

**LIABILITY ALLOCATION AGREEMENT**  
**BETWEEN**  
**NATIONAL RAILROAD PASSENGER CORPORATION**  
**AND**  
**CITY OF TACOMA, WASHINGTON**  
On Sound Transit Point Defiance Bypass

**THIS LIABILITY ALLOCATION AGREEMENT** (the “Agreement”), dated as of November 18, 2014 (the “Effective Date”), is by and between **National Railroad Passenger Corporation**, a corporation organized under Part C of Subtitle V of Title 49 of the United States Code (formerly the Rail Passenger Service Act), and the laws of the District of Columbia, having offices at 60 Massachusetts Avenue, NE, Washington, DC 20002 (“Amtrak”), and the **City of Tacoma**, a first class city under the laws of the State of Washington, each having offices at 2601 SR 509 N. Frontage Road, Tacoma, Washington (“Railroad”). Amtrak and Railroad are sometimes each referred to herein as a “Party” and collectively as the “Parties”.

**WHEREAS**, Amtrak operates intercity rail passenger trains on the Rail Line (as defined below); and

**WHEREAS**, Railroad operates freight and excursion passenger trains on the Rail Line; and

**WHEREAS**, the Parties desire to set forth the apportionment of liability and risk of damage between themselves for incidents which occur in connection with activities conducted on or about the Rail Line, such apportionment to apply regardless of the role (e.g., operator of trains or otherwise) of each Party.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the Parties agree to incorporate the foregoing recitals into this Agreement by this reference and further agree as follows:

**Section 1. Definitions.**

The following terms when used in this Agreement shall have the meaning ascribed to them in this Section 2:

- (a) "Amtrak Train" means a train operated by or on behalf of Amtrak.

(b) "Arbitration Agreement" means the NRPC Arbitration Agreement dated April 16, 1971, among Amtrak and certain railroads.

(c) "Rail Line" means the rail lines that are owned, leased, or otherwise controlled by the Central Puget Sound Regional Transit Authority ("Sound Transit") between TR Junction (at approximately Sound Transit railroad milepost 0.7), in Tacoma, through Lakewood, to the intersection with the BNSF Railway Company's ("BNSF") mainline track and Nisqually Junction (at approximately Sound Transit railroad milepost 20.73), all in the State of Washington, including tracks, switches, signal systems, and appurtenances thereto owned by Sound Transit and all of Sound Transit's rights to use such properties of others, subject to the terms of any applicable Sound Transit agreements for the use of such property of others, along with all modifications, alterations and improvements made to such railroad properties while this Agreement remains in effect, that are used in connection with operation of Amtrak intercity rail passenger service or Railroad's service. The Rail Line is neither Amtrak Property nor Railroad Property.

(d) "Railroad Train" means a train operated by or on behalf of Railroad.

**Section 2.** With respect to the apportionment of liability and risk of damage between the Parties for incidents which occur on or after the Effective Date in connection with activities conducted on or about the Rail Line regardless of the role (e.g., operator of trains or otherwise) of either Party, the provisions set forth herein shall govern. These provisions reflect the entire agreement of the Parties with respect to such apportionment of liability and risk of damage in connection with activities conducted on or about the Rail Line and supersedes any prior agreement between the Parties regarding the same subject matter.

**Section 3. Liability Apportionment on the Rail Line.**

(a) **General.** The Parties shall apportion, in the manner set forth in this Section 3, financial responsibility, irrespective of negligence or fault of either Party (except to the extent prohibited by law), for personal injury, bodily injury or death or property damage which may arise out of activities conducted on or about the Rail Line. Neither Party shall seek to recover from the other Party for service disruption, loss of profits, loss of revenues or other indirect, punitive, or consequential damages,

irrespective of the source or possible cause of such loss or damage. The Party that has financial responsibility for injury or damage under this Section 3 shall also have sole responsibility for the defense and payment of such defense costs, claims, damages, judgments, settlements and lawsuits against either Party. The terms "Amtrak" and "Railroad" as used in this Section 3 shall include affiliates and subsidiaries, and the directors and officers of the Party and of such affiliates and subsidiaries.

(b) Amtrak agrees to indemnify and save harmless Railroad, irrespective of any negligence or fault of Railroad, its employees, agents or servants, or howsoever the same shall occur or be caused, from any and all liability for injuries to or death of any employee of Amtrak and for loss of, damage to, or destruction to his property; but it is expressly understood and agreed that labor furnished by Railroad for and on behalf of Amtrak under any provision of this Agreement and for which Railroad bills Amtrak shall not be regarded for purposes of this Section 3 (b) as employees of Amtrak.

(c) Amtrak agrees to indemnify and save harmless Railroad, irrespective of any negligence or fault of Railroad, its employees, agents or servants, or howsoever the same shall occur or be caused, from any and all liability for (i) injuries to or death of any person or passenger who is on any train operated by or for the account of Amtrak (other than an employee or agent of Railroad in the course of his employment or agency, except when such employee or agent is a fare-paying passenger of Amtrak) or (ii) injury to or death of any third party who has a written contract with Amtrak in connection with intercity passenger or other rail service, or (iii) loss of, damage to or destruction of property of such person, passenger or third party, and for injuries to or death of any other person who may be on, getting on, or alighting from an Amtrak train for the purpose of accompanying or meeting an Amtrak passenger, and for loss of, damage to or destruction of the property of such other person.

(d) Amtrak agrees to indemnify and save harmless Railroad irrespective of any negligence or fault of Railroad its employees, agents or servants, or howsoever the same shall occur or be caused, from any and all liability for, loss of, damage to or destruction of any locomotive, passenger car or any other property or equipment owned by, leased to, used by or otherwise in control, custody or possession of Amtrak.

(e) Amtrak agrees to indemnify and save harmless Railroad irrespective of any negligence or fault of Railroad its employees, agents and servants or howsoever the same shall occur or be caused, and notwithstanding the provisions of Sections 3(f) and 3(g) hereof, from any and all liability for injury to or death of any person and for loss of, damage to, or destruction of any property, other than property specified in Sections 3(f) and 3(g) hereof, if such injury, death, loss, damage, or destruction arises from or is proximately caused as a result of a collision of a vehicle or a person with an Amtrak Train operating on the Rail Line, including injury, death, loss, damage, or destruction to persons or property in the immediate vicinity of the site of the collision to the extent arising out of or proximately caused by an object from an Amtrak Train that strikes such person or property.

(f) Railroad agrees to indemnify and save harmless Amtrak, irrespective of any negligence or fault of Amtrak, its agents, employees or servants, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any employee or employees of Railroad, for injuries to or death of any person or passenger who is on any train operated by or for the account of Railroad (other than an employee or agent of Amtrak in the course of his employment or agency, except when such employee or agent is a fare-paying passenger of Railroad), and for loss of, damage to or destruction of any property or equipment owned by, leased to, used by, or otherwise in control, custody, or possession of Railroad, its employees or passenger, other than property described in Section 3(d) hereof.

(g) Railroad agrees to indemnify and save harmless Amtrak irrespective of any negligence or fault of Amtrak its employees, agents and servants or howsoever the same shall occur or be caused, and notwithstanding the provisions of Sections 3(b), 3(c) and 3(e) hereof, from any and all liability for injury to or death of any person and for loss of, damage to, or destruction of any property, other than property specified in Section 3(d) hereof, if such injury, death, loss, damage, or destruction arises from or is proximately caused as a result of a collision of a vehicle or a person with a Railroad Train operating on the Rail Line, including injury, death, loss, damage, or destruction to persons or property in the immediate vicinity of the site of the collision to the extent

arising out of or proximately caused by an object from a Railroad Train that strikes such person or property.

(h) Railroad agrees to indemnify and hold harmless Amtrak from all liability or expense arising out of the transportation of hazardous (i.e., toxic or combustible) materials on a Railroad Train or any spillage of fuel oil on Sound Transit property from a Railroad Train or during fueling a Railroad Train, including the cost of clean up of any such material discharged on or about the Rail Line and restoration of such real property to the condition that existed prior to the discharge. Amtrak agrees to indemnify and hold harmless Railroad from all liability or expense arising out of the transportation of hazardous (i.e., toxic or combustible) materials on an Amtrak Train and from any spillage of fuel oil on Sound Transit property from an Amtrak Train or during fueling an Amtrak Train, including the cost of clean up of any such material discharged on or about the Rail Line and restoration of such real property to the condition that existed prior to the discharge.

(i) In case suit shall at any time be brought against either Amtrak or Railroad asserting a liability against which the other agrees to indemnify and save harmless the party sued, the indemnifying party shall, at its own cost and expense and without any cost or expense whatever to the party sued, defend such suit and indemnify and save harmless the party sued against all costs and expenses thereof and promptly pay or cause to be paid any final judgment recovered against the party sued; provided, however, that the party sued shall promptly upon the bringing of any such suit against it give notice to the indemnifying party and thereafter provide all such information as may from time to time be requested. Each party shall furnish to the other all such information relating to claims made for injuries, deaths, losses, damage or destruction of the type covered by this Section 3 as such other party may from time to time request.

#### **Section 4. Cooperation and Information.**

In the event of any suit brought against either Railroad or Amtrak asserting a liability against which the other has agreed to indemnify and save harmless the Party sued, the indemnifying Party shall, at its sole cost and expense, defend such suit and indemnify and save harmless the Party sued against all costs and expenses thereof and promptly pay or cause to be

paid any settlement or final judgment recovered against the Party sued. The Party sued shall promptly upon the bringing of any such suit against it give notice thereof to the indemnifying Party and thereafter provide all such information as may from time to time be required. Each Party shall furnish to the other all such information in that Party's possession relating to claims made for injuries, deaths, losses, damage or destruction of the type covered by this Agreement as such other Party may from time to time request; all costs incurred in furnishing such information shall be borne by the Party requesting such information. Each Party shall cooperate fully in the defense of claims for which the other Party is responsible pursuant to this Agreement, including furnishing witnesses, documents, and other relevant information requested by the responsible Party.

**Section 5. Insurance.**

Railroad and Amtrak will each maintain an appropriate program of commercial insurance, self-insurance, or a combination of commercial insurance and self-insurance, in amounts and types sufficient to satisfy its liabilities for personal injury, bodily injury and death (including coverage under the Federal Employers Liability Act), and property damage. Amtrak will maintain commercial general liability insurance as required in the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. § 28103).

**Section 6. Arbitration Procedures.**

Except as otherwise provided in this Agreement, any claim or controversy between Amtrak and Railroad concerning the interpretation, application, or implementation of this Agreement shall be resolved pursuant to the procedures set forth in Sections 3.1 3.2, 3.3, 4.2, 4.3, 4.4, 4.5 and 4.7 of the Arbitration Agreement and the Arbitration Rules of the National Arbitration Panel as revised April 8, 1975 and January 3, 1985 (collectively, the "Arbitration Rules"), which Arbitration Rules are incorporated herein by this reference. For purposes of this Section, all references to the "Participating Railroad" shall be deemed to mean Railroad; all references to the "National Arbitration Panel" or "NAP Panel" shall be deemed to mean the arbitration panel selected as described below; and all references to the "Basic Agreement" and "NRPC Agreement" shall be deemed to mean this Agreement. The arbitration panel shall be composed of one member designated by Amtrak, one member designated by Railroad, and a

third member who shall serve as Chairperson selected by mutual agreement of the Amtrak and Railroad members of the Panel; provided that nothing herein shall prohibit Amtrak and Railroad from requesting that the sitting members of the National Arbitration Panel established under the Arbitration Agreement agree to serve as the arbitration panel for the purpose of resolving disputes under this Agreement.

**Section 7. Governing Law.**

This Agreement shall be construed in accordance with the laws of the District of Columbia.

**Section 8. Successors and Assigns.**

All the covenants and obligations of the Parties hereunder shall bind their successors and assigns whether or not expressly assumed by such successors and assigns. The rights and obligations pursuant to this Agreement shall not be assigned or transferred, in whole or in part, by either Party without the prior written approval of the other Party, such approval not to be unreasonably withheld or delayed; provided, however, that Amtrak or Railroad may require that the proposed assignee or transferee represent in writing that it has the legal authority to, and will, comply with all obligations that are being assigned or transferred, including, but not limited to, the liability and insurance obligations contained in this Agreement.

**Section 9. Notices.**

Any notices, consent, waiver or authorization provided for or permitted by this Agreement to be made upon, given or furnished to, or filed with one Party by the other Party, shall be in writing and shall be delivered by hand or by deposit in the mails of the United States, postage prepaid, addressed as follows:

If to Amtrak

National Railroad Passenger Corporation  
2955 Market Street, Box 20  
Philadelphia, PA 19104  
Attn: Sr. Director Host Railroads

With a copy to:

National Railroad Passenger Corporation  
60 Massachusetts Ave., NE  
Washington, DC 20002  
Attn: General Counsel

If to Railroad

Superintendent  
Tacoma Rail  
2601 SR 509 N Frontage Road  
Tacoma, WA 98421

With a copy to:

City of Tacoma dba Tacoma Rail  
c/o Real Property Services  
3628 South 35th Street  
Tacoma, WA 98409

**Section 10. Severability.**

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

**Section 11. Term and Survival.**

This Agreement shall become effective as of the Effective Date and shall remain in effect so long as both Railroad and Amtrak operate rail service on the Rail Line, or, if either Railroad or Amtrak ceases to operate rail service on the Rail Line, this Agreement shall remain in effect so long as the Party that is no longer operating rail service on the Rail Line undertakes activities conducted pursuant to one or more agreements with the owner of the Rail Line. A temporary cessation of Amtrak service on the Rail Line for less than one eighty (180) consecutive days shall not constitute a cessation of Amtrak service on the Rail Line and, therefore, shall not result in an expiration or termination of this Agreement.

Any obligation, claims or causes of action arising under this Agreement based upon events occurring during the term hereof shall survive the termination of this Agreement.



**Section 12. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be an original as against any Party whose signature appears thereon and all of which together shall constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall be executed by both Parties, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized respective representatives as of the date first above written.

**National Railroad Passenger Corporation**

By: \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Title: \_\_\_\_\_

**City of Tacoma**

By: \_\_\_\_\_

Name (Printed): T.C. Broadnax

Title: City Manager

By: \_\_\_\_\_

Name (Printed): William A. Gaines

Title: Director of Utilities/CEO

**APPROVED**

By: \_\_\_\_\_

Dale King  
Tacoma Rail Superintendent