

MOTION NO. M2015-122

**Second Restated Land Bank Agreement with Washington State Department of Transportation**

| MEETING:          | DATE:    | TYPE OF ACTION:    | STAFF CONTACT:   |
|-------------------|----------|--------------------|--|
| Capital Committee | 12/10/15 | Recommend to Board | Ahmad Fazel, DECM Executive Director   |
| Board             | 12/17/15 | Final Action       | <b>Eric Beckman, Deputy Executive Director, Business and Construction Services</b> |

PROPOSED ACTION

Authorizes the chief executive officer to (1) execute the Second Restated Land Bank Agreement with the Washington State Department of Transportation amending the 2003 Restated Land Bank Agreement; and (2) execute new cooperative lease agreements and temporary construction cooperative lease agreements; and (3) execute cooperative lease agreements to replace existing airspace leases, all under the terms of the Second Restated Land Bank Agreement.

KEY FEATURES SUMMARY

- Amends the 2003 Restated Land Bank Agreement with the Washington State Department of Transportation (WSDOT), which provided for the purchase or lease of WSDOT property using land bank credits provided by WSDOT in exchange for Sound Transit's funding or construction of highway purpose improvements.
- This Second Restated Land Agreement adopts a new cooperative agreement lease form based on the old airspace lease form with updates to include a 50-year initial term with an option to extend for another 25-years. The 75-year term will more closely support the useful life of the permanent high capacity improvements constructed on state-owned property and comply with federal funding requirements. The cooperative agreement lease form will contain updated access procedures, maintenance provisions, and risk provisions.
- Under this action, the chief executive officer is authorized to replace existing airspace leases with cooperative lease agreements with an initial 50-year term plus a 25-year optional extension for a maximum 75-year term. The initial term of the replacement cooperative lease agreements will be adjusted for the years that have elapsed under the existing airspace leases and the fair market value rent for the leases will be adjusted accordingly.
- The chief executive officer is also authorized to enter into new cooperative lease agreements for the use of state-owned property. Cooperative lease agreements executed under the Second Restated Land Bank Agreement will provide for prepaid rent based on the fair market value, less the federal interest, which will be more financially sustainable for Sound Transit over the life of its projects.
- Authorizes the chief executive officer to execute temporary construction cooperative lease agreements using land bank credits under the Second Restated Land Bank Agreement.
- The term of the Second Restated Land Bank Agreement will be extended to 2080, and the land bank credits awarded to Sound Transit will be available until 2080 for the lease or purchase of surplus property.

## BACKGROUND

On July 14, 2000, Sound Transit and WSDOT entered into a Land Bank Agreement. Under the Land Bank Agreement, WSDOT awarded land bank credits to Sound Transit for its funding of improvements to the state highway system including HOV lanes and direct access ramps. Over the years, Sound Transit has used the land bank credits to pay for the lease or purchase of WSDOT property for Sounder, Regional Express, and Link Light Rail projects.

In 2003, the Land Bank Agreement was amended and restated as the Restated Land Bank Agreement to meet a forecasted need for land bank credits to be used for Sound Transit projects. Since execution of the Agreement, Sound Transit and WSDOT have entered into approximately sixteen 40-year airspace leases and many short-term temporary construction airspace leases.

This Second Restated Land Agreement adopts a new cooperative lease agreement form based on the old airspace lease form with updates to include a 50-year initial term with an option to extend for another 25-years for a maximum 75-year term. In addition, the cooperative lease agreement will include prepaid rent provisions, new access, maintenance, and environmental risk provisions that reflect the current policies and procedures of the agencies. The 75-year maximum term of the cooperative lease agreement will more closely support the useful life of the permanent high-capacity transit improvements constructed on state-owned property. The 75-year maximum term of the cooperative lease agreement will comply with the Federal Transit Administration's funding requirement that the grantee maintain continuing control of the project improvements for their useful life.

The existing airspace leases will be converted to the new cooperative lease agreement form with the initial term reduced by the years elapsed under the airspace lease and with the appropriate adjustments in prepaid fair market value rent. For prospective cooperative lease agreements executed by the parties, the federal share of the prepaid rent will be waived as authorized by federal law. Land bank credits may also be used for payment of fees for the payment of rent for temporary construction cooperative lease agreements under the Second Restated Land Bank Agreement.

The term of the Second Restated Land Bank Agreement will be extended to 2080 to allow Sound Transit to use all the credits available until 2080. The exhibits listing the Sound Transit projects eligible for award of land bank credits are updated under the Second Restated Land Bank Agreement.

## FISCAL INFORMATION

The Second Restated Land Bank Agreement has no immediate fiscal impact to the Sound Transit. However, the changes have a significant long-term financial benefit allowing more land bank credits to be used for future leases of WSDOT property. As new lease agreements are executed, the rental value for these future leases will only take into account WSDOT's share of the fair market value and not the federal share, which was included in previous leases. The arrangements under the Second Restated Land Bank Agreement will be more financially sustainable for Sound Transit over the useful life of its projects, and the remaining land bank credits will not be exhausted until 2070.

## PUBLIC INVOLVEMENT

Not applicable to this action.

## TIME CONSTRAINTS

A one-month delay would not create a significant impact to the project schedule.

## PRIOR BOARD/COMMITTEE ACTIONS

Motion No. M2003-113: Authorized 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.

Motion No. M2000-49: Authorized the Executive Director to execute a Land Bank Agreement with the Washington State Department of Transportation (WSDOT).

## ENVIRONMENTAL REVIEW

JI 10/26/2015

## LEGAL REVIEW

BN 12-2-15

## **MOTION NO. M2015-122**

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to (1) execute the Second Restated Land Bank Agreement with the Washington State Department of Transportation amending the 2003 Restated Land Bank Agreement; and (2) execute new cooperative lease agreements and temporary construction cooperative lease agreements; and (3) execute cooperative lease agreements to replace existing airspace leases, all under the terms of the Second Restated Land Bank Agreement.

### **BACKGROUND:**

On July 14, 2000, Sound Transit and WSDOT entered into a Land Bank Agreement. Under the Land Bank Agreement, WSDOT awarded land bank credits to Sound Transit for its funding of improvements to the state highway system including HOV lanes and direct access ramps. Over the years, Sound Transit has used the land bank credits to pay for the lease or purchase of WSDOT property for Sounder, Regional Express, and Link Light Rail projects.

In 2003, the Land Bank Agreement was amended and restated as the Restated Land Bank Agreement to meet a forecasted need for land bank credits to be used for Sound Transit projects. Since execution of the Agreement, Sound Transit and WSDOT have entered into approximately sixteen 40-year airspace leases and many short-term temporary construction airspace leases.

This Second Restated Land Agreement adopts a new cooperative lease agreement form based on the old airspace lease form with updates to include a 50-year initial term with an option to extend for another 25-years for a maximum 75-year term. In addition, the cooperative lease agreement will include prepaid rent provisions, new access, maintenance, and environmental risk provisions that reflect the current policies and procedures of the agencies. The 75-year maximum term of the cooperative lease agreement will more closely support the useful life of the permanent high-capacity transit improvements constructed on state-owned property. The 75-year maximum term of the cooperative lease agreement will comply with the Federal Transit Administration's funding requirement that the grantee maintain continuing control of the project improvements for their useful life.

The existing airspace leases will be converted to the new cooperative lease agreement form with the initial term reduced by the years elapsed under the airspace lease and with the appropriate adjustments in prepaid fair market value rent. For prospective cooperative lease agreements executed by the parties, the federal share of the prepaid rent will be waived as authorized by federal law. Land bank credits may also be used for payment of fees for the payment of rent for temporary construction cooperative lease agreements under the Second Restated Land Bank Agreement.

The term of the Second Restated Land Bank Agreement will be extended to 2080 to allow Sound Transit to use all the credits available until 2080. The exhibits listing the Sound Transit projects eligible for award of land bank credits are updated under the Second Restated Land Bank 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 (1) execute the Second Restated Land Bank Agreement with the Washington State Department of Transportation amending the 2003 Restated Land Bank Agreement; and (2) execute new cooperative lease agreements and temporary construction cooperative lease agreements; and (3) execute cooperative lease agreements to replace existing airspace leases, all under the terms of the Second Restated Land Bank Agreement.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on December 17, 2015.



Dow Constantine  
Board Chair

ATTEST:



Kathryn Flores  
Board Administrator