



ORDINANCE NO. 28419

1 AN ORDINANCE relating to public transportation; amending Ordinance No. 26749,
2 granting to Sound Transit a non-exclusive right of use to construct, operate,
3 own and maintain a passenger rail system within the City; providing for
4 expansion of the Right-of-Way Area to include the proposed location of the
5 Link Light Rail Expansion and amendments related thereto; providing for
6 incorporation of amendments set forth in the First Amended right of Use
7 Agreement authorized pursuant to Ordinance No. 28022; and establishing
8 an effective date.

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

15 WHEREAS, pursuant to Ordinance No. 28022, the City Council approved
16 certain amendments ("First Amended Right of Use Agreement") to the grant of the
17 Right of Use which were intended to recognize the addition of the Commerce
18 Street Station to the Right of Use Agreement, modify the liability and
19 indemnification to include both Sound Transit and the City, establish a five-year
20 review of the Right of Use, and change the 10-minute train headways to 12-minute
21 headways because of the extra time needed to serve the new Commerce Street
22 Station, and

23 WHEREAS the 1.6-mile Tacoma Link light rail line ("Tacoma Link") currently
24 serves six stations between the Theater District and Tacoma Dome Station, and
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WHEREAS, in 2008, voters approved Sound Transit 2, which included funding for a partnership to explore options for expanding Tacoma Link, and

WHEREAS, in August 2015, the City Council passed Resolution No. 39255, recommending to the Sound Transit Board of Directors that the expansion of the Tacoma Link conform to the alignment and stations examined in the Environmental Evaluation completed by Sound Transit in June 2015, and

WHEREAS the recommendation consists of six new stations and one relocated station along an approximately 2.4 mile expansion of the Tacoma Link, and is generally described as north along Commerce Street to the Hilltop District via Stadium Way, North 1st Street, Division Street, and Martin Luther King Jr. Way, and

WHEREAS, in November 2015, the Sound Transit Board of Directors approved the alignment and stations as recommended by the City Council and as set forth in the 2015 Environmental Evaluation ("Tacoma Link Expansion"), and

WHEREAS the City and Sound Transit desire to affirmatively incorporate into the Right of Use the amendments as set forth in the First Amendment Right of Use Agreement, and to further amend the Right of Use to expand the Right-of-Way Area to include the Tacoma Link Expansion as approved by the City Council, and to implement amendments related thereto, and

WHEREAS the City Council finds that it is in the best interest of the public health, safety and welfare to approve this ordinance subject to it being effective only upon its acceptance by Sound Transit; Now, Therefore,



BE IT ORDAINED BY THE CITY OF TACOMA:

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Section 1. That Ordinance No. 26749 is hereby amended to read as set forth in the attached Exhibit "A"; provided that, the Exhibits appended to Ordinance No. 26749 shall remain the same except as otherwise set forth in this Ordinance.

Section 2. That Exhibit "A" (Description of Right-of-Way Area) to Ordinance No. 26255 is hereby amended by the addition of Exhibit "A-1" thereto, which Exhibit "A-1" is set forth in attached Exhibit "B."

Section 3. That Exhibit "D" (Sound Transit Link Light Rail Levels of Service) to Ordinance No. 26255 is hereby replaced in its entirety with new Exhibit "D," attached hereto as Exhibit "C."

Section 4. That Sound Transit shall, within 30 days after the date of passage of this ordinance, execute and return to the City three original countersigned copies of the Right of Use as amended pursuant to this Ordinance, and a signed acceptance in the form attached hereto as Exhibit "D." 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.



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Section 5. This ordinance and the rights, duties and obligations herein, shall be effective 30 days following publication; provided that, this ordinance shall have no force and effect in the event that Sound Transit does not comply with Section 4 of this Ordinance.

Section 6. Upon the effective date of this Ordinance, the First Amended Right of Use Agreement approved by the City Council pursuant to Ordinance No. 28022 shall be and become superseded and replaced by the provisions hereof, and shall no longer be in force or effect.

Passed _____

Mayor

Attest:

City Clerk

Approved as to form:

Chief Deputy City Attorney

EXHIBIT "A"

(Right of Use as Amended)

In consideration of mutual promises and covenants herein contained, to be kept, performed, and fulfilled by the respective parties hereto, it is mutually agreed that a Right of Use is hereby granted to the Central Puget Sound Regional Transit Authority, a government Authority organized under the laws of the state of Washington ("Sound Transit"), to construct, operate, maintain, and own a passenger rail system to provide passenger transportation in the City within and along the Right-of-Way Area and upon the following terms and conditions:

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5 **Section 1. Definitions.** For purposes of this Right of Use Agreement, the
 6 following terms, phrases, words, and their derivations, shall have the meaning
 7 given herein where capitalized; words not defined herein shall have their ordinary
 8 and common meaning. When not inconsistent with the context, words used in the
 9 present tense include the future, words in the plural number include the singular
 10 number, words in the singular number include the plural number, and the use of
 11 any gender shall be applicable to all genders whenever the sense requires. The
 12 words “shall” and “will” are mandatory and the word “may” is permissive. A
 13 reference to the City’s Charter refers to the same as amended from time to time.
 14 References to governmental entities (whether persons or entities) refer to those
 15 entities or their successors in authority. If specific provisions of law referred to
 16 herein be renumbered, then the reference shall be read to refer to the renumbered
 17 provision. References to laws, ordinances, or regulations shall be interpreted
 18 broadly to cover government actions, however nominated, and include laws,
 19 ordinances, and regulations now in force or hereinafter enacted or amended.

20
 21 A. Agreement. “Agreement” shall mean this Right of Use Agreement as
 22 approved pursuant to City Ordinance No. 26749, and as amended pursuant to
 23 Ordinance No. XXXXX.

24 B. City. “City” shall mean the City of Tacoma and any successor or
 25 assignee following an assignment that is permitted under this Agreement.
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1 C. City Facility. "City Facility" shall mean and civil infrastructure designed,
constructed and/or owned by the City.

2 D. Commuter. "Commuter" shall mean any business visitor or public invitee
3 who normally would be considered an invitee of Sound Transit as the term "invitee"
4 is interpreted under Washington law (including, without limitation, all passengers
5 aboard, boarding, or disembarking from any Sound Transit train).

7 E. Emergency. "Emergency" shall mean, except as otherwise provided, a
8 sudden, generally unexpected occurrence or set of circumstances demanding
9 immediate action which interrupts or significantly disrupts the construction,
10 operation, maintenance, or repair of the Passenger Rail System or provision of
11 Passenger Rail Service.
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13 F. Employee. "Employee" shall mean any employee, agent, independent
14 contractor, or consultant of Sound Transit or the City, to the extent that such
15 employee, agent, independent contractor, or consultant is performing duties for
16 such party or such tenant or licensee of such party. For purposes of this
17 Agreement only, Employees of the Operator or any other successor of Sound
18 Transit shall be considered Employees of Sound Transit.
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20 G. Sound Transit Facilities. "Sound Transit Facilities" or "Sound Transit
21 Facility" shall mean any and all improvements, equipment, or property installed,
22 constructed, owned, or maintained by Sound Transit in the Right-of-Way Area for
23 the Passenger Rail Service. Sound Transit Facility shall not include City Facilities.

25 H. Final Construction Plans. "Final Construction Plans" shall mean prints
26 showing, in detail, the proposed construction and specifications of the Passenger



1 Rail System, including each and every proposed element, Facility, or improvement
2 appurtenant thereto planned for location on the Passenger Rail System. With
3 respect to the Tacoma Link Expansion, this term shall mean and refer only to the
4 Final Construction Plans for the Tacoma Link Expansion.

5 I. Hazardous Materials. "Hazardous Materials" shall mean any chemical,
6 material, or substance that is now, or at the time in question is, regulated or
7 governed by any law, the release of which creates any liability under any
8 applicable law or any other material which, when released, would cause significant
9 ecological damage.
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11 J. Liability. "Liability" shall mean all loss, damages, cost, expense
12 (including costs of investigation and attorneys' fees and expenses at arbitration,
13 trial, or appeal and without institution of arbitration or suit), liability, claims, and
14 demands of whatever kind or nature (including those arising under the Federal
15 Employers Liability Act) arising out of an occurrence relating to this Agreement or
16 occurring on or relating to any of the land, tracks, or other improvements described
17 herein.
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19 K. Memorandum of Agreement. "Memorandum of Agreement" shall mean
20 that Memorandum of Agreement for Intergovernmental Cooperation for the
21 Tacoma Light Rail Transit Line between the City and Sound Transit, dated
22 September 2, 1998.
23

24 L. Operator. "Operator" shall mean the operator or operators, if any,
25 appointed from time to time by Sound Transit, or its assignees, to operate Sound
26 Transit trains over the Right-of-Way Area and/or to exercise some or all of the



1 respective rights and obligations of Sound Transit under this Agreement in
2 connection with such operation over the Right-of-Way Area or any portion thereof,
3 but only to the extent such operator or operators are acting in such capacity and
4 not to the extent such operator or operators are acting for their own account or in
5 some other capacity.

6 M. Passenger Rail Service. "Passenger Rail Service" shall mean the
7 operation of trains, authorized in writing by Sound Transit, to transport passengers
8 on its Passenger Rail System or any other related rail passenger service activities.

9 N. Passenger Rail System. "Passenger Rail System" shall mean Sound
10 Transit's light rail rapid transit within the Right-of-Way Area, together with all
11 Facilities as well as any ancillary Facilities such as commuter parking, , bus, auto,
12 bicycle, and pedestrian access infrastructure for the provision of Passenger Rail
13 Service, all as authorized herein by this Agreement and as described in the Final
14 Construction Plans. This term shall mean and include the Tacoma Link
15 Expansion.
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18 O. Passenger Station. "Passenger Station" shall mean, collectively, any
19 passenger station owned, leased, or operated by or on behalf of Sound Transit;
20 any adjacent passenger parking lot owned, leased, or operated by or on behalf of
21 Sound Transit; any passenger loading platform owned, leased, or operated by or
22 on behalf of Sound Transit; or any passenger waiting area owned, leased, or
23 operated by or on behalf of Sound Transit for the purpose of providing Passenger
24 Rail Service.
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P. Passenger. "Passenger" shall mean any person (including, without limitation, an Employee of the City) aboard any Sound Transit Train.

Q. Public Rights-of-Way. "Public Rights-of-Way" shall mean the public streets and easements which, under the City Charter, the Tacoma Municipal Code, City ordinances, and applicable laws, the City has authority to grant rights-of-way, permits, or licenses for use thereof or has regulatory authority therefor, excluding railroad rights-of-way, airport, and harbor areas. Public Rights-of-Way, for the purpose of this Agreement, do not include buildings, parks, poles, conduits, or similar facilities or property owned by or leased to the City, including, by way of example and not limitation, structures in the Public Rights-of-Way such as utility poles and light poles.

R. Right of Use. "Right of Use" shall mean the rights granted by the City, pursuant to Article VIII of the Tacoma City Charter, to Sound Transit for the non-exclusive use of the rights-of-way of the City within the Right-of-Way Area in accordance with the terms and conditions of the Agreement.

S. Right-of-Way Area. "Right-of-Way Area" shall mean the public rights-of-way as described in Exhibit "A" and "A-1."

T. Schedule. "Schedule" shall mean a document which shall include, but not be limited to: (1) the number of stops; (2) the hours of operation; and (3) the frequency of service.

U. Sound Transit. "Sound Transit" shall mean the Central Puget Sound Regional Transit Authority, and any other entity to the extent such entity, as permitted under this Agreement, is exercising any rights to operate Passenger Rail



1 Service over any portion of the Right-of-Way Area, pursuant to a specific written
2 grant of such rights by Sound Transit, including any Operator.

3 V. Tacoma Link Expansion. "Tacoma Link Expansion" shall mean and refer
4 to that portion of the Passenger Rail System constructed and operating within that
5 portion of the Right-of-Way Area depicted in Exhibit "A-1," attached hereto.

6 W. Third Party. "Third Party" shall mean any person or entity other than the
7 City, or an employee of the City, and any person other than Sound Transit, or an
8 employee of Sound Transit.

9 X. Tracks. "Tracks" shall mean all tracks (including, without limitation,
10 passing tracks and sidings), turnouts, crossovers, interlocking devices and plants,
11 track improvements, and support structures that are located, installed, and
12 maintained by Sound Transit.

13 Y. Train. "Train" shall mean one or more light rail train units operated by or
14 on behalf of Sound Transit within the Right-of-Way Area to provide Passenger Rail
15 Service.
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18 **Section 2. Grant of Rights by City.**

19 A. Grant of Non-Exclusive Right of Use. The City grants to Sound Transit a
20 non-exclusive Right of Use solely to construct, operate, repair, maintain, and own a
21 Passenger Rail System in, upon, and along the Right-of-Way Area to provide
22 Passenger Rail Service in accordance with the terms and conditions of this
23 Agreement. Sound Transit expressly agrees that it will construct, operate, and
24 maintain the Passenger Rail System in compliance with this Agreement and all
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1 applicable City ordinances and state and federal laws, rules, and regulations
2 subject to subsection B below.

3 B. Rights Subject to City Approval of Final Construction Plans. Sound
4 Transit shall not construct on or along the Right-of-Way Area any additions to or
5 expansions of the Passenger Rail System unless it has the City's written consent.

6 C. Rights Subject to Right-of-Way Area Uses. The City intends to continue
7 using the Right-of-Way Area, as burdened by Sound Transit, for use as a
8 right-of-way and any other activities that do not unreasonably impair the ability of
9 Sound Transit to operate the Passenger Rail System as contemplated in this
10 Agreement. The rights of Sound Transit are subject to the right of City to (1) its
11 exercise of its police powers, (2) use and maintain the entire Right-of-Way Area
12 subject to the terms and conditions of the Agreement; (3) dispose of all or any part
13 of the Right-of-Way Area, including, but not limited to, the air space above and the
14 subsurface area below the Sound Transit Facilities, subject to the terms and
15 conditions of this Agreement; and (4) construct and operate, and to change,
16 modify, or relocate railway tracks (other than Sound Transit Facilities), signals,
17 pipelines, electric lines, other railway facilities, and/or recreational and City
18 Facilities in, on, upon, over, under, along, across, or through any or all parts of the
19 Right-of-Way Area, or permit others to do so for City or for other public
20 improvement projects, all or any of which may be freely done at any time or times
21 by the City or others with the City's permission, without liability to the City or to any
22 other party for compensation or damages, unless this Agreement otherwise
23 expressly provides therefor.
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1 D. City Use of Right-of-Way Area. Sound Transit understands and agrees
2 that the normal course of Public Right-of-Way use by the City may involve
3 construction, maintenance, demolition, leasing, licensing, permitting, and similar
4 activities that have the potential to cause interruption to the construction, operation,
5 maintenance, or repair of the Passenger Rail System. Sound Transit understands
6 and agrees that such activities may be caused, from time to time, by reasons
7 including, but not limited to: (1) traffic conditions; (2) public safety; (3) Public
8 Rights-of-Way construction; (4) Public Rights-of-Way repair (including resurfacing
9 or widening); (5) change of Public Rights-of-Way grade; (6) construction,
10 installation, or repair of sewers, drains, water pipes, power lines, signal lines,
11 tracks, government-owned communications systems, public works, public Facilities
12 or improvements, or any government-owned utility; and (7) Public Rights-of-Way
13 vacation, and for any other purpose, may enter the Right-of-Way Area and perform
14 work that may impact the construction, operation, maintenance, or repair of the
15 Passenger Rail System.
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18 The City agrees that such activities, to the extent they are permitted or
19 controlled by the City, shall not occur within the Right-of-Way Area without
20 five days' prior written notice to Sound Transit, except in the event of an
21 Emergency.
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23 E. Non-Exclusive Use. Sound Transit understands that the rights granted
24 herein are nonexclusive. In addition to the City's use of the Right-of-Way Area
25 under Subsection 2.C., the City may permit other nonexclusive occupancies
26 provided that any such subsequent occupancies may not unreasonably interfere



1 with Sound Transit's rights to construction, operation, maintenance, or repair of the
2 Passenger Rail System. The City shall, where and as practicable, protect from
3 subsequent occupancies an area on either side of the Sound Transit Facilities
4 where occupancy would have the risk of interference with the Sound Transit
5 Facilities or City Facilities, such as the Commerce Street Station or such other City
6 Facilities as may be added in the future.

7 F. Use Restricted. This Agreement does not authorize the provision of any
8 services by Sound Transit other than Passenger Rail Service, or in any way relieve
9 Sound Transit of any obligation to obtain any additional permits, authorizations,
10 licenses, or agreements to use the Right-of-Way Area to provide other services.
11 The provisions of this Agreement are not a bar to the imposition of similar,
12 different, or additional conditions with respect to the use of the Right-of-Way Area.

13 G. Ownership. Sound Transit shall own the Passenger Rail System;
14 provided, however, that to the extent the City or other governmental entity
15 constructs, or causes to be constructed, a Passenger Station on the Right-of-Way
16 Area, then the City or other governmental entity, as the case may be, shall own
17 such Passenger Station and all improvements thereon. Nothing in this Agreement
18 shall be construed as granting to Sound Transit any interest or right in the
19 Right-of-Way Area or the improvements on the Right-of-Way Area other than the
20 rights expressly provided herein.
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24 H. Inconsistent Use. Notwithstanding the above, no Public Rights-of-Way
25 shall be used by Sound Transit in a manner that is inconsistent with the terms,
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1 conditions, or provisions by which such Public Rights-of-Way were created or
2 dedicated, or presently used under applicable laws.

3 I. No Rights by Implication. No rights shall pass to Sound Transit by
4 implication. Without limiting the foregoing, by way of example and not limitation,
5 this Agreement shall not include or be a substitute for:

6 1. Any other permit or authorization required for the privilege of
7 transacting and carrying on a business within the City that may be required by the
8 ordinances and laws of the City;

9 2. Any permit, agreement, or authorization required in connection
10 with construction on or in the Right-of-Way Area or, including by way of example
11 and not limitation, street cut permits; or

12 3. Any permits or agreements for occupying any other property of
13 the City or private entities to which access is not specifically granted by this
14 Agreement.

15
16 J. Utilities Agreements. This Agreement shall not be read to diminish, or in
17 any way affect, the authority of the City to control and charge for the use of the
18 light, water, storm, refuse, and sewer utilities. Therefore, if Sound Transit desires
19 to use such utilities, it must obtain necessary agreements or consents for such
20 uses and pay any and all associated fees as may be required by the City. The
21 parties recognize that approval of the Tacoma Public Utilities Board is required for
22 access to and use of light and water utilities.
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25 K. Operating Agreement. The Parties have entered into an agreement (the
26 "Operating Agreement") dated the 9th day of December, 2011, approved pursuant



1 to Resolution No. 38342, defining the day-to-day operating procedures within the
2 Right-of-Way Area between Sound Transit, the Public Works Department of the
3 City and the City's municipally owned utilities. The Parties agree that the
4 Operating Agreement, as now or may be hereafter amended or replaced, will
5 control and that this Agreement shall be interpreted consistent therewith.

6 **Section 3. Payment.** The City agrees that, in recognition of the public
7 benefit provided by Light Rail to the citizens of Tacoma and in recognition that the
8 franchise fee requirements of Section 7.2 of the Tacoma City Charter are
9 inapplicable to railways, Sound Transit, for the term of the Agreement, shall not be
10 obligated to compensate the City for the rights granted herein.

12 **Section 4. Construction.**

13 A. Proposed Construction Plans. Prior to commencing construction, Sound
14 Transit shall, at its expense, submit to the City such number of Final Construction
15 Plans as reasonably requested by the City.

17 B. Approval. Upon the City's receipt of Final Construction Plans from
18 Sound Transit the City shall, within 30 days from said receipt, review and approve
19 or disapprove of the construction specified therein; provided, however, that
20 approval shall not be unreasonably withheld. To the extent that the City
21 disapproves of all or any part of the Final Construction Plans, the City shall, within
22 said 30-day period, provide to Sound Transit a written explanation of the reasons
23 for disapproval and suggested cures, if any. Sound Transit shall then submit
24 revised Final Construction Plans, which shall be subject to the same review and
25 approval or disapproval procedures. Sound Transit shall not commence
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1 construction along any portion of the Right-of-Way Area until Final Construction
2 Plans for such portion have been approved by the City. If unforeseen conditions
3 arise during construction of the Passenger Rail System, the City will promptly
4 consider new or revised Final Construction Plans, or portions thereof, necessary to
5 progress the work in a mutually satisfactory manner.

6 C. Entry Upon Right-of-Way Area. Sound Transit, its servants, employees,
7 agents, contractors, and/or subcontractors shall have the right, as defined and
8 limited pursuant to Sections 7 and 8 of this Agreement, to enter upon the
9 Right-of-Way Area for the purpose of constructing, operating, and maintaining the
10 Sound Transit Facilities and constructing City Facilities.

11 D. Construction Schedule. Sound Transit shall furnish to the City a
12 proposed schedule of construction (the "Construction Schedule") of the Passenger
13 Rail System. The Construction Schedule shall be used by the parties for purposes
14 of coordinating personnel and conflicting activities and shall be amended from time
15 to time by Sound Transit to reflect any and all schedule changes.

16 E. Facilities Drawings. As promptly as possible, but in no event later than
17 six months after each segment of the Passenger Rail System is installed, Sound
18 Transit shall furnish to the City "record drawings" of all constructed Sound Transit
19 Facilities and City Facilities constructed by Sound Transit.

20 F. Use of Right-of-Way Area. During construction of the Passenger Rail
21 System, Sound Transit, with the prior written agreement of the City, may fence the
22 Right-of-Way Area for the temporary storage of construction equipment and
23 materials; provided that such structures and fences (1) do not interfere with or
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1 disrupt in any way, other than in ways approved in advance by City, the ordinary
2 use of the Public Right-of-Way; and (2) do not interfere with or disrupt in any way,
3 other than in ways approved in advance by the City, the ordinary access to
4 property on either side of the Public Right-of-Way. Sound Transit shall not store or
5 temporarily place any goods, materials, or equipment (1) near a roadway,
6 intersection, or crossing in such a manner as to interfere with the sight distance of
7 persons approaching such crossing; or (2) within such greater distance as required
8 by public authority; provided, however, that fuel and other hazardous substances
9 shall not be stored unless approved by appropriate officials of the Tacoma Fire
10 Department.
11

12 G. Compliance with Laws, Rules, and Regulations. Sound Transit, at
13 Sound Transit's sole cost and expense, will furnish all materials, parts,
14 components, equipment, and structures necessary to construct and operate the
15 Passenger Rail System, or any part thereof, in accordance with this Agreement.
16 Any and all work performed by and on behalf of Sound Transit shall be done in a
17 good and workmanlike manner, in conformity with all applicable engineering,
18 safety, and other statutes, laws, ordinances, regulations, rules, codes, orders, or
19 specifications of any public body or authority having jurisdiction.
20

21 H. Apprentice Program. Sound Transit shall include in any apprenticeship
22 program for construction projects covered by this Agreement the City's Local
23 Employment and Apprenticeship Program ("LEAP") and Youth Building Tacoma
24 Program. The City's staff charged with enforcement of these programs shall be
25 reasonably available to assist Sound Transit in complying with the requirements of
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1 said programs. Sound Transit shall include in all construction contracts that the
2 City LEAP and Youth Building Tacoma staff shall have access to construction sites
3 for the purpose of enforcement of said programs. The foregoing requirements of
4 this subsection shall be deemed waived in the event that Sound Transit has in
5 place, for construction projects covered by this Agreement, a Project Labor
6 Agreement (“PLA”), in substantially the form as attached hereto as Exhibit “C,”
7 which PLA has been fully executed and implemented by the Sound Transit Board;
8 provided that Sound Transit, as a condition of said waiver, shall encourage its
9 contractors for those construction projects covered by this Agreement, to utilize
10 Tacoma labor forces in apprenticeship positions and to cooperate and coordinate
11 local labor hiring with City staff charged with enforcement of the LEAP program.

13 I. Installation. All Sound Transit Facilities and installations, and all City
14 Facilities installed by Sound Transit, must meet or exceed applicable specifications
15 of the City and be in compliance with all existing federal, state, or local laws,
16 ordinances, and regulations.

18 J. Track Support. During any work of any character by Sound Transit at
19 locations of the Transit Facilities, and in accordance with the Final Construction
20 Plans, Sound Transit will support the tracks and roadbed of Passenger Rail
21 System in such manner as is necessary for the safe operation of the Passenger
22 Rail System and ordinary use of the Public Rights-of-Way.

24 K. Imminent Danger. If, during construction, there is an Emergency or the
25 Passenger Rail System creates, or is contributing to, an imminent danger to health,
26 safety, or property that Sound Transit is unable to immediately address, the City



1 may protect, support, temporarily disconnect, remove, or relocate any or all parts
2 of the Passenger Rail System without prior notice and charge Sound Transit for
3 costs incurred. The City shall provide notice of such danger as soon as
4 practicable.

5 L. Transmission Wires. Sound Transit shall, on the request of any Third
6 Party holding a valid permit issued by a governmental authority, temporarily raise
7 or lower its wires to permit the moving of buildings or other objects. Sound Transit
8 may require that the expense of such temporary removal or raising or lowering of
9 wires be paid in advance by the Third Party requesting the same. In no case will
10 the cost or disconnection, removal, or relocation be charged to the City.
11

12 M. Information Regarding Ongoing Work. In addition to providing notice to
13 the public of ongoing work as may be required under applicable law, Sound Transit
14 shall make available information regarding any ongoing construction of its
15 Passenger Rail System sufficient to show:
16

- 17 1. The nature of the work being performed;
- 18 2. Where it is being performed;
- 19 3. Its estimated completion date; and
- 20 4. Progress towards completion.

21 N. Inspection during Construction. The City shall have the right to verify, by
22 inspection, that the location of the work and the materials used in construction or
23 operation of the Sound Transit Facilities are in compliance with the Final
24 Construction Plans, as approved by the City. The City shall further have the right
25 to verify, by inspection, that City Facilities relocated and/or constructed by Sound
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1 Transit are to a standard acceptable to the City in accordance with the Final
2 Construction Plans. The City shall give Sound Transit reasonable notice of such
3 inspections, and Sound Transit may, at its option, designate a representative to
4 accompany the City's representative on such inspections. The costs to the City
5 shall be borne by Sound Transit, except as may be otherwise provided by mutual
6 agreement of Sound Transit and the City, unless otherwise agreed to in writing
7 such as a project funding agreement..

8 O. Restoration of Right-of-Way Area. Sound Transit shall promptly repair
9 any and all Public Rights-of-Way and public or private property that is disturbed or
10 damaged during the construction of its Passenger Rail System. Upon completion
11 of the initial construction of the Transit Facilities, Sound Transit shall ensure that
12 the unimproved Right-of-Way Area and all other public and private property that is
13 disturbed or damaged during construction of the Passenger Rail System is
14 promptly returned to as good a condition as before the disturbance or damage
15 occurred, or if to a lesser condition, then to the satisfaction of the City or the private
16 property owners. In the event Sound Transit does not comply with the foregoing
17 requirements, the City may, upon reasonable advance notice to Sound Transit,
18 take action to restore the Public Rights-of-Way or public property at Sound
19 Transit's sole cost and expense.

20 P. Use of Separate Facilities. To the extent available, the City may, at its
21 sole option, rent or license to Sound Transit space in any vacant or partially vacant
22 buildings or property, within or beyond the Right-of-Way Area, for such use(s) as
23 Sound Transit may require in conjunction with the Sound Transit Facilities. For
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1 each such site, the parties shall enter into a separate lease, permit, or license
2 agreement. Sound Transit shall pay to the City separate rental for any buildings
3 used by Sound Transit, owned by City and located within or beyond the
4 Right-of-Way Area.

5 Q. Use of Right-of-Way Area. During, and in furtherance of, initial
6 construction of Sound Transit Facilities and City Facilities by Sound Transit, the
7 City agrees to allow Sound Transit the reasonable use, at no charge, of available
8 portions of the Right-of-Way Area for the purpose of allowing Sound Transit to
9 erect, at Sound Transit's sole cost and expense, temporary structures and fences
10 to protect Sound Transit's material or equipment necessary for the construction of
11 Sound Transit Facilities and City Facilities constructed by Sound Transit, provided
12 that such structures and fences (1) do not interfere with or disrupt in any way, other
13 than in ways approved in advance by the City, the ordinary use of the Public
14 Right-of-Way; (2) do not interfere with or disrupt in any way, other than in ways
15 approved in advance by the City, the ordinary access to property on either side of
16 the Right-of-Way Area; and (3) shall be as shown and described in the Final
17 Construction Plans. Sound Transit agrees to restore any land used for such
18 structures and fences in accordance with Subsection O herein. Except for Sound
19 Transit Facilities (to the extent, and only to the extent, constructed in accordance
20 with City-approved Final Construction Plans and the provisions of this Agreement),
21 Sound Transit shall not store or temporarily place any goods, materials, or
22 equipment (1) near a roadway, private grade, intersection, or crossing in such a
23 manner as to interfere with the sight distance of persons approaching such
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crossing; or (2) within such greater distance as required by public authority;
1 provided, however, that fuel and other hazardous substances shall not be stored
2 unless approved by appropriate officials of the Tacoma Fire Department.

3
4 R. Utilities During Construction. Sound Transit shall make its own
5 arrangements and be solely responsible for all electrical power and other utilities or
6 services necessary to construct and operate the Sound Transit Facilities, and
7 Sound Transit shall indemnify the City against any liability to any utility or service
8 company arising out of utilities or services ordered or used by or on behalf of
9 Sound Transit.

10
11 S. Crossing. Crossing by Sound Transit under public roadways shall be at
12 a location and depth as agreed by the City and Sound Transit, as shown on the
13 Final Construction Plans.

14 T. Artifacts. If, during construction or operation of Sound Transit Facilities,
15 or construction of City Facilities by Sound Transit, Sound Transit, its agents,
16 servants, employees, contractors, or subcontractors discover scientific or historic
17 artifacts, Sound Transit shall immediately notify the City of said discovery and shall
18 protect such artifacts in a manner as specified by the City, pursuant to the
19 guidelines identified in Exhibit "B."
20

21 **Section 5. Permits.**

22
23 A. Permits and Licenses. Sound Transit, at its sole cost and expense, shall
24 (1) secure and maintain in effect all federal, state, and local permits and licenses
25 required for the construction, operation, maintenance, and repair of the Passenger
26 Rail System, including, without limitation, crossing, zoning, building, health,



1 environmental, and communication permits and licenses; and (2) indemnify the
2 City against payment of the costs thereof and against any fines or penalties that
3 may be levied for failure to procure, or to comply with, such permits or licenses, as
4 well as any remedial costs incurred by the City in curing any such failures, except
5 for City Facilities such as the Commerce Street Station. The City shall cooperate
6 with and assist Sound Transit in securing and maintaining any such permits or
7 licenses.

8 B. Environmental Impact Statement. Environmental Impact Statements, if
9 any, required at any time during the planning, design, construction, or operation of
10 the Sound Transit Facilities shall be prepared by Sound Transit at Sound Transit's
11 sole cost and expense, except as may be otherwise agreed to by the City and
12 Sound Transit.

13 C. City Shall Not Hinder. The City shall not hinder Sound Transit's
14 attempts to secure, at Sound Transit's sole cost and expense, obtain, and maintain
15 any permits, licenses, or approvals of governmental agencies or authorities, or of
16 any necessary Third Parties, for the use of any structures or Facilities (including
17 streets, roads, or utility poles).
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20 **Section 6. Entry Notice.**

21 A. Access. Sound Transit, its servants, employees, agents, contractors,
22 and/or subcontractors shall have access to the Right-of-Way Area in connection
23 with Sound Transit's construction, operation, maintenance, and repair of the
24 Passenger Rail System as is reasonably necessary in accordance with this
25 Agreement; provided, however, except to the extent expressly provided in this
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1 Agreement, this right of access shall not be deemed to require the City to take any
2 actions or expend any funds to enable such persons to exercise such rights of
3 access, and, provided further, that such access may not interfere with or disrupt in
4 any way, other than in ways approved in advance by the City, the use of the Public
5 Right-of-Way by the City or Third Parties in and along the Right-of-Way Area.

6 B. Notice Prior to Initial Entry. During Construction (as defined below),
7 Sound Transit shall give the City at least 48 hours' written notice before initial
8 entry upon any portion of the Right-of-Way Area for Construction purposes. For
9 purposes of the Agreement, "Construction" shall mean Sound Transit's
10 construction of the Transit Facilities, pursuant to the approved Final Construction
11 Plans.
12

13 C. Entry After Initial Construction. After initial Construction, any entry by
14 Sound Transit onto the Right-of-Way Area that is not pursuant to the Routine
15 Maintenance and Operation of the Passenger Rail System, or for purposes relating
16 to an Emergency (both of which are defined below), shall require (1) advance
17 written notice from Sound Transit to the City not less than ten days prior to Sound
18 Transit's planned entry, with notice to specify the purpose of the entry; (2) if entry
19 involves any new construction, or removal of any portion of the Passenger Rail
20 System, four sets of prints showing in detail the proposed new construction,
21 reconstruction, or removal; and (3) approval by the City, which approval shall not
22 be unreasonably withheld or delayed, taking in account the nature of the proposed
23 entry.
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1 D. Entry for Routine Operation, Maintenance, and Repair. Except as may
2 be otherwise provided in the Operating Agreement, during Routine Operation,
3 Maintenance, and Repair (as defined herein), Sound Transit personnel may enter
4 the Right-of-Way Area without notice to the City, as long as such entry is for the
5 sole purposes of Routine Operation, Maintenance and Repair.. For purposes of
6 this Agreement, "Routine Operation, Maintenance, and Repair" shall mean Sound
7 Transit's operation, maintenance, and repair of the Transit Facilities that does not
8 require (1) the excavation of soil that would alter or disturb the Right-of-Way Area;
9 (2) the use of heavy machinery within 50 feet of or upon the Right-of-Way Area;
10 and (3) disruption of other uses of the Public Right-of-Way beyond that typical of
11 Passenger Rail Service.
12

13 E. Emergency Access. Except as may be otherwise provided in the
14 Operating Agreement, in the event of an Emergency, and for purposes of taking
15 immediate corrective action, Sound Transit personnel may enter the Right-of-Way
16 Area without notice to the City as long as such entry is for the sole purpose of
17 addressing the Emergency; provided, however, that if any entry for such purposes
18 is likely to require excavation of soil that would alter or disturb the Right-of-Way
19 Area, use of heavy machinery within 50 feet of or upon the Right-of-Way Area, or
20 disruption of other uses of the Public Right-of-Way beyond that typical of
21 Passenger Rail Service, Sound Transit shall give the City verbal or telephonic
22 notice of the places where and the manner in which entry is required prior to such
23 entry, promptly followed by written notice.
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Section 7. Operation, Maintenance, and Repair in Streets and

1 Rights-Of-Way.

2 A. Compliance with Laws, Rules, and Regulations. Sound Transit shall
3 operate, maintain, and repair its Passenger Rail System in compliance with all
4 federal, state, and local laws; ordinances; and departmental rules, regulations, and
5 practices affecting such system, which include, by way of example and not
6 limitation, the obligation to operate, maintain, and repair in accordance with the
7 Operating Agreement or the zoning codes, safety codes and City construction
8 standards. In addition, the construction, operation, and repair shall be performed
9 in a manner consistent with industry standards. Sound Transit shall exercise
10 reasonable care in the performance of all its activities and shall use
11 industry-accepted methods and devices for preventing failures and accidents that
12 are likely to cause damage, injury, or nuisance to the public or to property.

13 B. Permits Required. Except in cases of Emergency repairs, Sound
14 Transit's construction, operation, or repair of its Passenger Rail System shall not
15 commence until all required permits have been properly filed for and obtained from
16 the proper City officials and all required permits and associated fees paid. In case
17 of Emergency repairs, appropriate permits shall be obtained no later than the
18 second business day following repairs.

19 C. Level of Operation/Maintenance. All Facilities shall be operated and
20 maintained in such a manner as to minimize disruption to other users of the Public
21 Rights-of-Way. All Facilities shall be maintained to a standard of safety and
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1 aesthetics acceptable to and in accordance with standards adopted from time to
2 time by the City.

3 D. Appointment of Operator. Sound Transit may appoint an operator as
4 Sound Transit's agent to exercise some or all of Sound Transit's rights under this
5 Agreement, subject to the terms and conditions of this Agreement.

6 E. Staff. Sound Transit or the Operator shall maintain, or cause to be
7 maintained, an adequate, competent, trained, licensed, qualified, and experienced
8 staff to operate Trains that use the Right-of-Way Area.

9 F. Regulatory Approvals. Sound Transit and the Operator shall obtain and
10 maintain all federal, state, and/or local regulatory approvals as may be required for
11 the conduct of Passenger Rail Service on the Right-of-Way Area.

12 G. Hazardous Materials. Hazardous Materials shall not be allowed within
13 the Right-of-Way Area, nor shall any hazardous materials be transported within the
14 Right-of-Way Area.

15 H. Responsibility for Facilities. The City shall have no responsibility for
16 inspecting, maintaining, servicing, or repairing any trains or other equipment used
17 by Sound Transit on the Right-of-Way Area, but all such equipment shall at all
18 times comply with applicable federal, state, and local governmental requirements.
19 Further, the City shall not be responsible for the clearing or removal of trees,
20 shrubs, plants, ice, snow, or debris therefrom.

21 I. Prompt Repair. Sound Transit shall promptly repair any and all Public
22 Rights-of-Way and public or private property that is disturbed or damaged during
23 the operation, maintenance, or repair of its Passenger Rail System. Sound Transit
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1 shall ensure that the unimproved Right-of-Way Area and all other public and
2 private property that is disturbed or damaged during the operation, maintenance,
3 or repair of the Passenger Rail System is promptly returned to as good a condition
4 as before the disturbance or damage occurred, or if to a lesser condition, then to
5 the satisfaction of the City or the private property owners. In the event Sound
6 Transit does not comply with the foregoing requirements, the City may, upon
7 reasonable advance notice to Sound Transit, take action to restore the Public
8 Rights-of-Way or public property at Sound Transit's sole cost and expense.

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10 J. Tree Trimming. No tree trimming shall be performed, except in the event
11 of an Emergency, without the permission of the City and other affected authorities,
12 and any tree trimming must be performed in strict accordance with the Tacoma
13 Municipal Code. Even if tree trimming is authorized by the City, Sound Transit is
14 liable for any damage it causes during the course of tree trimming.

15
16 K. Dispute. In any dispute over the adequacy of a restoration, the Director
17 of the Department of Public Works shall, in his or her sole discretion, make the
18 final determination.

19
20 L. Imminent Danger. In the event of an Emergency, or where the
21 Passenger Rail System creates, or is contributing to, an imminent danger to health,
22 safety, or property, the City may protect, support, temporarily disconnect, remove,
23 or relocate any or all parts of the Passenger Rail System without prior notice and
24 charge Sound Transit for costs incurred. The City shall provide notice of such
25 danger as soon as practicable.

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M. Transmission Wires. Sound Transit shall, on the request of any Third Party holding a valid permit issued by a governmental authority, temporarily raise or lower its wires to permit the moving of buildings or other objects. Sound Transit may require that the expense of such temporary removal or raising or lowering of wires be paid in advance by the Third Party requesting the same. In no case will the cost of disconnection, removal, or relocation be charged to the City, even if the City makes the request for such action on behalf of a permit holder.

N. Information Regarding Ongoing Work. In addition to providing notice to the public of ongoing work as may be required under applicable law, Sound Transit shall make available information regarding any ongoing maintenance, operation, or repair of its stationary Facilities in the Right-of-Way Area sufficient to show:

1. The nature of the work being performed;
2. Where it is being performed;
3. Its estimated completion date; and
4. Progress towards completion.

Section 8. Dispatching and Level of Service.

A. Dispatching Responsibilities. The movement and dispatching of any trains and other equipment over the tracks shall, at all times, be subject to the exclusive direction and control of Sound Transit.

B. Level of Service. Sound Transit shall determine the quarterly passenger rail transportation schedules for the Passenger Rail System and shall provide such schedule, and any changes thereto, in a timely manner to the City. Sound Transit agrees to maintain service at the minimum and maximum levels for the life of this



1 Agreement, as described in Exhibit "D," unless otherwise mutually agreed to in
2 writing by the parties and authorized by the respective governing bodies.

3 C. Consultation. Upon written request by the City, Sound Transit agrees to
4 promptly make available appropriate representatives to meet with representatives
5 of the City to discuss, review, and consider revisions to the passenger rail
6 transportation schedules requested by the City. Sound Transit agrees to make
7 good faith efforts to accommodate the City's request and will provide a written
8 response detailing what action Sound Transit will take as a result of the City's
9 request and the reasons therefor, supported by any facts that were considered.
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11 **Section 9. Facility Location Signs.** Sound Transit, at its sole cost,
12 expense, and risk, shall furnish, erect, and thereafter maintain signs showing the
13 location of all Sound Transit Facilities. The size, form, color, text, location, and
14 spacing of such signs shall be subject to advance approval by the City and such
15 signs shall be considered part of the Facilities.
16

17 **Section 10. Third-Party Right-of-Way Area Ownership.** This Agreement
18 is not intended to cover and does not cover any occupancies over (1) rights-of-way
19 or other land owned solely or jointly by any other person or entity; or (2) any rights
20 granted to City by Third Parties. The City agrees to cooperate with Sound Transit
21 to assist in its efforts to acquire rights to use any joint facilities or structures or such
22 rights-of-way or land owned by others along the Right-of-Way Area.
23

24 **Section 11. Conveyance of Right-of-Way Area.** In the event of any sale,
25 transfer, or conveyance of the Right-of-Way Area or portion thereof, such sale,
26 transfer, or conveyance shall be subject to any existing rights of Sound Transit



1 under this Agreement to the extent permitted by law and applicable agreements
2 entered into prior to the date of this Agreement.

3 **Section 12. Liability; Indemnification.**

4 A. Sound Transit hereby agrees to indemnify, defend, and hold the City
5 harmless from any and all claims, demands, suits, actions, damages, recoveries,
6 judgments, costs, or expenses arising or growing out of or in connection with or
7 resulting from, either directly or indirectly, the design, construction, maintenance,
8 operation, repair, removal, occupancy, or use of the Passenger Rail System by
9 Sound Transit, except as provided in Section 12.B.
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11 B. The obligations of Sound Transit as set forth in Section 12.A above do
12 not apply to the extent such claims, demands, suits, actions, damages, recoveries,
13 judgments, costs, or expenses are caused by the sole negligence of the City.

14 C. The parties hereby agree that no damages shall be recoverable from
15 one another because of any dispossession that results from any failure of or defect
16 in the City's title or the rights granted herein by the City to Sound Transit. The City
17 will cooperate with Sound Transit's actions to rectify any title defect and shall
18 stipulate to judgment upon demand with regard to Sound Transit's title.
19

20 D. The party in whose favor an indemnification runs, pursuant to any of
21 Sections 12.A, 12.B, and 12.C (the "Protected Party"), shall give the other party
22 (the "Indemnifying Party") prompt notice of any claims or actions, of which it is
23 aware, against the Protected Party under this Agreement. The Indemnifying Party
24 shall promptly assume responsibility for the claim or undertake the defense of any
25 litigation on behalf of the Protected Party, its agents, contractors, and employees;
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1 hold the Protected Party harmless for any expense associated therewith; and
2 promptly pay any settlement or judgment that may be agreed to by the parties or
3 entered by a court. The Protected Party shall cooperate fully with the Indemnifying
4 Party in the defense of any such claim or action. The Protected Party shall not
5 settle any such claim or action without the prior written consent of the Indemnifying
6 Party, which consent shall not be unreasonably withheld. In the event that the
7 Indemnifying Party does not assume and meet its obligations under Section 12.D
8 promptly upon receiving written notice from the Protected Party, the Protected
9 Party may, at its option, make any expenditures or incur any obligations for the
10 payment of money in connection with or arising out of the matters referred to in
11 Sections 12.A, 12.B, and 12.C, including, but not limited to, attorney's fees. Such
12 sums paid or obligations incurred shall be deemed to be additional obligations of
13 the Indemnifying Party under this Agreement and shall be paid by the Indemnifying
14 Party upon the rendering of a statement to the Indemnifying Party therefor.
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16
17 E. In indemnifying and holding harmless as to its employees, Sound Transit
18 waives immunity under Industrial Insurance Law, RCW 51. Sound Transit
19 specifically assumes potential liability for actions brought by Sound Transit's own
20 employees against the City and, solely for the purpose of this indemnification and
21 defense, Sound Transit specifically waives any immunity under the state industrial
22 insurance law, RCW 51. SOUND TRANSIT RECOGNIZES THAT THIS WAIVER
23 WAS SPECIFICALLY ENTERED INTO PURSUANT TO THE PROVISIONS OF
24 RCW 4.24.115 AND WAS THE SUBJECT OF MUTUAL NEGOTIATION.
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1 **Section 13. Insurance.** Sound Transit shall, at its sole expense, obtain
2 and maintain during the entire term of this Agreement an appropriate program of
3 insurance, self-insurance or any combination thereof in amounts and types
4 sufficient to satisfy its liabilities. When commercial insurance is utilized, Sound
5 Transit shall name the City as an Additional Insured in accordance with insurer
6 underwriting practices, and Sound Transit insurance policies shall be primary and
7 non-contributory to any coverage maintained by the City. Sound Transit waives all
8 rights of subrogation against the City for claims by third-parties arising under this
9 Agreement, other than for damages, claims or liabilities arising from negligent acts
10 or omissions of the City and its officers, employees and agents. The limits of
11 Sound Transit's selected coverage program in no way diminish Sound Transit's
12 obligations to the City as set forth in this Agreement. Further, before Sound
13 Transit may operate, the parties will agree in an operating agreement to the
14 particulars of the insurance requirements that implement the principles expressed
15 in this section.
16
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18 **Section 14. Liens.**

19 A. The Right-of-Way Area is not subject to a claim of lien. In the event that
20 any City property becomes subject to any claims for mechanics', artisans', or
21 materialmen's liens, or other encumbrances chargeable to or through Sound
22 Transit which Sound Transit does not contest in good faith, Sound Transit shall
23 promptly, and in any event within 30 days, cause such lien claim or encumbrance
24 to be discharged or released of record (by payment, posting of bond, court deposit,
25 or other means), without cost to the City, and shall indemnify the City against all
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1 costs and expenses (including attorneys' fees) incurred in discharging and
2 releasing such claim of lien or encumbrance. If any such claim or encumbrance is
3 not so discharged and released, the City may pay or secure the release or
4 discharge thereof at the expense of Sound Transit after first giving Sound Transit
5 five business days' advance notice of its intention to do so. The City shall use its
6 reasonable best efforts to keep Sound Transit's Facilities free of all liens that may
7 adversely affect the Passenger Rail System.

8 B. Nothing herein shall preclude Sound Transit's or the City's contest of a
9 claim for lien or other encumbrance chargeable to or through Sound Transit or the
10 City, or of a contract or action upon which the same arose.

11 C. Nothing in this Agreement shall be deemed to give, and the City hereby
12 expressly waives, any claim of ownership in and to any part or the whole of the
13 Passenger Rail System, except for City Facilities such as the Commerce Street
14 Station, and as may be otherwise provided herein.

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17 **Section 15. Term; Termination.**

18 A. This Agreement, together with any amendments hereto, shall be
19 effective as of the date identified pursuant to Section 29 of this Agreement and,
20 unless sooner terminated pursuant to the terms hereof, shall terminate on April 8,
21 2067.

22 B. Five-Year Review. Beginning in the year 2016, on or about each
23 five-year anniversary of this Right of Use Agreement, the Parties shall, except as
24 may be otherwise agreed by the Parties, meet face-to-face, to discuss the
25 continued implementation of this Right of Use Agreement and any changes either
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1 Party believes should be made. Any such changes will be in the form of further
2 amendments to this Right of Use Agreement and shall be negotiated in good faith
3 by the Parties.

4 C. Upon termination of this Agreement, Sound Transit agrees to prepare,
5 execute, and deliver to the City all documentation necessary to evidence
6 termination of this Agreement or portion thereof so terminated. No such
7 termination, however, shall relieve the parties hereto of obligations accrued and
8 unsatisfied at such termination.

9 **Section 16. Remedies at Law.**

10 A. Remedies. The City has the right to exercise any and all of the following
11 remedies, singly or in combination, in the event Sound Transit violates any
12 provision of this Agreement:
13

- 14 1. Commence an action at law for monetary damages;
- 15 2. Commence an action for equitable or other relief;
- 16 3. Seek specific performance of any provision that reasonably lends
17 itself to such remedy.

18 B. Cumulative Remedies. In determining which remedy or remedies for
19 Sound Transit's violation are appropriate, a court may take into consideration the
20 nature and extent of the violation, the remedy needed to prevent such violations in
21 the future, whether Sound Transit has a history of previous violations of the same
22 or similar kind, and such other considerations as are appropriate under the
23 circumstances. Remedies are cumulative; the exercise of one shall not foreclose
24 the exercise of others.
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1 C. Failure to Enforce. Sound Transit shall not be relieved of any of its
2 obligations to comply promptly with any provision of this Agreement by reason of
3 any failure of the City to enforce prompt compliance, and the City's failure to
4 enforce shall not constitute a waiver of rights or acquiescence in Sound Transit's
5 conduct.

6 D. Alternative Remedies. No provision of this Agreement shall be deemed
7 to bar the right of the City to seek or obtain judicial relief from a violation of any
8 provision of the ordinance or any rule, regulation, requirement, or directive
9 promulgated thereunder. Neither the existence of other remedies identified in this
10 Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the
11 right of the City to recover monetary damages for such violation by Sound Transit,
12 or to seek and obtain judicial enforcement of Sound Transit's obligations by means
13 of specific performance, injunctive relief or mandate, or any other judicial remedy
14 at law or in equity.
15

16 **Section 17. Right to Purchase.**

17 A. The City has the option to purchase the Passenger Rail System upon
18 termination of this Agreement, whether termination is, or is not, for cause, subject
19 to the Federal Transit Administration's transfer conditions applicable to the
20 Passenger Rail System.
21

22 1. The City may exercise its option rights granted herein, and will
23 have up to 180 days after termination of this Agreement to notify Sound Transit
24 that it intends to exercise its right to purchase the Passenger Rail System. Within
25 90 days of the date the City notifies Sound Transit of its intent to exercise the
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option, or by such other time as the parties may separately agree, the parties shall
1 meet to establish a purchase price. If the parties are unable to agree to a
2 purchase price within 180 days after the City notifies Sound Transit that the City
3 intends to exercise its purchase option, either party may require the price to be set
4 by appraisal by sending the other party notice that it wishes to have the price set
5 by appraisal. Within 45 days of the date that notice is submitted, each party may
6 appoint one appraiser. When each party appoints an appraiser, the two appraisers
7 shall appoint a third appraiser ("Third Appraiser"); if only a single appraiser is
8 appointed (whether by mutual agreement or because of the failure of a party to
9 timely nominate an appraiser), that appraiser shall be the sole appraiser. The
10 appraiser, if only a single appraiser is appointed, or the three appraisers, if each
11 party appoints an appraiser and they appoint a third, shall mutually establish a
12 price for the Passenger Rail System, or portion thereof, that the City desires to
13 purchase in accordance with this Section 17. In the event that the three appraisers
14 cannot mutually establish a price for the Passenger Rail System, then the Third
15 Appraiser shall submit a final binding appraisal establishing the price for the
16 Passenger Rail System. The appraisal shall be of the fair market value of the
17 Passenger Rail System as a going concern (taking into account such property
18 used and useful in providing service within the City that is to be conveyed) and with
19 no value allocated to the Right-of-Use itself. This appraisal determination shall be
20 final and non-appealable. The City shall have 120 days after the decision of the
21 appraiser(s) to notify Sound Transit that it wishes to conclude the transaction; if it
22 does not so notify Sound Transit, the option shall be deemed terminated.
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1 2. If the City gives the notice required by the preceding paragraph,
2 the parties will thereafter promptly sign all necessary documents required to close
3 the transaction; provided, however, that the City may make conclusion of the
4 transaction conditional upon any necessary voter approval of any bond funding for
5 acquisition of all or a part of the Passenger Rail System and, if applicable, the
6 successful sale of the bonds.

7 3. The City and Sound Transit will share equally the costs
8 associated with any appraiser that is jointly appointed (by them or by both of the
9 appraisers selected); the City will bear costs associated with any appraiser that it
10 separately appoints and Sound Transit will bear costs associated with any
11 appraiser that it separately appoints.
12

13 B. Nothing in this section shall be read to limit the City's right to acquire the
14 Passenger Rail System as a result of abandonment.

15 C. In the event the City purchases, acquires, takes over, or holds all or
16 parts of the Passenger Rail System, the City, subject to Federal Transit
17 Administration funding requirements, shall have the right, without limitation, to
18 assign, sell, lease, or otherwise transfer its interest in all or parts of the Passenger
19 Rail System to any Third Party on whatever terms the City deems appropriate.
20

21 Section 18. Revocation of Right of Use.

22 A. In addition to any rights set out elsewhere in this Agreement or the City
23 Charter, the City reserves the right to declare a forfeiture or otherwise revoke or
24 suspend this Agreement and all or part of the rights and privileges pertaining
25 hereto in the event that:
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1. Sound Transit is in substantial non-compliance with the Agreement;
 2. Sound Transit is found to have engaged in any actual or attempted fraud or deceit upon the City, persons, or customers;
 3. Sound Transit fails to obtain and maintain any permit required by any federal or state regulatory body or by the City, relating to the construction, operation, maintenance, and repair of the Passenger Rail System; or
 4. At any time during the term of this Agreement, Sound Transit fails to provide and maintain any performance bond, if required; fails to maintain adequate insurance under this Agreement; or fails to satisfy the indemnity set out in this Agreement.
- B. Before this Agreement is revoked or suspended, Sound Transit shall be given notice and opportunity to cure.
- C. Where, after notice and providing Sound Transit an opportunity to cure, the City finds that there has been an act or omission that would justify revocation or suspension of this Agreement, the City may make an appropriate reduction in the remaining term of this Agreement or revoke or suspend this Agreement. However, this Agreement may only be revoked if Sound Transit was given (1) written notice of the default; (2) 60 days to cure the default; and (3) Sound Transit failed to cure the default, or to propose a schedule for curing the default acceptable to the City where it is impossible to cure the default in 60 days. No opportunity to cure is required for repeated violations, and fraud shall be deemed incurable. Authority to operate the Passenger Transportation System may be



1 suspended immediately upon notice when continued operation poses an imminent
2 threat to public safety.

3 D. Notwithstanding the foregoing, the City may declare this Agreement
4 forfeited without opportunity to cure when Sound Transit stops providing service it
5 is required to provide pursuant to this Agreement; however, Sound Transit shall
6 have the right to receive 30 days' prior notice of an intent to declare this
7 Agreement forfeited, and shall have the opportunity to show cause why this
8 Agreement should not be forfeited.

9 E. Sound Transit's property within the Right-of-Way Area, is expressly
10 subject to the rights set forth in Section 8.1(c) of the Charter as follows:

11 [The City has the right] To acquire by purchase or
12 condemnation, for the use of the city itself or its inhabitants,
13 all of the property of the grantee within the public streets,
14 alleys, or places at a fair and just value, which shall not
15 include any valuation of the franchise, right, or privilege,
16 which shall thereupon be terminated.

17 F. Likewise, nothing in this section or in any other section of this Agreement
18 shall be read to limit the City's right to acquire the Passenger Rail System through
19 exercise of any right of eminent domain.

20 **Section 19. Right To Require Removal of Property/Right To Remove**
21 **Property.**

22 A. Upon termination of this Agreement, Sound Transit may be required to
23 remove its property from the Right-of-Way Area and restore such Right-of-Way
24 Area to its same or better condition as existed just prior to such removal, subject to
25 any rights Sound Transit may have to abandon property in place. If Sound Transit
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1 fails to remove property that the City requires it to remove, the City may perform
2 the work and collect the cost thereof from Sound Transit. The actual cost thereof,
3 including direct and indirect administrative costs, shall be a lien upon all plant and
4 property of Sound Transit within the Right of Use Area, effective upon filing of the
5 lien with the Pierce County Auditor.

6 B. To the extent any portion of the Passenger Rail System in the Public
7 Rights-of-Way or on any other public property is not removed by Sound Transit
8 within 12 months of the later of the end of the term of this Agreement or any
9 continuation period, Sound Transit's property will be deemed abandoned and shall
10 become the property of the City, if the City wishes to own it. Provided, that in no
11 case shall Sound Transit be provided less than 12 months to remove its Facilities,
12 measured from the date the Sound Transit is ordered to remove its Facilities.

13 C. Any order, issued pursuant to Section 19.A, to remove the Passenger
14 Rail System, in whole or in part, shall be sent by registered or certified mail to
15 Sound Transit not later than 24 months following the date of termination of this
16 Agreement. Removal shall be completed (except with respect to property that
17 Sound Transit is permitted or required to abandon in place) not later than
18 12 months following the date of notification to remove the Facilities.

19 D. Sound Transit shall file a written removal plan with the City, not later
20 than 60 calendar days following the date of the receipt of any orders directing
21 removal or any consent to removal, describing the work that will be performed, the
22 manner it will be performed, and a schedule for removal by location. The removal
23 plan shall be subject to approval and regulation by the City. The affected property
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1 must be restored to as good or better condition than existed immediately prior to
2 removal, and those damaged by removal must be compensated for the damage.

3 E. The purchase option provided for in Section 17 does not affect the City's
4 authority to require Sound Transit to remove its Passenger Rail System upon
5 termination of this Agreement, as provided in this section, nor does it affect the
6 City's right to assume ownership of any portion of the Passenger Rail System that
7 is abandoned. Within 60 days of a request by the City, Sound Transit shall
8 execute such documents as may be required to convey such abandoned property
9 to the City free and clear of all encumbrances.
10

11 **Section 20. Covenants and Warranties.**

12 A. By execution of this Agreement, the City warrants:

13 1. That the City has the full right and authority to enter into and
14 perform this Agreement and any permits which may be granted in accordance with
15 the terms hereof, and that by entering into or performing this Agreement, the City is
16 not in violation of its Charter or Bylaws, or any law, regulation, or agreement by
17 which it is bound or to which it is bound or to which it is subject; it being
18 understood, however, that the covenant and warranty contained in this Section 20
19 does not constitute a warranty, expressed or implied, by the City of the right or
20 rights granted by the City to Sound Transit hereunder; and
21

22 2. That the execution, delivery, and performance of this Agreement
23 by the City has been duly authorized by all requisite corporate action, that the
24 signatories for the City hereto are authorized to sign this Agreement, and that,
25 upon approval by City, the joinder or consent of any other party, including a court,
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1 trustee, or referee, is not necessary to make valid and effective the execution,
2 delivery, and performance of this Agreement.

3 B. By execution of this Agreement, Sound Transit warrants:

4 1. That Sound Transit has full right and authority to enter into and
5 perform this Agreement in accordance with the terms hereof, and by entering into
6 or performing this Agreement, Sound Transit is not in violation of its charter or by-
7 laws, or any law, regulation, or agreement by which it is bound or to which it is
8 subject; and

9 2. That the execution, delivery, and performance of this Agreement
10 by Sound Transit has been duly authorized by all requisite Board action, that the
11 signatories for Sound Transit hereto are authorized to sign this Agreement, and
12 that the joinder or consent of any other party, including a court, trustee, or referee,
13 is not necessary to make valid and effective the execution, delivery, and
14 performance of this Agreement.

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17 **Section 21. Recordings, Taxes, and Other Charges.**

18 A. Sound Transit shall pay all transfer taxes, documentary stamps,
19 recording costs or fees, or any similar expense in connection with the recording or
20 filing of any permits which may be granted hereunder. Sound Transit further
21 agrees that if it is determined by any federal, state, or local governmental authority
22 that the sale, acquisition, license, grant, transfer, or disposition of any part or
23 portion of the Passenger Rail System or rights herein described requires the
24 payment of any tax, levy, excise, assessment, or charges (including, without
25 limitation, property, sales, or use tax) under any statute, regulation, or rule, Sound
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1 Transit shall pay the same, plus any penalty and/or interest thereon, directly to said
2 taxing authority and shall hold the City harmless therefrom. Sound Transit shall
3 pay all taxes, levies, excises, assessments, or charges, including any penalties
4 and/or interest thereon, levied or assessed on the Sound Transit Facilities, and
5 City Facilities constructed by Sound Transit, or on account of their existence or use
6 (including increases thereof attributable to such existence or use, and excluding
7 taxes based on the income of City), and shall indemnify City against payment
8 thereof. Sound Transit shall have the right to claim, and City shall reasonably
9 cooperate with Sound Transit in the prosecution of any such claim, for refund,
10 rebate, reduction, or abatement of such tax(es).
11

12 B. The City may pay any tax, levy, excise, assessment, or charge, plus any
13 penalty and/or interest thereon, imposed upon Sound Transit for which Sound
14 Transit is obligated, pursuant to this section, if Sound Transit does not pay such
15 tax, levy, excise, assessment, or charge when due. Sound Transit shall reimburse
16 the City for any such payment made pursuant to the previous sentence, plus
17 interest at the rate of 8 percent per annum.
18

19 **Section 22. Assignability; Beneficiary.**

20 A. This Agreement shall be binding upon and inure to the benefit of the
21 parties hereto and their respective successors or assigns. No assignment hereof
22 or sublease shall be valid for any purpose without the prior written consent of the
23 other party, and any attempt by one party to assign or license the rights or
24 obligations hereunder without prior written consent will give the other party the
25 right, at its written election, to immediately terminate this Agreement or take any
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other lesser action with respect thereto. The above requirement for consent shall not apply to (1) any disposition of all or substantially all of the assets of a party; (2) any corporate merger, consolidation, or reorganization, whether voluntary or involuntary; (3) a sublease or assignment of this Agreement (in whole or in part) to a wholly-owned subsidiary, affiliate, or parent company; or (4) a sale, lease, or other conveyance by City, subject to those requirements set forth in Section 17 of this Agreement; provided, however, that no sublease or assignment under (2) or (3) shall be permitted to a company not under common control with Sound Transit, and provided, further, that no unconsented assignment shall relieve Sound Transit of its obligations and liabilities under this Agreement.

B. Either party hereto may assign any monetary receivables due them under this Agreement; provided, however, such assignment shall not relieve the assignor of any of its rights or obligations under this Agreement.

C. Sound Transit acknowledges and agrees that the City may designate, in writing, a designee to (1) receive information (including information designated or identified as confidential) and notices under this Agreement; and (2) provide certain approvals or consents required from the City under this Agreement. In the event of such designation, Sound Transit may rely on approvals or consents by such designee on behalf of the City as fully as if such actions were performed by the designator itself.



Section 23. Notices.

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A. Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to (one copy each):

Sound Transit
Attention: Executive Director of Operations
401 S. Jackson Street
Seattle, WA 98104

And to:

City of Tacoma
Attention: Public Works Director
747 Market Street, 4th Floor
Tacoma, WA 98402

City of Tacoma
Attention: City Manager
747 Market Street, 12th Floor
Tacoma, WA 98402

With a copy to:

City Attorney
747 Market Street, Rm. 1120
Tacoma, WA 98402

or at such other addresses as may be designated in writing by the other party.

B. Unless otherwise provided herein, notices shall be sent by registered or certified United States Mail, or other verifiable physical or electronic transmission, and shall be deemed served or delivered to addressee, or its office, upon the date of actual receipt (if such acknowledgment, or other means), return receipt acknowledgment, or, if postal claim notice is given, on the date of its return marked "unclaimed"; provided, however, that upon receipt of a returned notice marked "unclaimed," the sending party shall make reasonable effort to contact and notify the other party by telephone.



Section 24. Miscellaneous.

1 A. This Agreement shall survive delivery and/or recordation of each permit
2 which may be granted hereunder.

3 B. Each party shall be responsible for its own costs, including legal fees,
4 incurred in negotiating or finalizing this Agreement.

5 C. The parties shall not be deemed in default with provisions of this
6 Agreement where performance was rendered impossible by war or riots, civil
7 disturbances, floods, or other natural catastrophes beyond Sound Transit's or the
8 City's control; the unforeseeable unavailability of labor or materials; labor
9 stoppages or slow downs, or power outages exceeding back-up power supplies.
10 This Agreement shall not be revoked or the parties penalized for such
11 noncompliance, provided that the parties take immediate and diligent steps to bring
12 themselves back into compliance and to comply as soon as practicable under the
13 circumstances without unduly endangering the health, safety, and integrity of the
14 parties' employees or property, or the health, safety, and integrity of the public,
15 Public Rights-of-Way, public property, or private property.

16 D. This Agreement may be amended only by a written instrument executed
17 by each of the parties hereto. No failure to exercise and no delay in exercising, on
18 the part of any party hereto, any rights, power, or privilege hereunder shall operate
19 as a waiver hereof and no single or partial exercise of any other rights, power or
20 privilege, except as expressly provided herein.

21 E. This Agreement constitutes the entire agreement of the parties with
22 respect to the subject matters hereof, and supersedes any and all prior
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negotiations (oral and written), understandings, and agreements with respect hereto, including the First Amendment Right of Use Agreement approved pursuant to Ordinance No. 28022.

F. Section headings are intended as information only, and shall not be construed with the substance of the section they caption.

G. In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and “or” is used in the inclusive sense, in all cases where such meanings would be appropriate.

H. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.

I. No Recourse. Without limiting such immunities as the City or other persons may have under applicable law, Sound Transit shall have no monetary recourse whatsoever against the City or its officials, boards, commissions, agents, or employees for any loss or damage arising out of the City’s exercising its authority pursuant to this Agreement or other applicable law; provided that, this Subsection I shall not apply in the event the Right of Use ordinance is repealed pursuant to Article VIII of the City Charter.

Section 25. Legal Forum. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the state of Washington. Venue for any action under this Agreement shall be Pierce County, Washington.



1 **Section 26. Interpretation.** This Agreement is executed by all parties
2 under current interpretations of applicable federal, state, or local statute,
3 ordinance, law, or regulation.

4 **Section 27. Billing Procedures.**

5 A. Errors or Disputes. If any portion of a bill is in dispute, the debtor
6 nonetheless shall pay, on a timely basis, the undisputed portion. No exception to
7 any bill shall be honored, recognized, or considered if filed after the expiration of
8 two years from the last day of the calendar month during which the bill is rendered.
9 No bill shall be rendered later than two years after either (1) the last day of the
10 calendar month in which the expense covered thereby is incurred; or (2) with
11 respect to a project for which a roadway completion report is required or with
12 respect to unliquidated liability claims, then 60 days following the date the amount
13 is settled and/or the liability is established.

14 B. Books and Records. The parties shall maintain accurate books and
15 records with respect to amounts due or claimed to be due under this Agreement.
16 Either party, at a reasonable time, upon reasonable notice, and at its own expense,
17 may inspect and/or audit the books, accounts and records of the other party, to the
18 extent that the same relate to matters covered by this Agreement. If any
19 discrepancy is found, the party owing money shall pay the difference to the other
20 party within 30 days.

21 **Section 28. Severability.**

22 A. In case any term of this Agreement shall be held invalid, illegal, or
23 unenforceable, in whole or in part, neither the validity of the remaining part of such
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1 term nor the validity of the remaining terms of this Agreement shall in any way be
2 affected thereby.

3 B. Notwithstanding the foregoing, the material provisions of this Agreement
4 are not severable. In the event that a court, agency, or legislature of competent
5 jurisdiction acts or declares any nonmaterial provision of this Agreement is
6 unenforceable according to its terms, or otherwise void, said provision shall be
7 considered a separate, distinct, and independent part of this Agreement, and such
8 holding shall not affect the validity and enforceability of all other provisions hereof.
9 In the event that a court, agency, or legislature of competent jurisdiction acts so
10 that, or declares that, any material provision of this Agreement is unenforceable
11 according to its terms, or is otherwise void, the City and Sound Transit agree to
12 immediately enter into negotiations in good faith to restore the relative burdens and
13 benefits of this Agreement, consistent with applicable law.

14 C. Notwithstanding the foregoing, if either Sound Transit or the City
15 believes a provision is not material, it must commence an action challenging the
16 materiality within 14 days of a request by the other that it enter into negotiations.
17 The obligation to negotiate is not tolled, and the City and Sound Transit must
18 discharge their negotiation responsibility notwithstanding the dispute as to
19 materiality. If there is a dispute as to materiality, the remedies provided for in the
20 preceding paragraph shall be additive, not alternative. The remedies provided for
21 herein do not prevent the City or Sound Transit from contending that a particular
22 provision is enforceable, or foreclose any remedies if a provision is enforceable.
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Section 29. Execution. Sound Transit shall execute and return to the City

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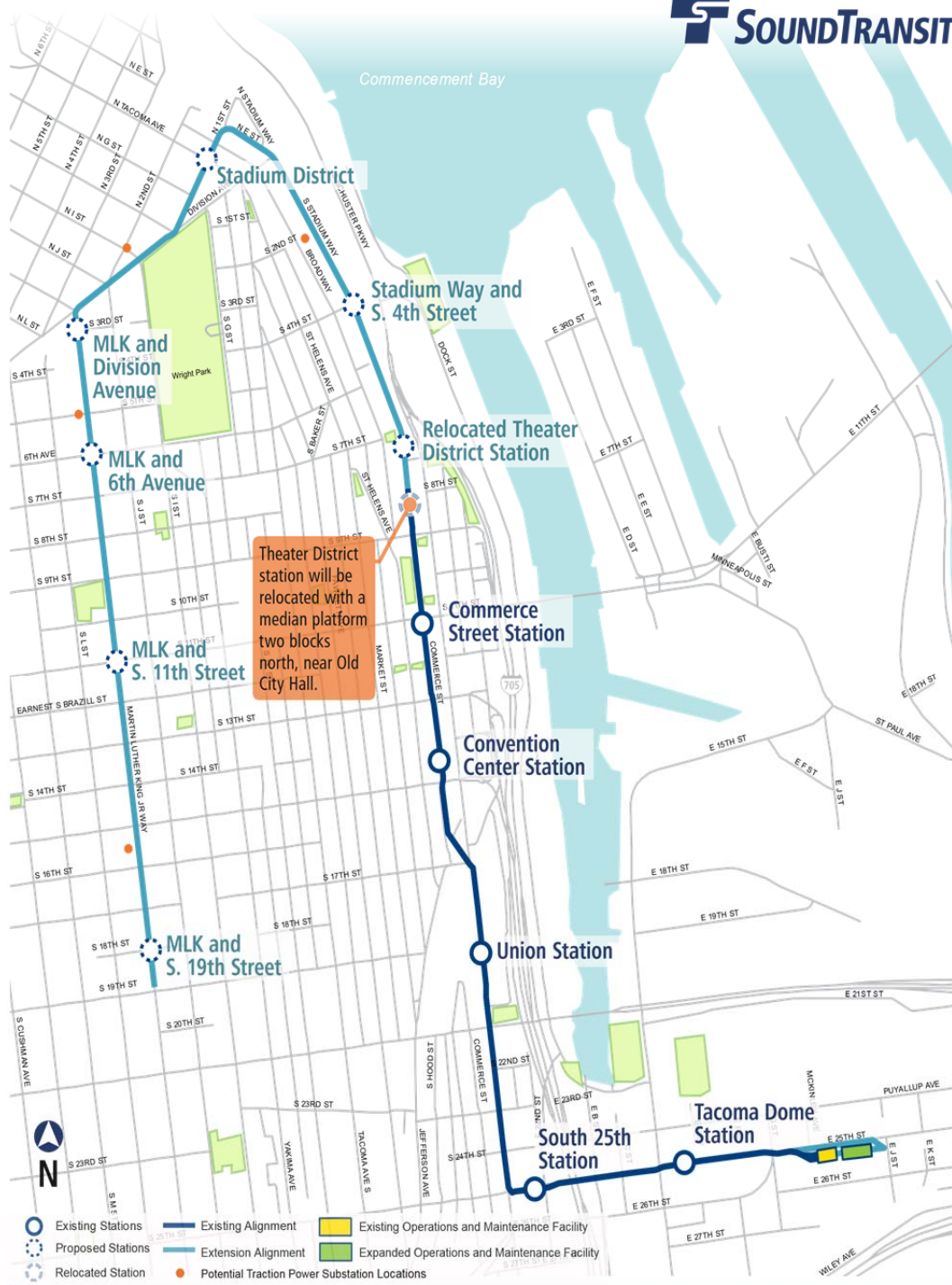
three original countersigned copies of this Agreement and a signed acceptance of this Agreement granted hereunder within 30 days after the date of passage of the Agreement by the City Council. The acceptance shall be in a form acceptable to the City Attorney, and in accepting this Agreement, Sound Transit warrants that it has carefully read the terms and conditions of this Agreement and unconditionally accepts all of the terms and conditions of this Agreement 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 this Agreement, that this Agreement represents the entire agreement between Sound Transit and the City. The countersigned Agreement and acceptance shall be returned to the City accompanied by: (1) evidence of insurance; and (2) a payment for publication costs. The rights granted herein shall not become effective until all of the foregoing is received in acceptable form. Amendments to this Agreement approved by Ordinance of the City Council, shall be accepted and become effective as provided in the Ordinance approving any such amendments.

EXHIBIT "B"

(Exhibit "A-1" to Right of Use)



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Sound Transit plans, builds, and operates regional transit systems and services to improve mobility for Central Puget Sound.
 Sound Transit | 401 S. Jackson St. | Seattle, WA 98104-2826 | 1-800-201-4900 / TTY Relay: 711 | www.soundtransit.org/TacomaLinkExpansion

EXHIBIT “C”

(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 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 nine 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.

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EXHIBIT "D"

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ACCEPTANCE OF CITY RIGHT OF USE AGREEMENT AS AMENDED

Ordinance No. _____, amending Ordinance No. 26749, effective
_____, 2017.

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 _____, 2017.

Sound Transit

By: _____
Its: _____

Witness: _____