



ORDINANCE NO. 28891

1 AN ORDINANCE relating to public transportation; amending Ordinance
2 No. 26749, as amended by Ordinance No. 28419, by amending Section
3 thereof, and adding Exhibits “E” and “F”, to establish rights, duties and
4 responsibilities related to maintenance, repair or replacement of that
5 portion of a 24-inch stormwater main that will be located under the Link
6 Light Rail Expansion Project Overhead Contact System within Stadium
7 Way.

8 WHEREAS, on January 2, 2001, the City Council passed Ordinance
9 No. 26749, granting the Central Puget Sound Regional Transit Authority, d/b/a
10 “Sound Transit,” a Right of Use Agreement (“Right of Use”), to operate,
11 maintain and own a passenger rail system to provide passenger transportation
12 in the City within and along the Right-of-Way Area and upon the terms and
13 conditions set forth therein, and

14 WHEREAS, on April 11, 2017, the City Council passed Ordinance
15 No. 28419 amending Ordinance No. 26749, and providing for the expansion of
16 the Right-of-Way Area to include the proposed location of the Hilltop Tacoma
17 Link Light Rail Expansion (the “HTLE Project”) and amendments related
18 thereto, and

19 WHEREAS in 2012, the City rebuilt Stadium Way and relocated a
20 24-inch stormwater main to the center of Stadium Way to alleviate the potential
21 for conflict with the proposed Overhead Contact System (“OCS”) (that part of
22 the traction power system the delivers electrical power to non-self-powered
23 electric vehicles) for the HTLE Project, and

24 WHEREAS, after considerable design effort, Sound Transit determined
25 that the steep slope and narrow roadway in the area of Stadium Way between
26



1 4th Street and Division Avenue, created considerable structural and cost issues
2 associating with locating the foundation and supports for the OCS on the side
3 of the roadway, and

4 WHEREAS, Sound Transit, based on the criteria of minimizing disruption
5 to Stadium Way, minimizing interference with view property, and being good
6 stewards of taxpayer funds, proposed that seven OCS poles be located at the
7 center of Stadium Way, south of Division Avenue, for approximately 600 feet, to
8 be held up by a shallow spread footing (approximately three feet deep and
9 ranging from 8.5 feet by 8.5 feet to 15 feet by 15 feet), and

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11 WHEREAS the recommended seven OCS poles together with the
12 shallow spread footing for each pole, the aerial feeders and other related
13 equipment and assemblies have been located over the top of the City's new
14 24-inch stormwater main, and

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16 WHEREAS the City and Sound Transit acknowledge and agree that the
17 placement of the OCS above the 24-inch stormwater main will interfere with,
18 impede, and increase the cost of, access to the stormwater main for purposes
19 of planned and unplanned maintenance, repair and future replacement, and
20 that such maintenance, repair and future replacement work has the potential to
21 interfere with light rail operations in the event that the OCS must be temporarily
22 removed and/or relocated to accommodate such work, and

23
24 WHEREAS it is necessary to amend the Right of Use to allocate rights,
25 duties and responsibilities of the City and Sound Transit with regard to planned
26 and unplanned work to maintain, repair or replace that portion of the



1 stormwater main within the area impacted by the center location of the OCS,
2 and

3 WHEREAS the City Council finds that it is in the best interest of the
4 public health, safety and welfare to approve this ordinance amending
5 No. 26749, as amended by City Ordinance No. 28419, subject to it being
6 effective only upon its acceptance by Sound Transit; Now, Therefore,

7 BE IT ORDAINED BY THE CITY OF TACOMA:

8 Section 1. That the table of contents and Section 3 of Ordinance
9 No. 26749, as amended by Ordinance No. 28419, are hereby amended as set
10 forth in the attached Exhibit "A".
11

12 Section 2. That Exhibit "D" (Sound Transit Link Light Rail Levels of
13 Service) to Ordinance No. 26749 as amended by Ordinance No. 28419, is
14 hereby replaced in its entirety with a new Exhibit "D," as set forth in the
15 attached Exhibit "B."
16

17 Section 3. That Ordinance No. 26749, as amended by Ordinance
18 No. 28419, is amended by the addition of New Exhibit "E" (Conflict Area) which
19 Exhibit is set forth in Exhibit "C" attached hereto.

20 Section 4. That Ordinance No. 26749, as amended by Ordinance
21 No. 28419, is amended by the addition of New Exhibit "F" (OCS
22 Alteration/Relocation Procedure) which Exhibit is set forth in Exhibit "D"
23 attached hereto.
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25 Section 5. That Sound Transit shall within 30 days after the date of
26 passage of this ordinance, execute and return to the City three original



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countersigned copies of the Right of Use as amended pursuant to this Ordinance, and a signed acceptance in the form attached hereto as Exhibit "E". In accepting the Right of Use as amended, Sound Transit warrants that it has carefully read the terms and conditions thereof and unconditionally accepts all of the terms and conditions thereof and agrees to abide by the same and acknowledges that it has relied upon its own investigation of all relevant facts, that it has had the assistance of counsel, that it was not induced to accept the terms and conditions of the Right of Use as amended, and that the Right of Use as amended represents the entire agreement between Sound Transit and the City. The rights, duties and obligations granted herein shall not become effective until the signed acceptance is received by the City in acceptable form.

Section 6. This ordinance and the rights, duties and obligations herein, shall be effective 30 days following publication; provided that,



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this ordinance shall have no force and effect in the event that Sound Transit does not comply with Section 5 of this Ordinance.

Passed _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney



EXHIBIT "A"

(Amendments to Ordinance No. 26749, as amended by Ordinance No. 28419)

* * *

TABLE OF CONTENTS

	<u>Page</u>
Section 1. DEFINITIONS	4
Section 2. GRANT OF RIGHTS BY THE CITY	7
Section 3. STADIUM WAY STORMWATER MAIN	10
Section 4. PAYMENT	10
Section 5. CONSTRUCTION	10
Section 6. PERMITS	15
Section 7. ENTRY NOTICE	15
Section 8. OPERATION, MAINTENANCE, AND REPAIR IN STREETS AND RIGHTS-OF-WAY	16
Section 9. DISPATCHING AND LEVEL OF SERVICE	19
Section 10. FACILITY LOCATION SIGNS	19
Section 11. THIRD PARTY RIGHT-OF-WAY AREA OWNERSHIP	19
Section 12. CONVEYANCE OF RIGHT-OF-WAY AREA	20
Section 13. LIABILITY; INDEMNIFICATION	21
Section 14. INSURANCE	22
Section 15. LIENS	26
Section 16. TERM; TERMINATION	26
Section 17. REMEDIES AT LAW	26
Section 18. RIGHT TO PURCHASE	27
Section 19. REVOCATION OF RIGHT OF USE	29
Section 20. RIGHT TO REQUIRE REMOVAL OF PROPERTY/RIGHT TO REMOVE PROPERTY	30
Section 21. COVENANTS AND WARRANTIES	32



1 Section 22. RECORDINGS, TAXES, AND OTHER CHARGES 32

2 Section 23. ASSIGNABILITY; BENEFICIARY 33

3 Section 24. NOTICES 34

4 Section 25. MISCELLANEOUS 34

5 Section 26. LEGAL FORUM 35

6 Section 27. INTERPRETATION 36

7 Section 28. BILLING PROCEDURES 36

8 Section 29. SEVERABILITY 36

9 Section 30. EXECUTION 37

10 * * *

11 Section 3. STADIUM WAY STORMWATER MAIN

12 A. Overhead Contact System (OCS) Defined. The terms “Overhead
13 Contact System” and “OCS” shall mean and refer to that part of the
14 traction power system that delivers electrical power to non-self-powered
electric vehicles, inclusive of the supports, foundations, aerial feeders
and other related equipment and assemblies.

15 B. Background. In 2012 the City commenced work to make improvements
16 to Stadium Way that included the relocation of a 24-inch stormwater
17 main to the center of Stadium Way to minimize the potential for conflict
18 with the proposed OCS for the Hilltop Tacoma Link Expansion. After
19 considerable design effort, Sound Transit determined that the steep
20 slope and narrow roadway in the area of Stadium Way between 4th
21 street and Division Avenue, created significant structural and economic
22 impediments to locating the foundation and supports for the OCS on the
23 side of the roadway. To alleviate the structural and economic
24 impediments to the Hilltop Tacoma Link Expansion project, Sound
25 Transit proposed that seven OCS poles be located at the center of
26 Stadium Way, south of Division Avenue, for approximately 600 feet, to
be held up by a shallow spread footing (approx. 3’ deep and ranging
from 8.5’x8.5’ to 15’x15’) located above the City’s new 24-inch
stormwater main. The City and Sound Transit acknowledge and agree
that the proposed placement of the OCS above the 24-inch stormwater
main will interfere with, impede, and increase the cost of, access to the
stormwater main for purposes of planned or un-planned maintenance,
repair and future replacement, and that such maintenance, repair and
future replacement work has the potential to interfere with light rail



operations in the event that the OCS must be temporarily removed and/or relocated to accommodate such work.

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C. Purpose. The purpose of this Section 3 is to allocate the rights, duties and responsibilities of the City and Sound Transit with regard to planned and un-planned work to maintain, repair or replace that portion of the stormwater main within the area of Stadium Way impacted by the location of the OCS above the 24-inch stormwater main.

D. Conflict Area. The provisions of this Section 3 of the Agreement are specific to the Conflict Area as described below. Attached hereto and incorporated herein by this reference is Exhibit "E" to the ROU depicting the proposed location within Stadium Way where the OCS will be located above the 24-inch stormwater main (the "Conflict Area"). Upon completion of the Hilltop Tacoma Link Expansion and submittal of Record Drawings by Sound Transit as provided in Section 5.E of this Agreement, Exhibit "E" may be amended to reflect any changes to the Conflict Area.

E. Coordination. In the event that the City determines, in its sole discretion, that it is reasonably necessary to require alteration to, or relocation of, the OCS located within the Conflict Area to accommodate a public improvement project, the City and Sound Transit agree to comply with and be bound by the OCS alteration/Relocation Procedures attached hereto and incorporated herein by this reference as Exhibit "F" to the ROU; provided that, in the event of an Emergency within the Conflict Area, the City shall have authority to take all actions that it determines to be reasonable and necessary to abate the emergency and permanently restore functionality of the City's infrastructure that gave rise to the emergency.

F. Emergency. In the event of a public emergency in the Conflict Area that, in the sole and reasonable judgment of the City, requires emergency repair to the 24-inch stormwater main, Sound Transit will, upon request of the City, immediately de-energize the OCS and remove the OCS to allow such repairs to be performed. Sound Transit agrees that it will follow lock out tag out procedures so as not re-energize the OCS until the City has given its approval, which approval will not be unreasonably withheld or delayed. Once the OCS is de-energized, the City may, in its sole and reasonable judgment, direct Sound Transit to immediately remove all components of the OCS as necessary in order to complete the repair. If Sound Transit is unable to take action to immediately remove the OCS for the City and the City is required to remove it, Sound Transit will reimburse the City for the costs of removal and also bear the cost for reinstallation of the OCS.



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Sound Transit agrees that it shall cooperate with the City in responding to the emergency and shall be responsible for replacement of the OCS upon the City's completion of the work performed in response to the emergency. The City shall, upon request of Sound Transit, consult with Sound Transit regarding the permanent repair of the City's infrastructure and give Sound Transit an opportunity to provide feedback and propose alternative solutions. The City shall allow a reasonable time, as determined by the City, for Sound Transit to provide feedback. If Sound Transit proposes an alternative solution for the permanent repair, it will be responsible for the increased costs incurred by the City for consideration of the alternative; provided that Sound Transit will not need to compensate the City for its review of the proposed alternative, if the City chooses to implement the alternative proposed by Sound Transit.

G. Release and Hold Harmless. Sound Transit does hereby release and hold harmless the City, its officials (elected or appointed), employees, and agents harmless from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees arising out of any disruption to or delay of operation of the Passenger Rail System resulting from the City's exercise of its rights under this Section 3.

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EXHIBIT “B”

(New Exhibit “D” to Right of Use)

Sound Transit Link Light Rail

Levels of Service

Following are the minimum and maximum normal levels of service approved for the Tacoma segment of the Link light rail system: (Subject to change with special events and extended service requests)

Minimum Level of Service:

Monday through Friday – Trains shall operate a minimum of 14 hours per day, with no greater than 12-minute headways between trains during peak hours and with no greater than 24-minute headways between trains during off peak hours.

Saturday – Trains shall operate a minimum of 14 hours per day, with no greater than 12-minute headways between trains.

Sunday – Trains shall operate a minimum of 9 hours per day, with no greater than 24-minute headways between trains.

Maximum Level of Service:

Trains shall never operate more frequently than five-minute headways between trains.



EXHIBIT "C"

(New Exhibit "E" to Ordinance No. 26749, as amended by Ordinance No. 28419)

(Depiction of Conflict Area)

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EXHIBIT "D"

1 (New Exhibit "F" to Ordinance No. 26749, as amended by Ordinance No.
2 28419)

3 (*OCS Alteration/Relocation Procedure*)

4 These procedures ("**Procedures**") are intended by the Parties to be
5 supplemental to the Right of Use. The Procedures have been agreed to by the
6 Parties for the purpose of implementing the respective obligations of the Parties
7 contained in Section 3 of the Right of Use.

8 Unless specifically defined otherwise herein, all terms herein where
9 capitalized will have the same meaning as when used in the Right of Use.

10 The Procedures may be amended permanently or on a project specific
11 basis by mutual agreement of the Parties. Any amendment must be set forth in
12 writing, signed by the Parties, and specifically state that it is an amendment to
13 these Procedures. The City Council hereby delegates to the City Manager the
14 authority to approve, on behalf of the City Council, any permanent or project
15 specific amendments to the Procedures, provided that any permanent
16 amendment hereto shall be filed with the office of the City Clerk as an amendment
17 to the Right of Use, Exhibit "F".

18 The Parties intend that required alteration or relocation of Sound Transits
19 OCS within the Conflict Area will be performed by the Parties in accordance with
20 the Procedures. The Parties acknowledge that the Procedures, including
21 specifically the time requirements provided therein, may, from time to time,
22 require amendment, or as mutually agreed by the Parties, deviation therefrom, to
23 reasonably accommodate unforeseen circumstances or force majeure events or
24 to accommodate construction sequencing and other factors that may affect the
25 Procedures. In such event, the Parties will make their respective best efforts to
26 reasonably amend the procedures set forth herein, or to reasonably deviate from
the procedures contained herein, as the Parties may mutually agree upon.

These Procedures, as from time to time amended, will remain in full force
and effect for the term of the Right of Use. The Parties agree to work together
cooperatively in the process of design, estimating, scheduling, sequencing work,
conversion, cut-over and construction to bring the Public Improvement Project
and Relocation Work, to completion in the most efficient and timely manner and
to avoid delay and disruption.

The following definitions shall apply:

"**Force Majeure Event**" circumstances beyond control of a party by reason of a
force majeure occurrence, such as, but not limited to, acts of God, acts of
terrorism, war, riots, civil disturbances, natural disasters, floods, tornadoes,



1 earthquakes, unusually severe weather conditions, and employee strikes and
2 unforeseen labor conditions not attributable to Sound Transit's employees.

3 "OCS" shall mean that part of the traction power system the delivers electrical
4 power to non-self-powered electric vehicles, inclusive of the supports,
5 foundations, aerial feeders, surface infrastructure, curbs, medians, and other
6 related equipment and assemblies.

7 "Public Improvement Project" shall mean and refer to the maintenance,
8 alteration, adjustment, and reconstruction of the stormwater main located in the
9 Conflict Area.

10 "Relocation work" shall mean and refer to any and all work necessary to alter,
11 remove, relocate, construct and reconstruct the OCS in accordance with the
12 accepted Relocation Plan, including but not limited to, all associated design and
13 engineering work, permitting, construction management and administration, all
14 as may be amended in accordance with the Procedures.

15 **Facilities Relocation Procedures**

16 1. Notice Required. In the event that the City determines, in its sole
17 discretion, that it is reasonably necessary to require alteration to, or relocation of,
18 the OCS located within the Conflict Area to accommodate a Public Improvement
19 Project, the City shall provide written advance notice ("Relocation Notice") to
20 Sound Transit of such required alteration or relocation.

21 2. Timing of Notice. The Relocation Notice shall be provided to Sound
22 Transit as soon as practical after the City determines the need, timing and
23 sequencing for the Relocation Work, and in no case, except in the event of an
24 Emergency, shall the Relocation Notice be provided to Sound Transit less than
25 180 calendar days prior to the date identified therein for completion of the
26 Relocation Work, or each segment thereof.

3. Contents of Notice. The Relocation Notice to Sound Transit shall
set forth,

- a. The date, or in the case of phased or sequenced Relocation Work, the dates, by which Sound Transit is required to complete the Relocation Work (the "**Completion Date(s)**");
- b. A reasonably detailed description of the OCS that will be impacted by the Public Improvement Project (the "**Project Area**");
- c. A reasonably detailed description of the scope of the work required for the Public Improvement Project;
- d. A list of the key milestone dates for the Public Improvement Project; and



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e. Two (2) copies of reasonably detailed drawings showing the planned improvements for the Public Improvement Project (collectively the “**Scope of Work**”). The City will also provide Sound Transit with a copy of the relevant electronic file(s) for the Scope of Work in a mutually agreed electronic format.

4. Sound Transit Obligations – Notice - Reliance. Sound Transit shall have thirty (30) calendar days after receipt of the Relocation Notice to notify the City in writing whether or not it will be able to complete the Sound Transit Relocation Work on or before the Completion Date(s). Sound Transit acknowledges, understands and agrees that in the event that Sound Transit fails to provide such notice, the City will rely upon the absence of such timely notice as agreement by Sound Transit that the Relocation Work will be completed by the Completion Date.

5. Adjustments. In the event Sound Transit believes that using its best efforts it will be unable to meet safety and service requirements for the Relocation Work within the time frames provided for in the Procedures and Relocation Notice, Sound Transit will, within thirty (30) calendar days after receipt of the Relocation Notice so notify the City. In such event and as soon thereafter as practicable, the Parties shall meet to discuss the circumstances precluding performance consistent with the Procedures and mutually agree to an adjustment to the time frames set forth in the Procedures and the Relocation Notice. In adjusting the schedule and Completion Date, the Parties shall consider the extent of OCS to be relocated, the service and safety requirements, need for acquisition or additional right of way or easements for relocation, the service interruption to Sound Transit operations, and the construction sequence for the relocation, within the city's overall Public Improvement Project construction sequence and constraints, to safely complete the relocation. The Parties will make their respective best efforts to resolve any dispute and/or to reach mutual agreement on any requested adjustments.

In the event that the City and Sound Transit are unable to mutually agree upon adjustments to the schedule and Completion Date within thirty (30) days following Sound Transit's receipt of Relocation Notice, the City may elect to exercise its statutory and police power authority to unilaterally implement adjustments to the schedule and Completion date that in the judgment of the City, reasonably accommodates the needs of Sound Transit; provided that, Sound Transit does not waive any right it may have to take legal action to contest the City's statutory or police power authority to implement such adjustments.

6. Sound Transit Design Submittal. Within a reasonable time, but in no case later than seventy (70) calendar days (unless otherwise mutually adjusted by the Parties) after receipt by Sound Transit of the City's Relocation Notice, Sound Transit will prepare and provide to the City and the Third Parties:



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a. A proposed design for the relocation of Sound Transit’s Facilities that accommodates the planned improvements for the Public Improvement Project, and

b. A proposed schedule for completion of the relocation which, to the extent reasonably practicable, reflects the applicable key milestone dates specified in the Relocation Notice, as adjusted, and provides for completion of the required relocation by Sound Transit and Third Parties by the projected Completion Date(s) provided by the City in the Relocation Notice, as adjusted. The proposed relocation design and proposed relocation schedule will be based upon the then current Scope of Work provided to Sound Transit and Other Utilities by the City.

7. Finalize Submittal. Within fifteen (15) calendar days after the City’s receipt of the proposed relocation design and proposed relocation schedule from Sound Transit, the City, Sound Transit will begin meeting, as necessary, in order to:

- a. Review the Scope of Work,
- b. Review the proposed relocation design,
- c. Review the proposed relocation schedule, and
- d. Make any changes thereto necessary to create a final Scope of Work, and to create a final relocation design and final relocation schedule (collectively the “**Relocation Plan**”) reasonably acceptable to the City and Sound Transit.

8. Acceptance of Relocation Plan. The Relocation Plan will be accepted in writing by authorized representatives of both Parties not less than (30) calendar days prior to the date Sound Transit is to commence Relocation Work. Once accepted by the Parties, the Relocation Plan may thereafter be changed or amended only in accordance with the change procedures set forth below. All costs and expense of the Relocation Work shall be borne by Sound Transit.

9. Modification of Scope of Work. The City will promptly notify Sound Transit of any revision(s) and/or addition(s) to the Scope of Work which may impact the design of or location for Sound Transit’s Facilities contained in the Relocation Plan or the timing or sequencing of the Relocation Work.

10. Contractor Coordination. The City will schedule a pre-construction conference with the City Contractor and all participants in the Relocation Work to review the Scope of Work, scheduling, sequencing, milestone dates, Relocation Plan and Completion Dates and related requirements. Sound Transit will provide input during this discussion regarding the Relocation Plan. The City shall cause the City Contractor to submit a preliminary progress schedule, weekly look-ahead schedules, and updates in accordance with the Relocation Plan, as adjusted, or propose adjustments to the Relocation Plan in accordance with the Procedures.



11. Notice to Commence. The City will, not less than ten (10) days prior to the date contained in the Relocation Plan that Sound Transit is to commence Relocation Work, provide a written notice to Sound Transit and Other Utilities to proceed with commencement of the Relocation Work.

12. Commencement of Relocation Work. After receipt of the City's notice to proceed, Sound Transit will relocate such Facilities within the Right of Use Area at no cost to the City as provided in the Relocation Plan. Upon commencement of Relocation Work, Sound Transit will be responsive to schedule, sequencing, and cost concerns and will commit sufficient resources to support the Relocation Work to complete such work by the Completion Dates and in accordance with the Relocation Plans, and will work cooperatively to resolve any unanticipated design and construction issues as they develop.

13. Coordination. The City, and/or its contractor(s), will be responsible for coordinating the Sound Transit relocation work with all other work to be performed in connection with the Public Improvement Project and any associated planned improvements. It is recognized that Sound Transit's relocation work may have an impact to other utility facilities and therefore Sound Transit will be an active participant in the coordination of its Relocation Work with all Third Parties, all other utilities with utility infrastructure impacted by the Public Improvement Project, and the City's contractor(s). The Parties will work together in an effort to mitigate the costs of the relocation, including, without limitation, identifying ways to accommodate Sound Transit's Facilities within the Conflict Area.

14. Progress Reports. Upon request of the City, and in any event as specified in the Relocation Plan, Sound Transit will provide periodic progress reports to the City.

15. Delays and Disruption. Sound Transit acknowledges and understands that any delay by Sound Transit in performing its obligation herein may delay, hinder, disrupt or interfere with the work performed by the City and its contractors and subcontractors in furtherance of the Public Improvement Project and result in damage to the City, including but not limited to, delay claims. Sound Transit shall cooperate with the City and its contractors and subcontractors to coordinate its obligations to accommodate the Public Improvement Project and project schedules to avoid delay, hindrance of, disruption to or interference with such Public Improvement Project. Any actual reasonable costs, damages, and liabilities incurred by the City or by any contractor working for the City, caused by delays, hindrance, interference or disruption to the Public Improvement Project arising out of failure by Sound Transit to adhere to the Relocation Plan, as adjusted, including Completion Date(s), will be the sole responsibility of Sound Transit.

16. Failure to Commence Public Improvement Project Work. Unless otherwise mutually agreed by the parties, in the event the City terminates or abandons the Public Improvement Project, and does not proceed with the Public



1 Improvement Project within two (2) years of the date in which such decision is
2 made such that relocation of Sound Transit Facilities will not be or would not have
3 been necessary, the City will pay Sound Transit for all actual reasonable costs
4 incurred by Sound Transit in performance of the relocation including any
5 necessary design and/or Relocation Work, plus any costs incurred by Sound
6 Transit, less salvage value, for materials and other items ordered or procured by
7 Sound Transit (with the prior authorization of the City) in order to meet the final
8 relocation schedule in the Relocation Plan. The parties will determine payment
9 terms on such reimbursement costs on a case by case basis.

10 17. Amendments. Either Party may, at any time, by written request to
11 the other Party, request changes to the Relocation Plan to accommodate
12 unforeseen conditions, Force Majeure Events, public safety concerns, service
13 issues, modifications to the Scope of Work, accommodation for field engineering,
14 and any other factors that may impact compliance with the Completion Date or
15 Relocation Plan. No request for change will be unreasonably denied or delayed
16 by either Party. A Request for Change will be effective and binding upon the
17 Parties only when signed by an authorized representative of each Party. The
18 Parties will meet and work in good faith with the objective of reaching written
19 agreement on mutually acceptable adjustments to the Relocation Plan.
20 Notwithstanding resolution of any dispute and/or mutual agreement concerning
21 requested changes to the Relocation Plan, each Party will, if requested by the
22 other Party and to the extent reasonably practicable, proceed with their
23 respective work in accordance with the Relocation Plan, subject to any mutually
24 agreed change(s), to accommodate the Public Improvement Project and avoid
25 delays or disruption related thereto. In the event the Parties so proceed, the
26 Parties will thereafter make their respective best efforts to resolve any dispute
and/or to reach mutual agreement on any requested change(s) and/or the results
of such proceeding notwithstanding such prior agreement.

18 18. Dispute Resolution. Any Dispute, disagreement or claim arising out
19 of a required relocation of Sound Transit's Facilities must first be presented to
20 and considered by the Parties. A Party who wishes to present such Dispute will
21 notify the other Party and pursue resolution of the Dispute consistent with the
22 dispute resolution provisions of the Right of Use. All negotiations pursuant to
23 these procedures for the resolution of disputes will be confidential and will be
24 treated as compromise and settlement negotiations for purposes of the state and
25 federal rules of evidence.

23 19. Force Majeure. In the event either party is prevented or delayed in
24 the performance of any of its obligations herein due to a Force Majeure Event,
25 such party (hereinafter the "Party Delayed") shall not be deemed in Breach of
26 provisions of the Procedures. Failure of a Sound Transit customer to complete
work necessary for completion of the Relocation Work shall not constitute an
event of Force Majeure unless Sound Transit has diligently exercised and



continues to diligently exercise its right and authority to require such customer to perform and complete such work.

If the Delayed Party believes that a force majeure event has prevented or delayed its compliance with the provisions of the Procedures, the Party Delayed shall provide documentation as reasonably required by the other party to substantiate the Delayed Party's claim. The Delayed Party shall have a reasonable time, under the circumstances, to perform the affected obligation under the Procedures or to procure a substitute for such obligation which is satisfactory to the other party; provided that, the Delayed Party shall perform to the maximum extent it is able to perform and shall take reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible, provided that the Delayed Party takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Procedures without unduly endangering the health, safety, and integrity of the Delayed Party's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, Public Improvement Project, public property, or private property.

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EXHIBIT "E"

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ACCEPTANCE OF CITY RIGHT OF USE AGREEMENT AS AMENDED

Ordinance No. _____, effective _____, 2023, amending Ordinance No. 26749, as amended by Ordinance No. 28419.

I, _____, am the _____ of Sound Transit and am the authorized representative to accept the above-referenced amendments to the City Right of Use Agreement on behalf of Sound Transit.

I certify that the Right of Use Agreement as amended pursuant the above referenced ordinance, and all terms and conditions thereof, are accepted by Sound Transit, without qualification or reservation.

DATED this ____ day of _____, 2023.

Sound Transit

By: _____

Its: _____

Witness: _____