surplus property that may be conveyed, the value shall be the fair market value. For WSDOT Property that may be leased for non-highway use, the rental value shall be the fair market rental value computed to a lump sum payment for the initial term of the lease. The rental value for any subsequent renewals or extensions of any lease shall be pursuant to the terms of the lease as agreed to by the parties. WSDOT will notify Sound Transit of the fair market value or the fair market rental value of the real property based on the appraisal or the otherwise agreed upon valuation method. If the lease is written for an initial term greater than twenty (20) years, WSDOT shall be entitled to adjust the rent in advance for five year periods commencing on the first day of year twenty-one (21), year twenty-six (26), year thirty-one (31) and year thirty-six (36). Each five-year adjustment shall reflect the fair market rental value in accordance with the method for determining the value of the Property in Section 1.

1.5. If Sound Transit is not in agreement with the WSDOT fair market value or fair market rental value, it may submit to WSDOT for its consideration an appraisal or, if an appraisal was not the basis of the determination of value, information comparable to the valuation method utilized. WSDOT shall consider the additional information and if deemed appropriate, adjust the value accordingly. If the parties still cannot agree upon a value, the parties shall mutually select an independent appraiser to conduct an independent appraisal of the property or, where an appraisal was not the basis for the value determination, conduct an independent analysis of the value of the property based upon the valuation method previously selected by the parties.

1.6. The value determined by the independent appraiser shall be binding on the parties; Provided, that the value is not more than the higher nor less than the lower amounts previously determined by WSDOT and Sound Transit. If the value determined by the independent appraiser is higher than the amounts previously determined by WSDOT and Sound Transit, the property will be valued at the amount of the higher of the WSDOT or Sound Transit determination of value. If the value determined by the independent appraiser is lower than the amount previously determined by WSDOT or Sound Transit, the property will be valued at the amount of the lower of the WSDOT or Sound Transit determination of value.

2. WSDOT Property.

2.1. The terms and conditions for the design and construction of Sound Transit Projects shall be pursuant to separate agreements on a project-by-project basis.

2.2. For WSDOT Property that is not presently needed for a highway purpose and which will be used by Sound Transit for a non-highway purpose, the following provisions shall apply:

2.2.1. Once the use of the WSDOT Property and fair market rental value have been mutually agreed upon, WSDOT and Sound Transit will enter into an airspace lease for a mutually agreed upon term not to exceed forty (40) years. The airspace lease will include substantially the same terms and conditions as set forth in Exhibit B (On file and available upon request from the Board Administrator) attached hereto and by this reference made a part hereof. Sound Transit shall make an advance payment of rent for the initial twenty (20) year term of the lease either in cash or a Land Bank debit in lieu of a monetary payment. For any lease with a term greater than twenty (20) years,, WSDOT shall be entitled to adjust the rent in advance for five year periods commencing on the first day of year twenty-one (21), year twenty-six (26), year thirty-one (31) and year thirty-six (36). Each five-year adjustment shall reflect the fair market rental value in accordance with the method for determining the value of the Property in Section 1. Sound Transit shall make payment of any increased rent in the form of cash or a Land Bank debit in lieu of a monetary payment on or before commencement of the 21st year, the 26th year, the 31st year, and the 36th year of the lease.

2.2.2. If during the first twenty (20) years of the airspace lease term, WSDOT determines that the WSDOT Property is needed for a highway purpose, WSDOT may terminate the airspace lease; Provided, that Sound Transit shall be entitled to a pro rata refund of pre-paid rent and at WSDOT's option either, pay to relocate Sound Transit's facility on the Premises to a mutually agreeable location, at WSDOT's cost, or pay Sound Transit the amount equal to the unamortized design and construction cost of Sound Transit's facility on the Premises based upon a straight line, forty year amortization schedule; Further provided, that if the termination is due to a decision by an agency with jurisdiction over both WSDOT and Sound Transit, WSDOT is not liable to Sound Transit in any way and relocation costs or design and construction costs as provided above, if any, are the responsibility of Sound Transit. In the event WSDOT chooses to pay Sound Transit for its unamortized design and construction costs as provided above, such cost must be documented and approved by WSDOT prior to payment. In the event Sound Transit's consideration for the initial twenty (20) years was pursuant to a Land Bank debit in lieu of a monetary payment, Sound Transit shall be entitled to a pro rata credit on the Land Bank balance sheet and is not, in any event, entitled to a monetary refund for such Land Bank debit.

2.2.3. If WSDOT terminates the airspace lease for a highway purpose after the initial twenty (20) years of the lease term, Sound Transit shall be entitled to a pro rata refund of pre-paid rent. In the event Sound Transit's consideration was pursuant to a Land Bank debit in lieu of a monetary payment, Sound Transit shall be entitled to a pro rata credit on the Land

Bank balance sheet and is not, in any event, entitled to a monetary refund for such debit.

2.3. For WSDOT Property that is no longer needed for highway purposes, the following provisions shall apply:

2.3.1. When the fair market value for the surplus WSDOT Property has been agreed upon by the parties, WSDOT will complete the surplus process in accordance with its standard procedures, which includes the execution of a Quitclaim Deed or other form of deed if mutually agreed upon by WSDOT and Sound Transit. The Quitclaim Deed will be in substantially the same form as Exhibit C (On file and available upon request from the Board Administrator) attached hereto and by this reference is made a part hereof.

2.3.2. Sound Transit shall make a payment either in cash or Land Bank debit in lieu of a monetary payment of fair market value in accordance with the provisions of section 1.

3. Credits for Highway Purpose Improvements.

3.1 Attached to this Restated Agreement as Exhibit A-1 (On file and available upon request from the Board Administrator) is a list of the highway improvements that are contemplated as part of Sound Transit's system. Exhibit A-1 (On file and available upon request from the Board Administrator) is hereby incorporated herein. The projects listed in Exhibit A-1 (On file and available upon request from the Board Administrator) are completed, under construction or have a final scope of design agreed to by WSDOT and Sound Transit. For the purposes of this Agreement, these improvements are deemed, in whole or in part, to be a highway purpose.

Attached as Exhibit A-2 (On file and available upon request from the Board Administrator) to this Restated Agreement is a list of improvements that at this stage in design appear to be, in whole or in part, a highway improvement project but which will need further evaluation once a final design is agreed to by WSDOT and Sound Transit. Exhibit A-2 (On file and available upon request from the Board Administrator) is hereby incorporated herein.

Attached as Exhibit A-3 (On file and available upon request from the Board Administrator) to this Restated Agreement is a list of highway improvements that Sound Transit has contributed to either as a funding agent, property provider, design, construction, or permitting provider, or other tangible, quantifiable benefit to the project, but is not necessarily the lead, contractor, final primary user or owner. Exhibit A-3 (On file and available upon request from the Board Administrator) is hereby incorporated herein.

Upon written amendment to this Restated Agreement, the parties may add, modify and delete projects to either Exhibit A-1, A-2, or A-3 (On file and available upon request from the Board Administrator).

3.2 Where the Sound Transit project involves the construction of a highway improvement on property adjacent to WSDOT Property but not owned by WSDOT, Sound Transit and WSDOT shall enter into a use agreement under which Sound Transit agrees to utilize the adjacent property for the highway purpose for a period of forty (40) years unless the parties mutually agree in writing to a different time period; Provided, that if Sound Transit does not continue to use the adjacent property for the highway purpose for the agreed upon period a pro rata debit shall be computed against Sound Transit's Land Bank account. If insufficient credits exist, Sound Transit shall pay WSDOT the amount of the pro rata debit.

3.3. Sound Transit will be entitled to a credit in the amount of the in-kind value equivalent to the reasonable cost to plan, design, and construct the highway purpose improvement identified in Exhibit A-1 (On file and available upon request from the Board Administrator).

3.4 Sound Transit shall be eligible to receive credits for pre-construction and construction costs at the time the project is bid.

3.5 The determination of the pre-construction costs and the cost of construction will be made as follows:

3.5.1. Sound Transit will submit a cost report that details its pre-construction cost and construction costs to WSDOT for the award of credits for all eligible costs. The report will include incurred costs, pre-construction costs, and those construction costs that are obligated but not yet incurred. Sound Transit may submit a revised or supplemental cost report for award of additional credits; provided that such submittal occurs no later than 180 days of Completion of the project. Completion shall be as defined in the WSDOT Standard Specifications, current edition and any amendments thereto. The cost report shall be revised and submitted to WSDOT no later than 180 days of Completion of the project to reflect actual invoices paid. Adjustments to credits, if any, will be made at that time.

3.5.2. WSDOT will review the report and request in writing that Sound Transit provide additional information, or notify Sound Transit in writing that it has accepted the report in whole or in part or rejected the report in whole or in part. Any notification that includes a rejection in whole or in part must contain a conclusion of reasonable value as determined by WSDOT.

3.5.3. If WSDOT requests additional information, Sound Transit shall provide such information upon receipt of WSDOT's request.

3.5.4. If WSDOT rejects the report in whole or in part, Sound Transit may dispute this conclusion by following the dispute provisions contained

in section 8 herein. Any such dispute must be invoked within 30 calendar days of receipt of WSDOT's notification. WSDOT's conclusion of reasonable value will be final and binding if Sound Transit does not invoke the dispute resolution process within the stated time period.

3.6 Credits established under this Restated Agreement shall remain available for use for the entire term of this Restated Agreement.

4. Debits for Surplus Property Conveyed and Non-Highway Use of WSDOT Property.

4.1. A debit to the Land Bank balance sheet will be deducted in the amount of the fair market value owed by Sound Transit to WSDOT for WSDOT surplus Property conveyed to Sound Transit; Provided, that no debit will be deducted for such property that was initially acquired by WSDOT with Advance Right of Way Revolving Funds (RCW 47.12.244).

4.2. For conveyances of property to Sound Transit that were initially acquired by WSDOT with Advance Right of Way Revolving Funds, Sound Transit agrees to pay the fair market value to WSDOT in cash, which WSDOT will use to reimburse the Advance Right of Way Revolving Fund as required by RCW 47.12.246.

4.3. For each airspace lease executed by the parties a debit to the Land Bank balance sheet will be made in the amount of the lump sum fair market rental value as determined in section 1 herein, which is owed by Sound Transit to WSDOT under said airspace lease(s). Additional debits to the Land Bank balance sheet will be made as rent falls due for additional periods unless Sound Transit pays cash for such rent.

4.4. Under no circumstances can debits be applied under this section if the result thereof would be to cause a running balance to be below zero.

5. Direct Highway Funding.

5.1. From time to time WSDOT and Sound Transit may enter into written agreements under which Sound Transit will provide funding for highway purpose improvements directly to WSDOT.

5.2. Sound Transit shall directly deposit the funds with WSDOT pursuant to the terms and conditions of the written funding agreement.

5.3. Upon deposit of the funds with WSDOT, WSDOT will grant Sound Transit a credit on the Land Bank balance sheet in the amount equal to the funds deposited.

6. Accounting.

6.1. WSDOT shall maintain a running balance of the credits and debits under this Restated Agreement on a balance sheet, and shall make it available to Sound Transit upon request.

6.1.1. WSDOT shall credit the account in the amount of the direct payment as set forth in section 5 herein.

6.1.2. WSDOT shall credit the account for highway purpose improvements in the amount mutually agreed upon as set forth in section 3 herein or as decided in section 8 herein.

6.1.3. WSDOT shall debit the account in the amount of rents as set forth in section 2 herein.

6.1.4. WSDOT shall debit the account in the amount of the fair market value of surplus Property conveyed to Sound Transit as set forth in section 2 herein.

6.2. No less frequently than annually, WSDOT shall conduct a reconciliation of the running balance of credits and debits of the Land Bank account and give written notice thereof to Sound Transit. If the parties are in agreement, they shall sign a document setting forth the then current balance, which shall be appended to this Restated Agreement. If Sound Transit disagrees with WSDOT's reconciliation report, it may follow the dispute resolution provisions in section 8 herein. In the event that Sound Transit does not invoke the dispute resolution provision within thirty (30) calendar days of such notice, then WSDOT's determination shall be conclusive as of the period covered by the reconciliation.

6.3. WSDOT and FHWA, if appropriate, shall have the option, at their discretion and expense, to conduct an audit of Sound Transit's records to determine the accuracy of any costs incurred in connection with in-kind contributions for highway improvements for which Sound Transit seeks credits, and the amount credited may be adjusted to reflect the results of such an audit, subject to the dispute resolution provisions set forth below.

6.4. The running balance of the Land Bank shall remain active for a maximum period of forty (40) years from July 14, 2000, unless the parties mutually agree in writing to an extension of such period. At the end of such period, any remaining credits will be deemed to belong to WSDOT without further obligation.

7. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing either served personally or sent by first class mail, postage prepaid, addressed as set forth below. Any notice will be effective when actually received or, if mailed as provided herein, on the earlier of actual receipt or two (2) calendar days after the date deposited in the mail.

WSDOT: Director, Real Estate Services
Washington Department of Transportation
P.O. Box 47338
310 Maple Park Ave. SE
Olympia, WA
98504-7338
Fax: (360) 705-6811

Sound Transit:Real Estate Manager
Sound Transit
401 S. Jackson St.
Seattle, WA 98104
Fax: (206) 398-5222

or to such other address as either party from time to time shall designate by written notice to the other.

8. Dispute Resolution.

8.1. The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this Restated Agreement:

WSDOT: Regional Real Estate Services Manager

Sound Transit:Real Estate Manager

8.2. The WSDOT Designated Representative and the Sound Transit Designated Representative shall confer to resolve disputes that arise under this Restated Agreement as requested by the either party. The Designated Representatives shall use their best efforts and exercise good faith to resolve such disputes.

8.3. In the event the Designated Representatives are unable to resolve the dispute, the appropriate WSDOT Regional Administrator and the Director in Charge of Real Estate for Sound Transit shall confer and exercise good faith to resolve the dispute.

8.4. In the event the WSDOT Regional Administrator and the Director in Charge of Real Estate for Sound Transit are unable to resolve the dispute, the parties may, if mutually agreed in writing, submit the matter to non-binding mediation. The parties shall then seek to mutually agree upon the mediation process, who shall serve as the mediator, and the timeframe the parties are willing to discuss the disputed issue(s).

8.5. Each party shall bring to the mediation session, unless excused from doing so by the mediator, a representative from its side with full settlement authority. In addition, each party shall bring counsel and such other persons as needed to contribute to a resolution of the dispute. The mediation process is to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conference from later discovery or use in evidence; Provided that any settlement executed by the parties shall not be considered confidential and may be disclosed. Each party shall pay its own costs for mediation and share equally in the cost of the mediator. The venue for the mediation shall be in Olympia, Washington, unless the parties mutually agree in writing to a different location.

If the parties cannot mutually agree as to the appropriateness of mediation, the mediation process, who shall serve as mediator, or the mediation is not successful, then either party may institute a legal action in the County of

Thurston, State of Washington, unless other venue is mutually agreed to in writing. The parties agree that they shall have no right to seek relief in a court of law until and unless each of the above procedural steps has been exhausted.

9. Termination. This Restated Agreement shall terminate forty (40) years from July 14, 2000, or as may be terminated by mutual written agreement of the parties.

10. Assignment. Either party may transfer or assign its interest in this Restated Agreement to any other public agency or public entity as permitted by law, provided that the successor or assignee has assumed all the obligations, duties and liabilities of the transferring/assigning party under this Restated Agreement then in effect, and has provided the other party with reasonable assurance of its legal and financial authority to honor and perform the same. No other assignment is authorized.

11. General. This Restated Agreement may be modified only in writing, signed by Sound Transit and WSDOT. Any waivers under this Restated Agreement must be in writing. A waiver of any right or remedy in the event of a default will not constitute a waiver of such right or remedy in the event of any subsequent default. This Restated Agreement will be governed by the laws of the State of Washington. This Restated Agreement is for the mutual benefit of WSDOT and Sound Transit, and their successors, and is binding upon them and their successors in accordance with its terms. The invalidity or unenforceability of any provision of this Restated Agreement will not affect the validity or enforceability of any other provision.

12. Effective Date. This Restated Agreement will be effective retroactively as of July 14, 2000 and shall remain in full force and effect until terminated in accordance with its terms.

13. Prior Transactions. The parties hereby agree that this Restated Agreement does not affect in any way transactions/agreements heretofore executed by the parties based upon the Agreement as executed July 14, 2000 and as amended by Amendment No. 1.

Signatures:

CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY,

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

By: _____
Joni Earl,
Executive Director

By: _____
Don Nelson,
Assistant Secretary

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
Betty Ngan,
Legal Counsel

By: _____
Bryce Brown
Assistant Attorney General

Exhibit A

RESTATED LAND BANK AGREEMENT

This Restated Land Bank Agreement (Restated Agreement) is made by the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, an agency of the State of Washington ("WSDOT") and the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a Regional Transit Authority ("Sound Transit") as of this ___ day of _____ 2003.

RECITALS:

- A. WSDOT and Sound Transit are parties to a certain Land Bank Agreement dated July 14, 2000, as amended by Amendment No. 1 to Land Bank Agreement effective November 28, 2000 (collectively referred to as Agreement).
- B. Section 11 of the Agreement provides for written modifications.
- C. It is the intent of this Restated Agreement to amend certain terms of the Agreement and to restate all other portions of the Agreement.
- D. Sound Transit is a regional transit authority of the State of Washington and is authorized by public vote and chapter 81.112 RCW to provide a high capacity transportation system which is integrated and coordinated with public transportation services currently provided by other public agencies through the Puget Sound region. Such regional transit system will include surface, underground and overhead railways, tramways, buses, rights of way, entrained and linked buses, ferries or other means of local transportation systems, passenger terminal and parking facilities and properties.
- E. Sound Transit is authorized to acquire real property and real property interests through purchase or otherwise under the provisions of RCW 81.112.080. Sound Transit has acquired or will be acquiring certain real property and real property interests as may be necessary or desirable in order to own, operate, maintain, repair, improve and develop an integrated and coordinated public transportation system throughout the Sound Transit's boundaries and provide pedestrian and vehicular access to and from such properties and facilities constituting the regional transit system and to and from existing public transportation services and facilities.
- F. WSDOT is a state agency created pursuant to RCW 47.01.031. The various statutory responsibilities of WSDOT include the ownership, development, lease, maintenance and operation of the state highway system. In carrying out this responsibility, WSDOT has acquired title to highway rights of way and other property (hereinafter "WSDOT Property" or "Property") throughout the State of Washington using funds specifically appropriated therefore by the state legislature from either state motor vehicle fund or from funds provided by the Federal Aid Highway Act, 23 U.S.C. § 101 et. seq. Property acquired from the funds appropriated from the state motor vehicle fund can be used only for highway purposes. Const.

art. II, § 40 (amend.18). Property acquired using federal aid highway funds is subject to certain restrictions specified in 23 CFR Part 713. The net effect of these requirements is that WSDOT may allow non-highway use of its Property that is not presently needed for a highway purpose only if it receives fair market value compensation in return for such use. Likewise, WSDOT may otherwise convey its Property for non-highway use only if it receives fair market value compensation in return for such conveyance.

G. Part of Sound Transit's program is to provide funding for construction of several improvements to highway facilities owned and operated by WSDOT.

H. Another portion of Sound Transit's program includes the development, construction and operation of both commuter rail and light rail systems in various parts of its service area. The parties contemplate that implementation of this portion of Sound Transit's system will require that Sound Transit from time to time obtain the use of portions of WSDOT Property for purposes of construction and/or maintenance and operations of its rail facilities. The parties acknowledge that such uses are not highway purposes as presently defined by the Washington State Constitution, statute and case law.

I. WSDOT recognizes that Sound Transit's funding of highway improvements can be used as consideration for allowing use of WSDOT Property for non-highway purposes. (e.g. rail facilities). The purpose of this Restated Agreement is to establish a framework within which WSDOT can from time to time convey portions of WSDOT Property to Sound Transit and to make portions of other WSDOT Property available for non-highway use by Sound Transit in consideration of Sound Transit's funding of highway purpose improvements.

J. The parties acknowledge that this Restated Agreement does not address property not owned by WSDOT that Sound Transit may need to acquire to enable its project to go forward. This Agreement does not impose any responsibility on WSDOT to acquire such property.

K. The parties acknowledge that this Restated Agreement does not address the use of property owned by WSDOT but which was acquired with funds other than motor vehicle funds.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Property Identification and Determination of Highway Purpose and Value.

1.1. As needed, Sound Transit will provide WSDOT with written notification of its need for WSDOT Property for a Sound Transit Project. The notification will describe the real property, the proposed use of the property, the proposed improvements to the property and the estimated cost of highway improvements on the property, if any.

1.2. For the purposes of this Restated Agreement “costs” shall mean reasonable design and construction cost.

1.3. WSDOT will review the written notification and make a written determination as to whether the proposed Sound Transit use constitutes a highway purpose, whether the Sound Transit use can be accommodated on the WSDOT Property, and if the property can be declared surplus to WSDOT needs and conveyed or leased to Sound Transit pursuant to applicable law. The determinations by WSDOT as to whether the Sound Transit use can be accommodated on the WSDOT Property or whether the Sound Transit use is a highway purpose are conclusive, final and binding on the parties.

1.4. If the Sound Transit use can be accommodated on the WSDOT Property or if the Property may be declared surplus and conveyed or leased to Sound Transit, WSDOT will make a determination of the value of the Property by performing or by having performed on its behalf an appraisal of the real property, or, if the parties mutually agree in writing, by an alternative valuation method. For surplus property that may be conveyed, the value shall be the fair market value. For WSDOT Property that may be leased for non-highway use, the rental value shall be the fair market rental value computed to a lump sum payment for the initial term of the lease. The rental value for any subsequent renewals or extensions of any lease shall be pursuant to the terms of the lease as agreed to by the parties. WSDOT will notify Sound Transit of the fair market value or the fair market rental value of the real property based on the appraisal or the otherwise agreed upon valuation method. If the lease is written for an initial term greater than twenty (20) years, WSDOT shall be entitled to adjust the rent in advance for five year periods commencing on the first day of year twenty-one (21), year twenty-six (26), year thirty-one (31) and year thirty-six (36). Each five-year adjustment shall reflect the fair market rental value in accordance with the method for determining the value of the Property in Section 1.

1.5. If Sound Transit is not in agreement with the WSDOT fair market value or fair market rental value, it may submit to WSDOT for its consideration an appraisal or, if an appraisal was not the basis of the determination of value, information comparable to the valuation method utilized. WSDOT shall consider the additional information and if deemed appropriate, adjust the value accordingly. If the parties still cannot agree upon a value, the parties shall mutually select an independent appraiser to conduct an independent appraisal of the property or, where an appraisal was not the basis for the value determination, conduct an independent analysis of the value of the property based upon the valuation method previously selected by the parties.

1.6. The value determined by the independent appraiser shall be binding on the parties; Provided, that the value is not more than the higher nor less than the lower amounts previously determined by WSDOT and Sound Transit. If the value

determined by the independent appraiser is higher than the amounts previously determined by WSDOT and Sound Transit, the property will be valued at the amount of the higher of the WSDOT or Sound Transit determination of value. If the value determined by the independent appraiser is lower than the amount previously determined by WSDOT or Sound Transit, the property will be valued at the amount of the lower of the WSDOT or Sound Transit determination of value.

2. WSDOT Property.

2.1. The terms and conditions for the design and construction of Sound Transit Projects shall be pursuant to separate agreements on a project-by-project basis.

2.2. For WSDOT Property that is not presently needed for a highway purpose and which will be used by Sound Transit for a non-highway purpose, the following provisions shall apply:

2.2.1. Once the use of the WSDOT Property and fair market rental value have been mutually agreed upon, WSDOT and Sound Transit will enter into an airspace lease for a mutually agreed upon term not to exceed forty (40) years. The airspace lease will include substantially the same terms and conditions as set forth in **Exhibit B** attached hereto and by this reference made a part hereof. Sound Transit shall make an advance payment of rent for the initial twenty (20) year term of the lease either in cash or a Land Bank debit in lieu of a monetary payment. For any lease with a term greater than twenty (20) years, WSDOT shall be entitled to adjust the rent in advance for five year periods commencing on the first day of year twenty-one (21), year twenty-six (26), year thirty-one (31) and year thirty-six (36). Each five-year adjustment shall reflect the fair market rental value in accordance with the method for determining the value of the Property in Section 1. Sound Transit shall make payment of any increased rent in the form of cash or a Land Bank debit in lieu of a monetary payment on or before commencement of the 21st year, the 26th year, the 31st year, and the 36th year of the lease.

2.2.2. If during the first twenty (20) years of the airspace lease term, WSDOT determines that the WSDOT Property is needed for a highway purpose, WSDOT may terminate the airspace lease; Provided, that Sound Transit shall be entitled to a pro rata refund of pre-paid rent and at WSDOT's option either, pay to relocate Sound Transit's facility on the Premises to a mutually agreeable location, at WSDOT's cost, or pay Sound Transit the amount equal to the unamortized design and construction cost of Sound Transit's facility on the Premises based upon a straight line, forty year amortization schedule; Further provided, that if the termination is due to a decision by an agency with jurisdiction over both WSDOT and Sound Transit, WSDOT is not liable to Sound Transit in any way and relocation costs or design and construction costs as provided

above, if any, are the responsibility of Sound Transit. In the event WSDOT chooses to pay Sound Transit for its unamortized design and construction costs as provided above, such cost must be documented and approved by WSDOT prior to payment. In the event Sound Transit's consideration for the initial twenty (20) years was pursuant to a Land Bank debit in lieu of a monetary payment, Sound Transit shall be entitled to a pro rata credit on the Land Bank balance sheet and is not, in any event, entitled to a monetary refund for such Land Bank debit.

2.2.3. If WSDOT terminates the airspace lease for a highway purpose after the initial twenty (20) years of the lease term, Sound Transit shall be entitled to a pro rata refund of pre-paid rent. In the event Sound Transit's consideration was pursuant to a Land Bank debit in lieu of a monetary payment, Sound Transit shall be entitled to a pro rata credit on the Land Bank balance sheet and is not, in any event, entitled to a monetary refund for such debit.

2.3. For WSDOT Property that is no longer needed for highway purposes, the following provisions shall apply:

2.3.1. When the fair market value for the surplus WSDOT Property has been agreed upon by the parties, WSDOT will complete the surplus process in accordance with its standard procedures, which includes the execution of a Quitclaim Deed or other form of deed if mutually agreed upon by WSDOT and Sound Transit. The Quitclaim Deed will be in substantially the same form as **Exhibit C** attached hereto and by this reference is made a part hereof.

2.3.2. Sound Transit shall make a payment either in cash or Land Bank debit in lieu of a monetary payment of fair market value in accordance with the provisions of **section 1**.

3. Credits for Highway Purpose Improvements.

3.1 Attached to this Restated Agreement as **Exhibit A-1** is a list of the highway improvements that are contemplated as part of Sound Transit's system. **Exhibit A-1** is hereby incorporated herein. The projects listed in **Exhibit A-1** are completed, under construction or have a final scope of design agreed to by WSDOT and Sound Transit. For the purposes of this Agreement, these improvements are deemed, in whole or in part, to be a highway purpose.

Attached as **Exhibit A-2** to this Restated Agreement is a list of improvements that at this stage in design appear to be, in whole or in part, a highway improvement project but which will need further evaluation once a final design is agreed to by WSDOT and Sound Transit. **Exhibit A-2** is hereby incorporated herein.

Attached as **Exhibit A-3** to this Restated Agreement is a list of highway improvements that Sound Transit has contributed to either as a funding agent, property provider, design, construction, or permitting provider, or other tangible, quantifiable benefit to the project, but is not necessarily the lead, contractor, final primary user or owner. **Exhibit A-3** is hereby incorporated herein.

Upon written amendment to this Restated Agreement, the parties may add, modify and delete projects to either **Exhibit A-1, A-2, or A-3**.

3.2 Where the Sound Transit project involves the construction of a highway improvement on property adjacent to WSDOT Property but not owned by WSDOT, Sound Transit and WSDOT shall enter into a use agreement under which Sound Transit agrees to utilize the adjacent property for the highway purpose for a period of forty (40) years unless the parties mutually agree in writing to a different time period; Provided, that if Sound Transit does not continue to use the adjacent property for the highway purpose for the agreed upon period a pro rata debit shall be computed against Sound Transit's Land Bank account. If insufficient credits exist, Sound Transit shall pay WSDOT the amount of the pro rata debit.

3.3. Sound Transit will be entitled to a credit in the amount of the in-kind value equivalent to the reasonable cost to plan, design, and construct the highway purpose improvement identified in **Exhibit A-1**.

3.4 Sound Transit shall be eligible to receive credits for pre-construction and construction costs at the time the project is bid.

3.5 The determination of the pre-construction costs and the cost of construction will be made as follows:

3.5.1. Sound Transit will submit a cost report that details its pre-construction cost and construction costs to WSDOT for the award of credits for all eligible costs. The report will include incurred costs, pre-construction costs, and those construction costs that are obligated but not yet incurred. Sound Transit may submit a revised or supplemental cost report for award of additional credits; provided that such submittal occurs no later than 180 days of Completion of the project. Completion shall be as defined in the WSDOT Standard Specifications, current edition and any amendments thereto. The cost report shall be revised and submitted to WSDOT no later than 180 days of Completion of the project to reflect actual invoices paid. Adjustments to credits, if any, will be made at that time.

3.5.2. WSDOT will review the report and request in writing that Sound Transit provide additional information, or notify Sound Transit in writing that it has accepted the report in whole or in part or rejected the report in whole or in part. Any notification that includes a rejection in whole or in part must contain a conclusion of reasonable value as determined by WSDOT.

3.5.3. If WSDOT requests additional information, Sound Transit shall provide such information upon receipt of WSDOT's request.

3.5.4. If WSDOT rejects the report in whole or in part, Sound Transit may dispute this conclusion by following the dispute provisions contained in **section 8** herein. Any such dispute must be invoked within 30 calendar days of receipt of WSDOT's notification. WSDOT's conclusion of reasonable value will be final and binding if Sound Transit does not invoke the dispute resolution process within the stated time period.

3.6 Credits established under this Restated Agreement shall remain available for use for the entire term of this Restated Agreement.

4. Debits for Surplus Property Conveyed and Non-Highway Use of WSDOT Property.

4.1. A debit to the Land Bank balance sheet will be deducted in the amount of the fair market value owed by Sound Transit to WSDOT for WSDOT surplus Property conveyed to Sound Transit; Provided, that no debit will be deducted for such property that was initially acquired by WSDOT with Advance Right of Way Revolving Funds (RCW 47.12.244).

4.2. For conveyances of property to Sound Transit that were initially acquired by WSDOT with Advance Right of Way Revolving Funds, Sound Transit agrees to pay the fair market value to WSDOT in cash, which WSDOT will use to reimburse the Advance Right of Way Revolving Fund as required by RCW 47.12.246.

4.3. For each airspace lease executed by the parties a debit to the Land Bank balance sheet will be made in the amount of the lump sum fair market rental value as determined in **section 1** herein, which is owed by Sound Transit to WSDOT under said airspace lease(s). Additional debits to the Land Bank balance sheet will be made as rent falls due for additional periods unless Sound Transit pays cash for such rent.

4.4. Under no circumstances can debits be applied under this section if the result thereof would be to cause a running balance to be below zero.

5. Direct Highway Funding.

5.1. From time to time WSDOT and Sound Transit may enter into written agreements under which Sound Transit will provide funding for highway purpose improvements directly to WSDOT.

5.2. Sound Transit shall directly deposit the funds with WSDOT pursuant to the terms and conditions of the written funding agreement.

5.3. Upon deposit of the funds with WSDOT, WSDOT will grant Sound Transit a credit on the Land Bank balance sheet in the amount equal to the funds deposited.

6. Accounting.

6.1. WSDOT shall maintain a running balance of the credits and debits under this Restated Agreement on a balance sheet, and shall make it available to Sound Transit upon request.

6.1.1. WSDOT shall credit the account in the amount of the direct payment as set forth in **section 5** herein.

6.1.2. WSDOT shall credit the account for highway purpose improvements in the amount mutually agreed upon as set forth in **section 3** herein or as decided in **section 8** herein.

6.1.3. WSDOT shall debit the account in the amount of rents as set forth in **section 2** herein.

6.1.4. WSDOT shall debit the account in the amount of the fair market value of surplus Property conveyed to Sound Transit as set forth in **section 2** herein.

6.2. No less frequently than annually, WSDOT shall conduct a reconciliation of the running balance of credits and debits of the Land Bank account and give written notice thereof to Sound Transit. If the parties are in agreement, they shall sign a document setting forth the then current balance, which shall be appended to this Restated Agreement. If Sound Transit disagrees with WSDOT's reconciliation report, it may follow the dispute resolution provisions in **section 8** herein. In the event that Sound Transit does not invoke the dispute resolution provision within thirty (30) calendar days of such notice, then WSDOT's determination shall be conclusive as of the period covered by the reconciliation.

6.3. WSDOT and FHWA, if appropriate, shall have the option, at their discretion and expense, to conduct an audit of Sound Transit's records to determine the accuracy of any costs incurred in connection with in-kind contributions for highway improvements for which Sound Transit seeks credits,

and the amount credited may be adjusted to reflect the results of such an audit, subject to the dispute resolution provisions set forth below.

6.4. The running balance of the Land Bank shall remain active for a maximum period of forty (40) years from July 14, 2000, unless the parties mutually agree in writing to an extension of such period. At the end of such period, any remaining credits will be deemed to belong to WSDOT without further obligation.

7. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing either served personally or sent by first class mail, postage prepaid, addressed as set forth below. Any notice will be effective when actually received or, if mailed as provided herein, on the earlier of actual receipt or two (2) calendar days after the date deposited in the mail.

WSDOT: Director, Real Estate Services
Washington Department of Transportation
P.O. Box 47338
310 Maple Park Ave. SE
Olympia, WA
98504-7338
Fax: (360) 705-6811

Sound Transit: Real Estate Manager
Sound Transit
401 S. Jackson St.
Seattle, WA 98104
Fax: (206) 398-5222

or to such other address as either party from time to time shall designate by written notice to the other.

8. Dispute Resolution.

8.1. The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this Restated Agreement:

WSDOT: Regional Real Estate Services Manager

Sound Transit: Real Estate Manager

8.2. The WSDOT Designated Representative and the Sound Transit Designated Representative shall confer to resolve disputes that arise under this Restated Agreement as requested by the either party. The Designated Representatives shall use their best efforts and exercise good faith to resolve such disputes.

8.3. In the event the Designated Representatives are unable to resolve the dispute, the appropriate WSDOT Regional Administrator and the Director in Charge of Real Estate for Sound Transit shall confer and exercise good faith to resolve the dispute.

8.4. In the event the WSDOT Regional Administrator and the Director in Charge of Real Estate for Sound Transit are unable to resolve the dispute, the parties may, if mutually agreed in writing, submit the matter to non-binding mediation. The parties shall then seek to mutually agree upon the mediation process, who shall serve as the mediator, and the timeframe the parties are willing to discuss the disputed issue(s).

8.5. Each party shall bring to the mediation session, unless excused from doing so by the mediator, a representative from its side with full settlement authority. In addition, each party shall bring counsel and such other persons as needed to contribute to a resolution of the dispute. The mediation process is to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conference from later discovery or use in evidence; Provided that any settlement executed by the parties shall not be considered confidential and may be disclosed. Each party shall pay its own costs for mediation and share equally in the cost of the mediator. The venue for the mediation shall be in Olympia, Washington, unless the parties mutually agree in writing to a different location.

If the parties cannot mutually agree as to the appropriateness of mediation, the mediation process, who shall serve as mediator, or the mediation is not successful, then either party may institute a legal action in the County of Thurston, State of Washington, unless other venue is mutually agreed to in writing. The parties agree that they shall have no right to seek relief in a court of law until and unless each of the above procedural steps has been exhausted.

9. Termination. This Restated Agreement shall terminate forty (40) years from July 14, 2000, or as may be terminated by mutual written agreement of the parties.

10. Assignment. Either party may transfer or assign its interest in this Restated Agreement to any other public agency or public entity as permitted by law, provided that the successor or assignee has assumed all the obligations, duties and liabilities of the transferring/assigning party under this Restated Agreement then in effect, and has provided the other party with reasonable assurance of its legal and financial authority to honor and perform the same. No other assignment is authorized.

11. General. This Restated Agreement may be modified only in writing, signed by Sound Transit and WSDOT. Any waivers under this Restated Agreement must be in writing. A waiver of any right or remedy in the event of a default will not constitute a waiver of such right or remedy in the event of any subsequent default. This Restated Agreement will be governed by the laws of the State of Washington. This Restated Agreement is for the mutual benefit of

WSDOT and Sound Transit, and their successors, and is binding upon them and their successors in accordance with its terms. The invalidity or unenforceability of any provision of this Restated Agreement will not affect the validity or enforceability of any other provision.

12. Effective Date. This Restated Agreement will be effective retroactively as of July 14, 2000 and shall remain in full force and effect until terminated in accordance with its terms.

13. Prior Transactions. The parties hereby agree that this Restated Agreement does not affect in any way transactions/agreements heretofore executed by the parties based upon the Agreement as executed July 14, 2000 and as amended by Amendment No. 1.

Signatures:

CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY,

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

By: _____
Joni Earl,
Executive Director

By: _____
Don Nelson,
Assistant Secretary

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
Betty Ngan,
Legal Counsel

By: _____
Bryce Brown
Assistant Attorney General