

MOTION NO. M2016-54**Amend Four Agreements with BNSF Railway Company to Adjust Insurance Provisions**

MEETING:	DATE:	TYPE OF ACTION:	STAFF CONTACT:
Board Meeting	05/26/2016	Final Action	Bonnie Todd, Executive Director Operations Martin Young, Sounder Operations Manager Jordan Wagner, Senior Legal Counsel

PROPOSED ACTION

Authorizes the chief executive officer to execute amendments to the Commuter Rail Service Agreement (Seattle to Nisqually), the Joint Use Agreement (Seattle to Tacoma), the Commuter Rail North Service Agreement, and the Joint Use Agreement (Everett to Seattle), all with the BNSF Railway Company, to adjust insurance provisions to reflect the passenger rail liability cap increase under federal law.

KEY FEATURES SUMMARY

- In December 2015, President Obama signed into law the Fixing America's Surface Transportation Act (FAST), which among other things, raised the liability limitation for passenger rail from \$200 million to \$295 million for a single accident, with adjustments every five years to reflect the change in the Consumer Price Index-All Urban Consumers (49 U.S.C. §28103).
- Under the four agreements with the BNSF Railway Company (BNSF), Sound Transit is currently required to maintain \$200 million in comprehensive railroad liability insurance.
- These amendments adjust Sound Transit's contractual insurance requirements to meet the new liability cap under federal law.
- The Board previously approved an amendment to the Commuter Rail South Service Agreement (through Motion No. M2015-106) that went unsigned by BNSF because of the change in liability cap law shortly after Board approval. The amendment to this agreement also includes the terms authorized by the Board in Motion No. M2015-106 for the Service Agreement and supersedes the prior unsigned amendment.

BACKGROUND

The FAST Act raised the liability cap for passenger rail accidents from \$200 million to \$295 million, with adjustments every five years. Under all four agreements, changes in the law regarding the liability cap for passenger rail accidents requires the parties to negotiate new insurance coverage language when the law is changed, because of the potential gap between Sound Transit's insurance levels and the maximum possible liability for an accident.

With the December 2015 change in federal law, the parties reopened and negotiated a new level of Sound Transit insurance intended to cover uninsured liability, giving due consideration to the additional costs or savings of such a change.

Commuter Rail Service Agreement (Seattle to Nisqually) and Joint Use Agreement (Seattle to Tacoma)

Sound Transit and BNSF entered the Commuter Rail Service Agreement (Seattle to Nisqually) and Construction Agreement (Seattle to Tacoma), under which BNSF constructed improvements necessary to operate nine Sounder commuter rail round trips over BNSF right-of-way between Seattle and Tacoma for 40 years. In 2010, Sound Transit entered into a purchase and sale agreement to acquire perpetual rights through “commuter rail easements” for four additional round trips over BNSF right-of-way between Seattle and Tacoma, bringing the total round trips to thirteen. When the Service Agreement expires in 2040, Sound Transit’s four round trips (on the four commuter rail easements) will be controlled under the terms of the Joint Use Agreement (Seattle to Tacoma).

The Commuter Rail Service Agreement (Seattle to Tacoma) has been amended over the years to add additional trips, and include operations over track now owned by Sound Transit between Tacoma Rail Junction and the Tacoma Dome Station, then between the Tacoma Dome Station and Lakewood. In November 2015, the Board approved a previous draft of the Fourth Amendment to the Commuter Rail Service Agreement (Seattle to Nisqually) to, among other things, add responsibilities relating to Positive Train Control (PTC) and dispatching and support services through Nisqually when Amtrak service starts over Sound Transit’s track between Nisqually and Tacoma. BNSF did not sign the Board-approved amendment (authorized under Motion No. M2015-106) because President Obama signed the FAST Act shortly after the Board action.

The Fourth Amendment to the Commuter Rail Service Agreement (Seattle to Nisqually) now before the Board contains all of the amendments approved in M2015-106 as well as the renegotiated insurance provisions that now require Sound Transit to have its insurance match the new liability cap under federal law, subject to renegotiation regarding future changes.

Under the Commuter Rail Service Agreement (Seattle to Nisqually), BNSF operates ten daily round trips for commuter service and supports Sounder south line special service on weekends to Seahawk, Mariners, and Sounders FC sporting events. Sound Transit will add one round trip in September 2016 and two round trips in September 2017, for a total of thirteen daily round trips.

Commuter Rail North Service Agreement and Joint Use Agreement (Everett to Seattle)

Sound Transit first entered the Commuter Rail North Service Agreement with BNSF to operate Sounder commuter rail between Everett and Seattle in 2003. The term of the Commuter Rail Service agreement was for 12 years, with an option of five additional years, for a maximum term of 17 years. The Board authorized the five-year extension in November 2015.

The Commuter Rail North Service Agreement and Everett to Seattle Joint Use Agreement require the parties to renegotiate the contractual \$200 million insurance requirement if federal law regarding liability limitations change. With the December 2015 change in federal law, the parties agreed to reopen and renegotiate a new level of Sound Transit insurance intended to reflect any resulting change in either party’s exposure to uninsured liability, giving due consideration to the additional costs or savings of such a change.

The Commuter Rail North Service Agreement will be amended to require Sound Transit to have its insurance match the new liability cap under federal law, but requires the parties to renegotiate future changes.

Under the Commuter Rail North Service Agreement, BNSF operates four daily round trips for commuter service and supports Sounder north line special service on weekends to Seahawk, Mariners, and Sounders FC sporting events. Sound Transit has a perpetual right to operate trains

in the Everett to Seattle corridor under four commuter rail easements implemented through the Everett to Seattle Joint Use Agreement executed along with the Commuter Rail North Service Agreement in 2003. When the service agreement expires, Sound Transit could select an operator other than BNSF. In such a situation, the terms of the Joint Use Agreement (Everett to Seattle) would control.

FISCAL INFORMATION

For the additional \$95 million of liability insurance coverage, the new premium, including surplus lines and taxes, has increased by an annual amount of \$300,985. The prorated incremental cost for 2016 is \$211,263. The increase in Sounder insurance budget will be funded from the surplus in diesel fuel budget due to favorable pricing.

The table below illustrates the budget impact of the proposed action.

Currently Year Sounder Operations Fuel and Insurance budget	Adopted 2016 Budget	Spent and Committed to date in 2016	Contract Expenditures 2016	Remaining 2016 Budget
Sounder Fuel Budget	4,327	384	1,151	2,792
Other Materials and Supplie sbudget	2,258	576	N/A	1,682
<i>Total Sounder Operations Materials and Supplies Budget</i>	6,585	960	1,151	4,474
Sounder Insurance Premium	1,177	625	763	-211

Budget Shortfall	(211)
Surplus in Fuel budget	2,792
Remainaing Fuel Budget	2,581

Notes:

Sounder Operations Fuel budget is embedded in Materials and Supplies budget. Materials/Supplies, and Insurance budget can be found on page 49 of the Adopted 2016 Budget book.

SMALL BUSINESS/DBE PARTICIPATION, APPRENTICESHIP UTILIZATION, AND TITLE VI COMPLIANCE

Not applicable.

PUBLIC INVOLVEMENT

Not applicable.

TIME CONSTRAINTS

A one-month delay may not impact operations.

PRIOR BOARD/COMMITTEE ACTIONS

Motion No. M2015-106: Authorizes the chief executive officer to execute an amendment to the Commuter Rail Service Agreement with the BNSF Railway Company to incorporate changes

related to the south line service agreement including the extension of service to Lakewood on Sound Transit right-of-way and the implementation of positive train control. [Amendment not executed]

Motion No. M2015-105: Authorized the chief executive officer to execute an amendment to the Commuter Rail North Service Agreement including exercising a five-year term extension option with the BNSF Railway Company for the continued operation of Sounder north line service between Everett and Seattle.

Motion No. M2010-71: Authorized the chief executive officer to execute an amendment to the Commuter Rail Service Agreement with The BNSF Railway Company for the operation of Sounder commuter rail service between Seattle and Lakewood to add four additional Sounder commuter rail weekday round trips.

Motion No. M2007-98: Authorized the chief executive officer to execute an amendment to the BNSF Railway Company Service Agreement for Sounder commuter rail for the Seattle to Tacoma Corridor to permit up to six round trips before completion of Phase 2 railroad improvements under the BNSF Railway Company Construction Agreement.

Motion No. M2003-136: Authorized the Chief Executive Officer to execute a First Amendment to the Commuter Rail Service Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company.

Motion No. M2003-135: Authorized the chief executive officer to execute a Joint Use Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern and Santa Fe Railway Company for Tacoma to Nisqually Railroad right-of-way and properties.

Motion No. M2003-131: Authorized the chief executive officer to execute a commuter rail service agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for Everett to Seattle Commuter Rail Services.

Motion No. M2003-130: Authorized the chief executive officer to execute a Joint Use Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for Everett to Seattle Commuter Rail Easements.

Resolution No. R2003-22: Authorized the execution of eight agreements covering the purchase and sale of right-of-way and right-of-way interests, joint use conditions and services between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company (BNSF) for Sounder in the Everett to Seattle and Lakewood to Tacoma corridors.

Resolution No. R99-22: Authorized the Executive Director to execute two contracts with The Burlington Northern and Santa Fe Railway (BNSF), each to be substantially in accordance with the basic terms for such agreements set forth in the Background and Comments attached hereto as Exhibit A. The first is a long-term contract that will provide for BNSF to operate Sounder commuter rail service between Seattle and Tacoma (Operating Agreement). The second is a contract that will specify agreed-upon capital improvements on and around BNSF's existing railroad right-of-way, and provide for BNSF to construct those improvements and for Sound Transit to contribute approximately \$200 million and other public authorities to contribute approximately \$70 million to the cost of such construction (Construction Agreement).

ENVIRONMENTAL REVIEW

Jl 4/28/2016

LEGAL REVIEW

JW 5/11/2016

MOTION NO. M2016-54

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to execute amendments to the Commuter Rail Service Agreement (Seattle to Nisqually), the Joint Use Agreement (Seattle to Tacoma), the Commuter Rail North Service Agreement, and the Joint Use Agreement (Everett to Seattle), all with the BNSF Railway Company, to adjust insurance provisions to reflect the passenger rail liability cap increase under federal law.

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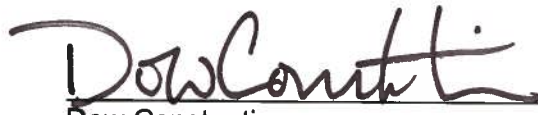
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Under the Commuter Rail North Service Agreement, BNSF operates four daily round trips for commuter service and supports Sounder north line special service on weekends to Seahawk, Mariners, and Sounders FC sporting events. Sound Transit has a perpetual right to operate trains in the Everett to Seattle corridor under four commuter rail easements implemented through the Everett to Seattle Joint Use Agreement executed along with the Commuter Rail North Service Agreement in 2003. When the service agreement expires, Sound Transit could select an operator other than BNSF. In such a situation, the terms of the Joint Use Agreement (Everett to Seattle) would control.

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 amendments to the Commuter Rail Service Agreement (Seattle to Nisqually), the Joint Use Agreement (Seattle to Tacoma), the Commuter Rail North Service Agreement, and the Joint Use Agreement (Everett to Seattle), all with the BNSF Railway Company, to adjust insurance provisions to reflect the passenger rail liability cap increase under federal law.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on May 26, 2016.



Dow Constantine
Board Chair

ATTEST:



Kathryn Flores
Board Administrator