



Req. #8344

## ORDINANCE NO. 26749

1 AN ORDINANCE granting a non-exclusive right of use to the Central Puget  
2 Sound Regional Transit Authority ("SOUND TRANSIT"), a regional  
3 transit authority organized under the laws of the state of Washington, to  
4 construct, operate, own and maintain a passenger rail system within the  
5 City, and setting forth provisions, terms, and conditions of the grant of  
6 right of use, pursuant to the Tacoma Municipal Code and the City  
7 Charter.

8 WHEREAS SOUND TRANSIT is a governmental entity vested with all  
9 powers necessary to implement a high capacity transportation system within its  
10 boundaries in King, Pierce, and Snohomish counties, and the state legislature,  
11 through the Growth Management Act (RCW 36.70A), requires the City to plan  
12 for and encourage regional high-capacity transportation facilities such as the  
13 Central Link Light Rail Project and, pursuant to RCW 81.104 and 81.112, has  
14 declared that a single regional agency such as SOUND TRANSIT is more  
15 effective than several local jurisdictions working collectively at planning,  
16 developing, operating, and funding a high-capacity public transportation street  
17 improvement, and

18 WHEREAS, on November 5, 1996, central Puget Sound area voters  
19 approved local funding for *Sound Move*, the ten-year plan for regional  
20 high-capacity transit, and

21 WHEREAS *Sound Move* is comprised of three new transportation  
22 systems that will be integrated with the existing local transit systems and use a  
23 single, regional fare structure, and

24 WHEREAS included in the new facilities and services will be light rail,  
25 consisting of 25 miles of new track with 24 stations in three segments:  
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1 (1) downtown Seattle north to the University District and potentially to  
2 Northgate; (2) downtown Seattle south through Southeast Seattle and Tukwila  
3 to SeaTac; and (3) downtown Tacoma to Tacoma Dome Intermodal Station,  
4 and

5 WHEREAS the City is a first-class city operating under the laws of the  
6 state of Washington, and

7 WHEREAS the City owns and operates streets, public utilities, and other  
8 infrastructure improvements within the City boundaries, where transit  
9 improvements and light rail are proposed, and

10  
11 WHEREAS the Memorandum of Agreement for the Tacoma Link Light  
12 Rail Project provides that the City shall, subject to future agreements and City  
13 Council approval, grant to SOUND TRANSIT a Right of Use for the  
14 construction, maintenance, operation, and ownership of the Passenger Rail  
15 System, consistent with the provisions of Article VIII of the City Charter and  
16 applicable City ordinances, which Right of Use Agreement shall detail the  
17 conditions for construction, maintenance, operation, and SOUND TRANSIT  
18 ownership of the Passenger Rail System within City right-of-way and revisions,  
19 extensions, or amendments of the Agreement; Now, Therefore,

20  
21 **BE IT ORDAINED BY THE CITY OF TACOMA:**

22 That, in consideration of mutual promises and covenants herein  
23 contained, to be kept, performed, and fulfilled by the respective parties hereto, it  
24 is mutually agreed that a Right of Use is hereby granted to the Central Puget  
25 Sound Regional Transit Authority, a government Authority organized under the  
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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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## Section 1. DEFINITIONS

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

- 11 A. Agreement. "Agreement" shall mean this Right of Use Agreement.
- 12 B. City. "City" shall mean the City of Tacoma and any successor or  
13 assignee following an assignment that is permitted under this  
14 Agreement.
- 15 C. Commuter. "Commuter" shall mean any business visitor or public invitee  
16 who normally would be considered an invitee of SOUND TRANSIT as  
17 the term "invitee" is interpreted under Washington law (including, without  
18 limitation, all passengers aboard, boarding, or disembarking from any  
19 SOUND TRANSIT train).
- 20 D. Emergency. "Emergency" shall mean, except as otherwise provided, a  
21 sudden, generally unexpected occurrence or set of circumstances  
22 demanding immediate action which interrupts or significantly disrupts  
23 operation of transit Facilities.
- 24 E. Employee. "Employee" shall mean any employee, agent, independent  
25 contractor, or consultant of SOUND TRANSIT or the City, to the extent  
26 that such employee, agent, independent contractor, or consultant is  
performing duties for such party or such tenant or licensee of such party.  
For purposes of this Agreement only, Employees of the Operator or any  
other successor of SOUND TRANSIT shall be considered Employees of  
SOUND TRANSIT.



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- F. Facilities. "Facilities" or "Facility" shall mean any and all improvements, equipment, or property installed, constructed, owned, or maintained by SOUND TRANSIT in the Right-of-Way Area.
- G. Final Construction Plans. "Final Construction Plans" shall mean prints showing, in detail, the proposed construction and specifications of the Passenger Rail System, including each and every proposed element, Facility, or improvement appurtenant thereto planned for location on the Passenger Rail System.
- H. Hazardous Materials. "Hazardous Materials" shall mean any chemical, material, or substance that is now, or at the time in question is, regulated or governed by any law, the release of which creates any liability under any applicable law or any other material which, when released, would cause significant ecological damage.
- I. Liability. "Liability" shall mean all loss, damages, cost, expense (including costs of investigation and attorneys fees and expenses at arbitration, trial, or appeal and without institution of arbitration or suit), liability, claims, and demands of whatever kind or nature (including those arising under the Federal Employers Liability Act) arising out of an occurrence relating to this Agreement or occurring on or relating to any of the land, tracks, or other improvements described herein.
- J. Memorandum of Agreement. "Memorandum of Agreement" shall mean that Memorandum of Agreement for Intergovernmental Cooperation for the Tacoma Light Rail Transit Line between the City and SOUND TRANSIT, dated September 2, 1998.
- K. Operator. "Operator" shall mean the operator or operators, if any, appointed from time to time by SOUND TRANSIT, or its assignees, to operate SOUND TRANSIT trains over the Property and/or to exercise some or all of the respective rights and obligations of SOUND TRANSIT under this Agreement in connection with such operation over the Property or any portion thereof, but only to the extent such operator or operators are acting in such capacity and not to the extent such operator or operators are acting for their own account or in some other capacity.
- L. Passenger Rail Service. "Passenger Rail Service" shall mean the operation of trains, authorized in writing by SOUND TRANSIT, which are used to provide passenger rail service or any other related rail passenger service activities.
- M. Passenger Rail System. "Passenger Rail System" shall mean light rail rapid transit within the Right-of-Way Area, together with any ancillary



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Facilities such as tracks, commuter parking, passenger station sites, bus, auto, bicycle, and pedestrian access Facilities, all as authorized herein by this Agreement and as described in the Final Construction Plans.

- N. Passenger Station Site. "Passenger Station Site" shall mean, collectively, any passenger station owned, leased, or operated by or on behalf of SOUND TRANSIT; any adjacent passenger parking lot owned, leased, or operated by or on behalf of SOUND TRANSIT; any passenger loading platform owned, leased, or operated by or on behalf of SOUND TRANSIT; or any passenger waiting area owned, leased, or operated by or on behalf of SOUND TRANSIT.
- O. Passenger Station. "Passenger Station" shall mean all buildings and other improvements owned or operated by or on behalf of SOUND TRANSIT related to the Passenger Rail System that are located on any Passenger Station Site.
- P. Passenger Transportation Uses. "Passenger Transportation Uses" shall mean the movement or transport of people over, along, or across the Property by light rail rapid transit.
- Q. Passenger. "Passenger" shall mean any person (including, without limitation, an Employee of the City) aboard any SOUND TRANSIT train.
- R. Property. "Property" shall mean the Right-of-Way Area.
- S. 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.
- T. 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.
- U. Right-of-Way Area. "Right-of-Way Area" shall mean the public rights-of-way as described in Exhibit "A."

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- V. 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.
- W. 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 Service over any portion of the Property, pursuant to a specific written grant of such rights by SOUND TRANSIT, including any Operator.
- X. SOUND TRANSIT Train. "SOUND TRANSIT Train" or "Train" shall mean any train operated by or on behalf of SOUND TRANSIT.
- Y. Third Party. "Third Party" shall mean any person or entity other than the City, or an employee of the City, and any person other than SOUND TRANSIT, or an employee of SOUND TRANSIT.
- Z. Tracks. "Tracks" shall mean all tracks (including, without limitation, passing tracks and sidings), turnouts, crossovers, interlocking devices and plants, track improvements, and support structures that are located, installed, and maintained by SOUND TRANSIT.
- AA. Train. "Train" shall mean one or more light rail units operated by SOUND TRANSIT within the Right-of-Way Area.

**Section 2. GRANT OF RIGHTS BY CITY**

- A. Grant of Non-Exclusive Right of Use. The City grants to SOUND TRANSIT a non-exclusive Right of Use to construct, operate, maintain, and own a Passenger Rail System in, upon, and along the Right-of-Way Area in accordance with the terms and conditions of this Agreement. SOUND TRANSIT expressly agrees that it will construct, operate, and maintain the Passenger Rail System in compliance with this Agreement and all applicable City ordinances and state and federal laws, rules, and regulations.
- B. Rights Limited to Passenger Rail System. The Right of Use is granted solely for the purpose of construction, maintenance, operation, and ownership of the Passenger Rail System detailed in the Final Construction Plans, and for no other purpose. SOUND TRANSIT intends, and shall have the right, to use the Right-of-Way Area solely for Passenger Transportation Uses. SOUND TRANSIT agrees that it shall not, without the City's written consent, construct on or along the Right-of-Way Area any additions to or expansions of the Passenger Rail



1 System subsequent to the construction, in accordance with the Final  
2 Construction Plans.

3 C. Rights Subject to Right-of-Way Uses. The City intends to continue using  
4 the Right-of-Way Area, as burdened by SOUND TRANSIT, for use as a  
5 right-of-way and any other activities that do not impair the ability of  
6 SOUND TRANSIT to operate the Passenger Rail System. The rights of  
7 SOUND TRANSIT are subject and subordinate to the prior and  
8 continuing right of City (1) to use and maintain the entire Property subject  
9 to the terms and conditions of the Agreement; (2) the City's right to  
10 dispose of all or any part of the Property, including, but not limited to, the  
11 air space above and the subsurface area below the SOUND TRANSIT  
12 Facilities, subject to the terms and conditions of this Agreement; and  
13 (3) to construct and operate, and to change, modify, or relocate railway  
14 tracks (other than SOUND TRANSIT Facilities), signals, pipelines,  
15 electric lines, other railway Facilities, and/or recreational and municipal  
16 Facilities in, on, upon, over, under, along, across, or through any or all  
17 parts of the Right-of-Way Area, or permit others to do so for City or for  
18 other public improvement projects, all or any of which may be freely done  
19 at any time or times by the City or others with the City's permission,  
20 without liability to the City or to any other party for compensation or  
21 damages, unless and except to the extent that this Agreement otherwise  
22 expressly provides therefor.

23 D. City Use of Right-of-Way Area. SOUND TRANSIT understands and  
24 agrees that the normal course of Public Right-of-Way use by the City  
25 may involve construction, maintenance, demolition, leasing, licensing,  
26 permitting, and similar activities that have the potential to cause  
interruption to the Passenger Transportation Uses. SOUND TRANSIT  
understands and agrees that such activities may be caused, from time to  
time, by reasons including, but not limited to: (1) traffic conditions;  
(2) public safety; (3) Public Rights-of-Way construction; (4) Public  
Rights-of-Way repair (including resurfacing or widening); (5) change of  
Public Rights-of-Way grade; (6) construction, installation, or repair of  
sewers, drains, water pipes, power lines, signal lines, tracks,  
government-owned communications systems, public works, public  
Facilities or improvements, or any government-owned utility; and  
(7) Public Rights-of-Way vacation, and for any other purpose, may enter  
the Right-of-Way Area and perform work that may impact the  
construction, operation, or repair of the Passenger Rail System.

The City agrees that such activities, to the extent they are permitted or  
controlled by the City, shall not occur within the Right-of-Way without  
five days' prior written notice to SOUND TRANSIT, except in the event of  
an emergency.

E. Non-Exclusive Use. SOUND TRANSIT understands that the rights  
granted herein are nonexclusive. The City shall have the right to agree  
to other nonexclusive occupancies of the portion of the Right-of-Way

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Area occupied by SOUND TRANSIT Facilities by one or more other person(s); provided, however, that any such subsequent occupancies shall not unreasonably interfere with SOUND TRANSIT's rights. The City shall, where and as practicable, protect from subsequent occupancies an area on either side of the SOUND TRANSIT Facilities where occupancy would have the risk of interference with the SOUND TRANSIT Facilities.

- F. Use Restricted. This Agreement does not authorize the provision of any services by SOUND TRANSIT other than the services reasonably involved in the operation of the Passenger Rail System consistent with Right-of-Way use, or in any way relieve SOUND TRANSIT of any obligation to obtain any additional permits, authorizations, licenses, or agreements to use the Right-of-Way Area to provide other services. The provisions of this Agreement are not a bar to the imposition of similar, different, or additional conditions with respect to the use of the Right-of-Way Area.
  
- G. Ownership. SOUND TRANSIT shall own all tracks and other improvements on the Property not reserved to the City, including, without limitation, improvements constructed at the cost and expense of SOUND TRANSIT; provided, however, that to the extent the City or other governmental entity constructs, or causes to be constructed, a Passenger Station on the Property, then the City or other governmental entity, as the case may be, shall own such Passenger Station and all improvements thereon. Nothing in this Agreement shall be construed as granting to SOUND TRANSIT any interest or right in the Property or the improvements on the Property other than the rights expressly provided herein.
  
- H. Inconsistent Use. Notwithstanding the above, no Public Rights-of-Way shall be used by SOUND TRANSIT in a manner that is inconsistent with the terms, conditions, or provisions by which such Public Rights-of-Way were created or dedicated, or presently used under applicable laws.
  
- I. No Rights by Implication. No rights shall pass to SOUND TRANSIT by implication. Without limiting the foregoing, by way of example and not limitation, this Agreement shall not include or be a substitute for:
  - 1. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;
  - 2. Any permit, agreement, or authorization required in connection with operations on or in Public Rights-of-Way or property, including by way of example and not limitation, street cut permits; or



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

J. Utilities Agreements. This Agreement shall not be read to diminish, or in any way affect, the authority of the City to control and charge for the use of the light, water, storm, refuse, and sewer utilities. Therefore, if SOUND TRANSIT desires to use such utilities, it must obtain necessary agreements or consents for such uses and pay any and all associated fees as may be required by the City. The parties recognize that approval of the Tacoma Public Utilities Board is required for access to and use of light and water utilities.

### Section 3. FINANCIAL SECURITY

The parties agree to meet on the 10-year, 20-year, 30-year, and 40-year anniversaries of this Agreement and in good faith conduct a review to determine whether the Agreement should be amended by mutual agreement of the parties to require SOUND TRANSIT to post a performance bond and/or security fund for the remaining term of the Agreement. The purpose of the performance bond and/or security fund would be to ensure the faithful performance of SOUND TRANSIT's responsibilities under this Agreement and applicable law, including by way of example and not limitation, its obligations to relocate and remove its Facilities; and to restore Public Rights-of-Way and other property.

### Section 4. PAYMENT

The City agrees that, in recognition of the public benefit provided by Light Rail to the citizens of Tacoma and in recognition that the franchise fee requirements of Section 8.2 of the Tacoma City Charter are inapplicable to railways, SOUND TRANSIT, for the term of the Agreement, shall not be obligated to compensate the City for the rights granted herein.

### Section 5. CONSTRUCTION

A. Proposed Construction Plans. Prior to commencing construction of the Passenger Rail System, SOUND TRANSIT shall, at its expense, submit to the City four sets of the Final Construction Plans.

B. Approval. Upon the City's receipt of Final Construction Plans from SOUND TRANSIT for all of the Passenger Rail System, the City shall, within 30 days from said receipt, review and approve or disapprove of the construction specified therein; provided, however, that approval shall not be unreasonably withheld. To the extent that the City disapproves of all or any part of the Final Construction Plans, the City shall, within said 30-day period, provide to SOUND TRANSIT a written explanation of the reasons for disapproval and suggested cures, if any. SOUND TRANSIT shall then submit revised Final Construction Plans, which shall be subject to the same review and approval or disapproval procedures.

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1 SOUND TRANSIT shall not commence construction along any portion of  
2 the Right-of-Way Area until Final Construction Plans for such portion  
3 have been approved by the City. If unforeseen conditions arise during  
4 construction of the Passenger Rail System, the City will promptly  
5 consider new or revised Final Construction Plans, or portions thereof,  
6 necessary to progress the work in a mutually satisfactory manner.

- 7 C. Entry Upon Right-of-Way Area. SOUND TRANSIT, its servants,  
8 employees, agents, contractors, and/or subcontractors shall have the  
9 right, as defined and limited pursuant to Sections 7 and 8 of this  
10 Agreement, to enter upon the Right-of-Way Area for the purpose of  
11 constructing, operating, and maintaining the Transit Facilities.
- 12 D. Construction Schedule. SOUND TRANSIT shall furnish to the City a  
13 proposed schedule of construction (the "Construction Schedule") of the  
14 Passenger Rail System. The Construction Schedule shall be used by  
15 the parties for purposes of coordinating personnel and conflicting  
16 activities and shall be amended from time to time by SOUND TRANSIT  
17 to reflect any and all schedule changes.
- 18 E. Facilities Drawings. As promptly as possible, but in no event later than  
19 six months after each segment of the Passenger Rail System is installed,  
20 SOUND TRANSIT shall furnish to the City "record drawings" of all  
21 constructed Facilities.
- 22 F. Use of Right-of-Way Area. During construction of the Passenger Rail  
23 System, SOUND TRANSIT, with the prior written agreement of the City,  
24 may fence the Right-of-Way Area for the temporary storage of  
25 construction equipment and materials; provided that such structures and  
26 fences (1) do not interfere with or disrupt in any way, other than in ways  
approved in advance by City, the ordinary use of the Public  
Right-of-Way; and (2) do not interfere with or disrupt in any way, other  
than in ways approved in advance by the City, the ordinary access to  
property on either side of the Public Right-of-Way. SOUND TRANSIT  
shall not store or temporarily place any goods, materials, or equipment  
(1) near a roadway, intersection, or crossing in such a manner as to  
interfere with the sight distance of persons approaching such crossing; or  
(2) within such greater distance as required by public authority; provided,  
however, that fuel and other hazardous substances shall not be stored  
unless approved by appropriate officials of the Tacoma Fire Department.
- G. Compliance with Laws, Rules, and Regulations. SOUND TRANSIT, at  
SOUND TRANSIT's sole cost and expense, will furnish all materials,  
parts, components, equipment, and structures necessary to construct  
and operate the Passenger Rail System, or any part thereof, in  
accordance with this Agreement. Any and all work performed by and on  
behalf of SOUND TRANSIT shall be done in a good and workmanlike  
manner, in conformity with all applicable engineering, safety, and other



1 statutes, laws, ordinances, regulations, rules, codes, orders, or  
2 specifications of any public body or authority having jurisdiction.

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

22 I. Installation. All Facilities and installations must meet or exceed  
23 applicable specifications of the City and be in compliance with all existing  
24 federal, state, or local laws, ordinances, and regulations.

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

K. Imminent Danger. If, during construction, there is an Emergency or the  
Passenger Rail System creates, or is contributing to, an imminent danger  
to health, safety, or property that SOUND TRANSIT is unable to  
immediately address, the City may protect, support, temporarily  
disconnect, remove, or relocate any or all parts of the Passenger Rail  
System without prior notice and charge SOUND TRANSIT for costs  
incurred. The City shall provide notice of such danger as soon as  
practicable.

L. 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



1 the Third Party requesting the same. In no case will the cost or  
2 disconnection, removal, or relocation be charged to the City.

3 M. Information Regarding Ongoing Work. In addition to providing notice to  
4 the public of ongoing work as may be required under applicable law,  
5 SOUND TRANSIT shall make available information regarding any  
6 ongoing construction of its Passenger Rail System sufficient to show:

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

11 N. Inspection during Construction. The City shall have the right to verify, by  
12 inspection, that the location of the work and the materials used in  
13 construction or operation of the SOUND TRANSIT Facilities are in  
14 compliance with the Final Construction Plans, as approved by the City.  
15 The City shall further have the right to verify, by inspection, that City  
16 Facilities relocated and/or constructed by SOUND TRANSIT are to a  
17 standard acceptable to the City in accordance with the Final Construction  
18 Plans. The City shall give SOUND TRANSIT reasonable notice of such  
19 inspections, and SOUND TRANSIT may, at its option, designate a  
20 representative to accompany the City's representative on such  
21 inspections. The costs to the City shall be borne by SOUND TRANSIT in  
22 accordance with the Memorandum of Agreement.

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

27 P. Use of Separate Facilities. To the extent available, the City may, at its  
28 sole option, rent or license to SOUND TRANSIT space in any vacant or  
29 partially vacant buildings or property, within or beyond the Right-of-Way  
30 Area, for such use(s) as SOUND TRANSIT may require in conjunction  
31 with the SOUND TRANSIT Facilities. For each such site, the parties  
32 shall enter into a separate lease, permit, or license agreement. SOUND  
33 TRANSIT shall pay to the City separate rental for any buildings used by



1 SOUND TRANSIT, owned by City and located within or beyond the  
2 Right-of-Way Area.

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

15 R. Utilities During Construction. SOUND TRANSIT shall make its own  
16 arrangements and be solely responsible for all electrical power and other  
17 utilities or services necessary to construct and operate the SOUND  
18 TRANSIT Facilities, and SOUND TRANSIT shall indemnify the City  
19 against any liability to any utility or service company arising out of utilities  
20 or services ordered or used by or on behalf of SOUND TRANSIT.

19 S. Crossing. Crossing by SOUND TRANSIT under public roadways shall  
20 be at a location and depth as agreed by the City and SOUND TRANSIT,  
21 as shown on the Final Construction Plans.

21 T. Artifacts. If, during construction or operation of SOUND TRANSIT  
22 Facilities, SOUND TRANSIT, its agents, servants, employees,  
23 contractors, or subcontractors discover scientific or historic artifacts,  
24 SOUND TRANSIT shall immediately notify the City of said discovery and  
25 shall protect such artifacts in a manner as specified by the City, pursuant  
26 to the guidelines identified in Exhibit "B."

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## Section 6. PERMITS

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- A. Permits and Licenses. SOUND TRANSIT, at its sole cost and expense, shall (1) secure and maintain in effect all federal, state, and local permits and licenses required for the construction, operation, and maintenance of the Passenger Rail System, including, without limitation, crossing, zoning, building, health, environmental, and communication permits and licenses; and (2) indemnify the City against payment of the costs thereof and against any fines or penalties that may be levied for failure to procure, or to comply with, such permits or licenses, as well as any remedial costs incurred by the City in curing any such failures. The City shall cooperate with and assist SOUND TRANSIT in securing and maintaining any such permits or licenses.
- B. Environmental Impact Statement. Environmental Impact Statements, if any, required at any time during the planning, design, construction, or operation of the SOUND TRANSIT Facilities shall be prepared by SOUND TRANSIT at SOUND TRANSIT's sole cost and expense.
- C. City Shall Not Hinder. The City shall not hinder SOUND TRANSIT's attempts to secure, at SOUND TRANSIT's sole cost and expense, obtain, and maintain any permits, licenses, or approvals of governmental agencies or authorities, or of any necessary Third Parties, for the use of any structures or Facilities (including streets, roads, or utility poles).

## Section 7. ENTRY NOTICE

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- A. Access. SOUND TRANSIT, its servants, employees, agents, contractors, and/or subcontractors shall have access to the Right-of-Way Area in connection with SOUND TRANSIT's construction, operation, and maintenance of the Passenger Rail System as is reasonably necessary in accordance with this Agreement; provided, however, except to the extent expressly provided in this Agreement, this right of access shall not be deemed to require the City to take any actions or expend any funds to enable such persons to exercise such rights of access, and, provided further, that such access may not interfere with or disrupt in any way, other than in ways approved in advance by the City, the use of the Public Right-of-Way by the City or Third Parties in and along the Right-of-Way Area.
- B. Notice Prior to Initial Entry. During Construction (as defined below), SOUND TRANSIT shall give the City at least 48 hours' written notice before initial entry upon any portion of the Right-of-Way Area for Construction purposes. For purposes of the Agreement, "Construction" shall mean SOUND TRANSIT's construction of the Transit Facilities, pursuant to the approved Final Construction Plans.



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- C. Entry After Initial Construction. After initial Construction, any entry by SOUND TRANSIT onto the Right-of-Way Area that is not pursuant to the Routine Maintenance and Operation of the Passenger Rail System, or for purposes relating to an emergency (both of which are defined below), shall require (1) advance written notice from SOUND TRANSIT to the City not less than ten days prior to SOUND TRANSIT's planned entry, with notice to specify the purpose of the entry; (2) if entry involves any new construction, or removal of any portion of the Passenger Rail System, four sets of prints showing in detail the proposed new construction, reconstruction, or removal; and (3) approval by the City, which approval shall not be unreasonably withheld or delayed, taking in account the nature of the proposed entry.
- D. Entry for Routine Maintenance and Operation. During Routine Maintenance and Operation (as defined herein), SOUND TRANSIT personnel may enter the Right-of-Way Area without notice to the City, as long as such entry is for the sole purposes of Routine Maintenance and Operation. For purposes of this Agreement, "Routine Maintenance and Operation" shall mean SOUND TRANSIT's maintenance and operation of the Transit Facilities that does not require (1) the excavation of soil that would alter or disturb the Right-of-Way Area; (2) the use of heavy machinery within 50 feet of or upon the Right-of-Way Area; and (3) disruption of other uses of the Public Right-of-Way beyond that typical of Passenger Rail Service.
- E. Emergency Access. In the event of an Emergency, and for purposes of taking immediate corrective action, SOUND TRANSIT personnel may enter the Right-of-Way Area without notice to the City as long as such entry is for the sole purpose of addressing the Emergency; provided, however, that if any entry for such purposes is likely to require excavation of soil that would alter or disturb the Right-of-Way Area, use of heavy machinery within 50 feet of or upon the Right-of-Way Area, or disruption of other uses of the Public Right-of-Way beyond that typical of Passenger Rail Service, SOUND TRANSIT shall give the City verbal or telephonic notice of the places where and the manner in which entry is required prior to such entry, promptly followed by written notice.

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## **SECTION 8. OPERATION, MAINTENANCE, AND REPAIR IN STREETS AND RIGHTS-OF-WAY**

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- A. Compliance with Laws, Rules, and Regulations. SOUND TRANSIT shall operate, maintain, and repair its Passenger Rail System in compliance with all federal, state, and local laws; ordinances; and departmental rules, regulations, and practices affecting such system, which include, by way of example and not limitation, the obligation to operate, maintain, and repair in accordance with zoning codes, safety codes and City construction standards. In addition, the construction, operation, and repair shall be performed in a manner consistent with industry standards.





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SOUND TRANSIT shall exercise reasonable care in the performance of all its activities and shall use industry-accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

- B. Permits Required. Except in cases of emergency repairs, SOUND TRANSIT's construction, operation, or repair of its Passenger Rail System shall not commence until all required permits have been properly filed for and obtained from the proper City officials and all required permits and associated fees paid. In case of emergency repairs, appropriate permits shall be obtained no later than the second business day following repairs.
  
- C. Level of Operation/Maintenance. All Facilities shall be operated and maintained in such a manner as to minimize disruption to other users of the Public Rights-of-Way. All Facilities shall be maintained to a standard of safety and aesthetics acceptable to and in accordance with standards adopted from time to time by the City.
  
- D. Appointment of Operator. SOUND TRANSIT may appoint an operator as SOUND TRANSIT's agent to exercise some or all of SOUND TRANSIT's rights under this Agreement, subject to the terms and conditions of this Agreement.
  
- E. Staff. SOUND TRANSIT or the Operator shall maintain, or cause to be maintained, an adequate, competent, trained, licensed, qualified, and experienced staff to operate SOUND TRANSIT Trains that use the Property.
  
- F. Regulatory Approvals. SOUND TRANSIT and the Operator shall obtain and maintain all federal, state, and/or local regulatory approvals as may be required for the conduct of Passenger Rail Service on the Property.
  
- G. Hazardous Materials. Hazardous Materials shall not be allowed within the Right-of-Way Area, nor shall any hazardous materials be transported within the Right-of-Way Area.
  
- H. Responsibility for Facilities. The City shall have no responsibility for inspecting, maintaining, servicing, or repairing any trains or other equipment used by SOUND TRANSIT on the Property, but all such equipment shall at all times comply with applicable federal, state, and local governmental requirements. Further, the City shall not be responsible for the clearing or removal of trees, shrubs, plants, ice, snow, or debris therefrom.



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- I. Prompt Repair. SOUND TRANSIT shall promptly repair any and all Public Rights-of-Way and public or private property that is disturbed or damaged during the operation, maintenance, or repair of its Passenger Rail System. SOUND TRANSIT shall ensure that the unimproved Right-of-Way Area and all other public and private property that is disturbed or damaged during the operation, maintenance, or repair of the Passenger Rail System is promptly returned to as good a condition as before the disturbance or damage occurred, or if to a lesser condition, then to the satisfaction of the City or the private property owners. In the event SOUND TRANSIT does not comply with the foregoing requirements, the City may, upon reasonable advance notice to SOUND TRANSIT, take action to restore the Public Rights-of-Way or public property at SOUND TRANSIT's sole cost and expense.
- J. Tree Trimming. No tree trimming shall be performed, except in the event of an Emergency, without the permission of the City and other affected authorities, and any tree trimming must be performed in strict accordance with the Tacoma Municipal Code. Even if tree trimming is authorized by the City, SOUND TRANSIT is liable for any damage it causes during the course of tree trimming.
- K. Dispute. In any dispute over the adequacy of a restoration, the Director of the Department of Public Works shall, in his or her sole discretion, make the final determination.
- L. Imminent Danger. In the event of an Emergency, or where the Passenger Rail System creates, or is contributing to, an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Passenger Rail System without prior notice and charge SOUND TRANSIT for costs incurred. The City shall provide notice of such danger as soon as practicable.
- 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

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1 ongoing maintenance, operation, or repair of its stationary Facilities in  
2 the Right-of-Way sufficient to show:

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

### 7 **Section 9. DISPATCHING AND LEVEL OF SERVICE**

- 8 A. Dispatching Responsibilities. The movement and dispatching of any  
9 trains and other equipment over the tracks shall, at all times, be subject  
10 to the exclusive direction and control of SOUND TRANSIT.  
11 B. Level of Service. SOUND TRANSIT shall determine the quarterly  
12 passenger rail transportation schedules for the Passenger Rail System  
13 and shall provide such schedule, and any changes thereto, in a timely  
14 manner to the City. SOUND TRANSIT agrees to maintain service at the  
15 minimum and maximum levels for the life of this Agreement, as  
16 described in Exhibit "D," unless otherwise mutually agreed to in writing  
17 by the parties and authorized by the respective governing bodies.  
18 C. Consultation. Upon written request by the City, SOUND TRANSIT  
19 agrees to promptly make available appropriate representatives to meet  
20 with representatives of the City to discuss, review, and consider revisions  
21 to the passenger rail transportation schedules requested by the City.  
22 SOUND TRANSIT agrees to make good faith efforts to accommodate  
23 the City's request and will provide a written response detailing what  
24 action SOUND TRANSIT will take as a result of the City's request and  
25 the reasons therefor, supported by any facts that were considered.

### 26 **Section 10. FACILITY LOCATION SIGNS**

SOUND TRANSIT, at its sole cost, expense, and risk, shall furnish, erect, and thereafter maintain signs showing the location of all SOUND TRANSIT Facilities. The size, form, color, text, location, and spacing of such signs shall be subject to advance approval by the City and such signs shall be considered part of the Facilities.

### **Section 11. THIRD PARTY RIGHT-OF-WAY OWNERSHIP**

This Agreement is not intended to cover and does not cover any occupancies over (1) rights-of-way or other land owned solely or jointly by any other person or entity; or (2) any rights granted to City by Third Parties. The City agrees to cooperate with SOUND TRANSIT to assist in its efforts to acquire rights to use



any joint Facilities or structures or such rights-of-way or land owned by others along the Right-of-Way Area.

## Section 12. RELOCATIONS

A. Except as otherwise provided herein, if the City determines that as a result of a public project, the location of any of SOUND TRANSIT Facilities must be changed or relocated by reason of traffic conditions; public safety; Public Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work, public facility, improvement, or any government-owned utility; Public Rights-of-Way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of the Passenger Rail System, the City shall notify SOUND TRANSIT of such plans and shall use the City's best reasonable efforts to secure an alternate location for SOUND TRANSIT Facilities. SOUND TRANSIT and the City agree that upon notice as provided above, representatives of each party will promptly meet and enter into good faith negotiations to determine and mutually agree upon a plan for relocation and upon allocation of the costs of relocation of SOUND TRANSIT Facilities. SOUND TRANSIT shall move the affected SOUND TRANSIT Facilities to such mutually agreed-upon alternative location as soon as practicable after the parties have executed an agreement or agreements reflecting the allocated costs to be borne by each of the parties as a result of the change to or relocation of SOUND TRANSIT Facilities. Notwithstanding the foregoing, in the event that relocation of SOUND TRANSIT Facilities is required, for public safety reasons, which are in whole or in part a cause or result of the presence of SOUND TRANSIT Facilities, SOUND TRANSIT agrees that it will relocate its Facilities to the extent required to alleviate the identified public safety concerns.

B. Abandonment. This section shall not apply to a case of abandonment of the Passenger Rail System or portion thereof by SOUND TRANSIT.

## Section 13. CONVEYANCE OF RIGHT-OF-WAY AREA

In the event of any sale, transfer, or conveyance of the Right-of-Way Area or portion thereof, such sale, transfer, or conveyance shall be subject to any existing rights of SOUND TRANSIT under this Agreement to the extent permitted by law and applicable agreements entered into prior to the date of this Agreement.

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## Section 14. LIABILITY; INDEMNIFICATION

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- A. SOUND TRANSIT hereby agrees to indemnify, defend, and hold the City harmless from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses arising or growing out of or in connection with or resulting from, either directly or indirectly, the construction, maintenance, operation, repair, removal, occupancy, and use of the Passenger Rail System by SOUND TRANSIT.
- B. SOUND TRANSIT hereby releases the City from, and agrees to indemnify, defend, protect, and save the City harmless from and against any and all claims, suits, judgments, liabilities, defense costs and expenses (including, but not limited to, attorneys' fees) arising out of any loss of and/or damage to the real or tangible personal property of the City, and any loss of and/or damage to the property of Third Parties or SOUND TRANSIT; any loss and/or damage on account of injury to or death of any persons whomsoever (including employees and agents of the parties hereto and all other persons) caused by or growing out of SOUND TRANSIT's or its employees', agents', servants', contractors', or subcontractors' presence in, upon, or along the Right-of-Way Area or the plan, design, construction, and installation, or subsequent operations, maintenance, repair, reinstallation, replacement, relocation, or removal of Transit Facilities or any part thereof; service interruption, cessation, or unreliability of the Transit Facilities; libel; slander; infringement of copyright or unauthorized use of any trademark, trade name, or service mark arising out of the material, data, information, or other content transmitted or received over the Transit Facilities, unless such claims, suits, judgments, or liabilities arise from the sole, actions, or inaction of the City, their employees, servants, agents, contractors, subcontractors, or persons using the Passenger Rail System with permission of the City.
- C. The parties hereby agree that no damages shall be recoverable from one another because of any dispossession that results from any failure of or defect in the City's title or the rights granted herein by the City to SOUND TRANSIT. The City will cooperate with SOUND TRANSIT's actions to rectify any title defect and shall stipulate to judgment upon demand with regard to SOUND TRANSIT's title.
- D. The party in whose favor an indemnification runs, pursuant to any of Sections 14.A, 14.B, and 14.C (the "Protected Party"), shall give the other party (the "Indemnifying Party") prompt notice of any claims or actions, of which it is aware, against the Protected Party under this Agreement. The Indemnifying Party shall promptly assume responsibility for the claim or undertake the defense of any litigation on behalf of the Protected Party, its agents, contractors, and employees; hold the Protected Party harmless for any expense associated therewith; and promptly pay any settlement or judgment that may be agreed to by the parties or entered by a court. The Protected Party shall cooperate fully with the Indemnifying Party in the defense of any such claim or action.



1 The Protected Party shall not settle any such claim or action without the  
2 prior written consent of the Indemnifying Party, which consent shall not  
3 be unreasonably withheld. In the event that the Indemnifying Party does  
4 not assume and meet its obligations under Section 14.D promptly upon  
5 receiving written notice from the Protected Party, the Protected Party  
6 may, at its option, make any expenditures or incur any obligations for the  
7 payment of money in connection with or arising out of the matters  
8 referred to in Sections 14.A, 14.B, and 14.C, including, but not limited to,  
9 attorney's fees. Such sums paid or obligations incurred shall be deemed  
10 to be additional obligations of the Indemnifying Party under this  
11 Agreement and shall be paid by the Indemnifying Party upon the  
12 rendering of a statement to the Indemnifying Party therefor.

- 7 E. In indemnifying and holding harmless as to its employees, SOUND  
8 TRANSIT waives immunity under Industrial Insurance Law, RCW 51.  
9 SOUND TRANSIT specifically assumes potential liability for actions  
10 brought by SOUND TRANSIT's own employees against the City and,  
11 solely for the purpose of this indemnification and defense, SOUND  
12 TRANSIT specifically waives any immunity under the state industrial  
13 insurance law, RCW 51. SOUND TRANSIT RECOGNIZES THAT THIS  
14 WAIVER WAS SPECIFICALLY ENTERED INTO PURSUANT TO THE  
15 PROVISIONS OF RCW 4.24.115 AND WAS THE SUBJECT OF  
16 MUTUAL NEGOTIATION.

### 13 Section 15. INSURANCE

- 14 A. General. SOUND TRANSIT agrees that, throughout the term of this  
15 Agreement, it shall at its sole expense, prior to commencement of  
16 construction and operation of its Passenger Rail System, obtain and  
17 carry adequate Commercial General Liability, general automotive,  
18 completed operations and products liability, property damage liability,  
19 workers compensation, and other insurance coverages as reasonably  
20 required by the City, except as provided below, to protect the City, its  
21 trustees, elected and appointed officers, agents, and employees against  
22 claims and damages that may arise as a result of the construction,  
23 operation, or repair of the Passenger Rail System, all in a form and  
24 pursuant to endorsements as approved of by the Risk Manger for the  
25 City.
- 21 B. Policy Limits. The City understands that SOUND TRANSIT proposes  
22 that such insurance coverage include a reasonable deductible or  
23 self-insurance retention (hereinafter referred to collectively as  
24 "self-insurance retention"). Such self-insurance retention shall be the  
25 responsibility of SOUND TRANSIT. SOUND TRANSIT understands that,  
26 but for the presence and operation of SOUND TRANSIT in the Public  
Rights-of-Way, the City would not be at risk whether as a result of  
negligence of SOUND TRANSIT or the City; therefore, property and  
liability insurance coverage is a substantial and reasonable benefit to the  
City to preserve the status quo. Furthermore, an indemnity to the City by

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1 SOUND TRANSIT currently offers limited protection to the City<sup>1</sup>. In  
2 recognition of these facts, SOUND TRANSIT agrees that the policy  
3 limits, as well as the self-insurance retention, are material terms and  
4 conditions of this Agreement and, further, that extended coverage may  
5 be required to protect the City from the limits of the Indemnity provided,  
6 pursuant to Section 14 herein. SOUND TRANSIT and the City agree,  
7 therefore, that upon execution of this Agreement, representatives of each  
8 party will meet and enter into good faith negotiations to secure mutual  
9 agreement upon self-insurance retention, extended coverage, and  
10 insurance policy coverage limits consistent with such limits for other  
11 comparable passenger rail systems.

12 C. Operation of Passenger Rail System. SOUND TRANSIT agrees that it is  
13 not authorized to operate the Passenger Rail System, until the parties  
14 have first entered into and fully executed an agreement, as required  
15 pursuant to Section 15.B herein.

16 D. Minimum Requirements. The parties agree that the insurance coverage  
17 required herein, shall:

- 18 1. Provide coverage on an occurrence basis;
- 19 2. Cover any and all costs, including defense costs, losses and  
20 damages resulting from any personal injury and/or death  
21 (including coverage under the Federal Employers Liability Act),  
22 and/or property damage;
- 23 3. Include blanket contractual coverage, including coverage for  
24 written contracts and specific coverage for the indemnity  
25 provisions set forth in this Agreement, and completed operations  
26 and products liability coverage; provided that, there shall not be  
an exclusion for liability not contracted for;
4. Have no exclusion for incidents occurring within 25 feet, or any  
distance, from a railroad track, or on, over, or under a railroad  
track;
5. Have an aggregate limit location endorsement for the Passenger  
Rail System;
6. Commence and be in force and effect before any work is done  
under this Agreement;
7. Be maintained in place until all of its Facilities have been removed  
from the Public Rights-of-Way and for six years thereafter;
8. Have no non-standard exclusions unless approved of by the City  
Risk Manager;
9. Name the City as an additional insured without limitation, pursuant  
to an endorsement approved of by the City's Risk Manager;
10. Cover all liability of the City arising out of, or related to, City's  
performance, or nonperformance, under this Agreement, or  
arising out of the construction, maintenance, or operation of the

<sup>1</sup> See, Barendregt v. Walla Walla School District No. 140, 26 Wn. App. 246 (1980).



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- Passenger Rail System, including, without limitation, any negligence of City;
- 11. Be issued by a financially sound insurer who is authorized to do business in the state of Washington with a financial rating no less than an "A XII" in the latest edition of "Best's Key Rating Guide," published by A.M. Best Company;
- 12. Be endorsed to state that coverage under the policy shall not be suspended, voided, canceled, or amended except after 60 days prior written notice of such has been given to the City;
- 13. Include a waiver of subrogation rights to the extent that any liability for costs, losses, and damages resulting from any personal injury, death, and/or property damage may be covered by the proceeds of such insurance policies; and
- 14. Include an endorsement that such policy is primary and noncontributing.

E. SOUND TRANSIT shall, during construction of the Passenger Rail System, maintain insurance or self-insured retention in no less than the minimum amounts as specified in Sections F through K below.

F. Comprehensive general liability insurance shall cover liability, bodily injury, and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

1. <u>Bodily Injury</u>	
a. Each Occurrence	\$ 1,000,000
b. Annual Aggregate	\$ 3,000,000
2. <u>Property Damage</u>	
a. Each Occurrence	\$ 1,000,000
b. Annual Aggregate	\$ 3,000,000
3. <u>Personal Injury</u>	
a. Annual Aggregate	\$ 3,000,000

G. Completed operations and product liability insurance shall be maintained for two years after the termination of this Agreement (in the case of the SOUND TRANSIT or Operator) or completion of the work for SOUND TRANSIT or Operator (in the case of a contractor or subcontractor).

H. Property damage liability insurance shall include coverage for the following hazards: X – explosion; C – collapse; U – underground.

I. Workers' compensation insurance shall be maintained during the life of this Agreement to comply with statutory limits for all employees and, in the case any work is sublet, SOUND TRANSIT shall require its contractors and subcontractors to similarly provide workers'

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compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by SOUND TRANSIT. SOUND TRANSIT shall also maintain during the life of this Agreement employer's liability insurance. The following minimum limits must be maintained:

1. Workers' Compensation: Statutory
2. Employer's Liability: \$ 500,000 per occurrence

J. Comprehensive auto liability coverage shall include owned, hired, and non-owned vehicles.

1. Bodily Injury
  - a. Each Occurrence \$ 1,000,000
  - b. Annual Aggregate \$ 3,000,000
2. Property Damage
  - a. Each Occurrence \$ 1,000,000
  - b. Annual Aggregate \$ 3,000,000

K. SOUND TRANSIT shall keep, or shall require its general contractor to keep, all Project components insured for Builders All Risk Comprehensive Coverage, including earthquake, fire, and flood and to include amounts sufficient to prevent SOUND TRANSIT from becoming a co-insurer under the terms of the applicable policies, but in any event in an amount not less than 100 percent of the then full "Replacement Cost," being the cost of replacing the Project components, and all fixtures, equipment, improvements, and betterments thereto.

L. If SOUND TRANSIT, its contractors, or subcontractors do not have the required insurance, the City may order such entities to stop operations until the insurance is obtained and approved.

M. Certificates of insurance, reflecting evidence of the required insurance and naming the City as an additional insured on the general liability and automotive policies described above, shall be filed with the City's Risk Manager. The certificate shall be filed with the acceptance of the Agreement and annually thereafter, and as provided in Subsection N below.

N. In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Agreement, then, in that event, SOUND TRANSIT shall furnish, at least 30 days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be



obtained prior to any such lapse or termination during the balance of the period of the Agreement.

## Section 16. LIENS

- A. The Right-of-Way Area is not subject to a claim of lien. In the event that any City property becomes subject to any claims for mechanics', artisans', or materialmen's liens, or other encumbrances chargeable to or through SOUND TRANSIT which SOUND TRANSIT does not contest in good faith, SOUND TRANSIT shall promptly, and in any event within 30 days, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit, or other means), without cost to the City, and shall indemnify the City against all costs and expenses (including attorneys' fees) incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of SOUND TRANSIT after first giving SOUND TRANSIT five business days' advance notice of its intention to do so. The City shall use its reasonable best efforts to keep SOUND TRANSIT's Facilities free of all liens that may adversely affect the Passenger Rail System.
- B. Nothing herein shall preclude SOUND TRANSIT's or the City's contest of a claim for lien or other encumbrance chargeable to or through SOUND TRANSIT or the City, or of a contract or action upon which the same arose.
- C. Nothing in this Agreement shall be deemed to give, and the City hereby expressly waives, any claim of ownership in and to any part or the whole of the SOUND TRANSIT Facilities, except as may be otherwise provided herein.

## Section 17. TERM; TERMINATION

- A. This Agreement shall be effective as of the date identified pursuant to Section 31 of this Agreement and, unless sooner terminated pursuant to the terms hereof, shall remain in effect for 50 years from such date.
- B. Upon termination of this Agreement, SOUND TRANSIT agrees to prepare, execute, and deliver to the City all documentation necessary to evidence termination of this Agreement or portion thereof so terminated. No such termination, however, shall relieve the parties hereto of obligations accrued and unsatisfied at such termination.

## Section 18. REMEDIES AT LAW

- A. Remedies. The City has the right to exercise any and all of the following remedies, singly or in combination, in the event SOUND TRANSIT violates any provision of this Agreement:



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

B. Cumulative Remedies. In determining which remedy or remedies for SOUND TRANSIT'S violation are appropriate, a court may take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether SOUND TRANSIT has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

C. Failure to Enforce. SOUND TRANSIT shall not be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure of the City to enforce prompt compliance, and the City's failure to enforce shall not constitute a waiver of rights or acquiescence in SOUND TRANSIT's conduct.

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

**Section 19. RIGHT TO PURCHASE**

A. The City shall have an option to purchase the Passenger Rail System upon termination of this Agreement, whether termination is, or is not, for cause. This option requires SOUND TRANSIT to convey the Passenger Rail System, or such portion thereof as the City may choose to purchase, free and clear of any encumbrances except such federal obligations and requirements as may cover the system, along with (1) all equipment, Facilities, tools, vehicles, tracks, rail, and real property interests necessary for the Passenger Rail System's operation, free and clear of any encumbrances; (2) all repair records, maps, and equipment and Facilities records (including records identifying equipment that is being used in the field, warranties with respect to such equipment and the like);



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(3) and such other properties, contract rights, or intangibles as may be normally conveyed in order to permit a buyer to take over and continue the operations of a seller with minimal disruption to Commuters; provided, that nothing herein shall require the City to accept or pay for any contract that it does not wish to assume. SOUND TRANSIT is not required to convey its trains or other portions of the Passenger Rail System located outside the City which are essential to SOUND TRANSIT's operations in other communities.

1. The City may exercise its option rights granted herein, and will have up to 180 days after termination of this Agreement to notify SOUND TRANSIT that it intends to exercise its right to purchase the Passenger Rail System. Within 90 days of the date the City notifies SOUND TRANSIT of its intent to exercise the option, or by such other time as the parties may separately agree, the parties shall meet to establish a purchase price. If the parties are unable to agree to a purchase price within 180 days after the City notifies SOUND TRANSIT that the City intends to exercise its purchase option, either party may require the price to be set by appraisal by sending the other party notice that it wishes to have the price set by appraisal. Within 45 days of the date that notice is submitted, each party may appoint one appraiser. When each party appoints an appraiser, the two appraisers shall appoint a third appraiser ("Third Appraiser"); if only a single appraiser is appointed (whether by mutual agreement or because of the failure of a party to timely nominate an appraiser), that appraiser shall be the sole appraiser. The appraiser, if only a single appraiser is appointed, or the three appraisers, if each party appoints an appraiser and they appoint a third, shall mutually establish a price for the Passenger Rail System, or portion thereof, that the City desires to purchase in accordance with this Section 19. In the event that the three appraisers cannot mutually establish a price for the Passenger Rail System, then the Third Appraiser shall submit a final binding appraisal establishing the price for the Passenger Rail System. The appraisal shall be of the fair market value of the Passenger Rail System as a going concern (taking into account such property used and useful in providing service within the City that is to be conveyed) and with no value allocated to the Right-of-Use itself. This appraisal determination shall be final and non-appealable. The City shall have 120 days after the decision of the appraiser(s) to notify SOUND TRANSIT that it wishes to conclude the transaction; if it does not so notify SOUND TRANSIT, the option shall be deemed terminated.

2. If the City gives the notice required by the preceding paragraph, the parties will thereafter promptly sign all necessary documents required

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to close the transaction; provided, however, that the City may make conclusion of the transaction conditional upon any necessary voter approval of any bond funding for acquisition of all or a part of the Passenger Rail System and, if applicable, the successful sale of the bonds.

3. The City and SOUND TRANSIT will share equally the costs associated with any appraiser that is jointly appointed (by them or by both of the appraisers selected); the City will bear costs associated with any appraiser that it separately appoints and SOUND TRANSIT will bear costs associated with any appraiser that it separately appoints.

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

C. In the event the City purchases, acquires, takes over, or holds all or parts of the Passenger Rail System, the City, subject to federal law, shall have the right, without limitation, to assign, sell, lease, or otherwise transfer its interest in all or parts of the Passenger Rail System to any Third Party on whatever terms the City deems appropriate.

**Section 20. REVOCATION OF FRANCHISE**

A. In addition to any rights set out elsewhere in this Agreement or the City Charter, the City reserves the right to declare a forfeiture or otherwise revoke or suspend the Agreement and all or part of the rights and privileges pertaining thereto in the event that:

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, maintenance, and operation of the System; or
4. At any time during the term of the Agreement, SOUND TRANSIT fails to provide and maintain the performance bond, if required; fails to maintain the insurance required by this Agreement; or fails to satisfy the indemnity set out in this Agreement.

B. Before the Agreement is revoked or suspended, SOUND TRANSIT shall be given notice and opportunity to cure.



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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 the Agreement, the City may make an appropriate reduction in the remaining term of the Agreement or revoke or suspend the Agreement. However, the 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 suspended immediately upon notice when continued operation poses an imminent threat to public safety.

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

E. Nothing in this section or in any other section of this Agreement shall prevent the City's exercise of its rights under Article VIII of the City Charter. Included within the rights granted under the City's Charter is the right to purchase or condemn SOUND TRANSIT's property within the Right-of-Way Area at any time, which right is expressly set out in Section 8.1(c) of the Charter as follows:

To acquire by purchase or condemnation, for the use of the city itself or its inhabitants, all of the property of the grantee within the public streets, alleys, or places at a fair and just value, which shall not include any valuation of the franchise, right, or privilege, which shall thereupon be terminated.

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

**Section 21. RIGHT TO REQUIRE REMOVAL OF PROPERTY/RIGHT TO REMOVE PROPERTY**

A. Upon termination of this Agreement, SOUND TRANSIT may be required to remove its property from any Public Rights-of-Way and restore such Right-of-Way to its same or better condition as existed just prior to such

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1 removal, subject to any rights SOUND TRANSIT may have to abandon  
2 property in place. If SOUND TRANSIT fails to remove property that the  
3 City requires it to remove, the City may perform the work and collect the  
4 cost thereof from SOUND TRANSIT. The actual cost thereof, including  
5 direct and indirect administrative costs, shall be a lien upon all plant and  
6 property of SOUND TRANSIT within the Right of Use Area, effective  
7 upon filing of the lien with the Pierce County Auditor.

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

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18 C. Any order, issued pursuant to Section 21.A, to remove the Passenger  
19 Rail System, in whole or in part, shall be sent by registered or certified  
20 mail to SOUND TRANSIT not later than 24 months following the date of  
21 termination of this Agreement. Removal shall be completed (except with  
22 respect to property that SOUND TRANSIT is permitted or required to  
23 abandon in place) not later than 12 months following the date of  
24 notification to remove the Facilities.

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

E. The purchase option provided for in Section 19 does not affect the City's  
authority to require SOUND TRANSIT to remove its Passenger Rail  
System upon termination of this Agreement, as provided in this section,  
nor does it affect the City's right to assume ownership of any portion of  
the Passenger Rail System that is abandoned. Within 60 days of a  
request by the City, SOUND TRANSIT shall execute such documents as  
may be required to convey such abandoned property to the City free and  
clear of all encumbrances.



## Section 22. COVENANTS AND WARRANTIES

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

- 3 1. That the City has the full right and authority to enter into and perform  
4 this Agreement and any permits which may be granted in accordance  
5 with the terms hereof, and that by entering into or performing this  
6 Agreement, the City is not in violation of its Charter or Bylaws, or any  
7 law, regulation, or agreement by which it is bound or to which it is  
8 bound or to which it is subject; it being understood, however, that the  
9 covenant and warranty contained in this Section 22 does not  
10 constitute a warranty, expressed or implied, by the City of the right or  
11 rights granted by the City to SOUND TRANSIT hereunder; and
- 12 2. That the execution, delivery, and performance of this Agreement by  
13 the City has been duly authorized by all requisite corporate action,  
14 that the signatories for the City hereto are authorized to sign this  
15 Agreement, and that, upon approval by City, the joinder or consent of  
16 any other party, including a court, trustee, or referee, is not necessary  
17 to make valid and effective the execution, delivery, and performance  
18 of this Agreement.

19 B. By execution of this Agreement, SOUND TRANSIT warrants:

- 20 1. That SOUND TRANSIT has full right and authority to enter into  
21 and perform this Agreement in accordance with the terms hereof, and  
22 by entering into or performing this Agreement, SOUND TRANSIT is  
23 not in violation of its charter or by-laws, or any law, regulation, or  
24 agreement by which it is bound or to which it is subject; and
- 25 2. That the execution, delivery, and performance of this Agreement by  
26 SOUND TRANSIT has been duly authorized by all requisite Board  
action, that the signatories for SOUND TRANSIT hereto are  
authorized to sign this Agreement, and that the joinder or consent of  
any other party, including a court, trustee, or referee, is not necessary  
to make valid and effective the execution, delivery, and performance  
of this Agreement.

## Section 23. RECORDINGS, TAXES, AND OTHER CHARGES

21 A. SOUND TRANSIT shall pay all transfer taxes, documentary stamps,  
22 recording costs or fees, or any similar expense in connection with the  
23 recording or filing of any permits which may be granted hereunder.  
24 SOUND TRANSIT further agrees that if it is determined by any federal,  
25 state, or local governmental authority that the sale, acquisition, license,  
26 grant, transfer, or disposition of any part or portion of the Passenger Rail  
System or rights herein described requires the payment of any tax, levy,  
excise, assessment, or charges (including, without limitation, property,  
sales, or use tax) under any statute, regulation, or rule, SOUND





1 TRANSIT shall pay the same, plus any penalty and/or interest thereon,  
2 directly to said taxing authority and shall hold the City harmless  
3 therefrom. SOUND TRANSIT shall pay all taxes, levies, excises,  
4 assessments, or charges, including any penalties and/or interest  
5 thereon, levied or assessed on the Transit Facilities, or on account of  
6 their existence or use (including increases thereof attributable to such  
7 existence or use, and excluding taxes based on the income of City), and  
8 shall indemnify City against payment thereof. SOUND TRANSIT shall  
9 have the right to claim, and City shall reasonably cooperate with SOUND  
10 TRANSIT in the prosecution of any such claim, for refund, rebate,  
11 reduction, or abatement of such tax(es).

- 7 B. The City may pay any tax, levy, excise, assessment, or charge, plus any  
8 penalty and/or interest thereon, imposed upon SOUND TRANSIT for  
9 which SOUND TRANSIT is obligated, pursuant to this section, if SOUND  
10 TRANSIT does not pay such tax, levy, excise, assessment, or charge  
11 when due. SOUND TRANSIT shall reimburse the City for any such  
12 payment made pursuant to the previous sentence, plus interest at the  
13 rate of 8 percent per annum.

#### 11 **Section 24. ASSIGNABILITY; BENEFICIARY**

- 12 A. This Agreement shall be binding upon and inure to the benefit of the  
13 parties hereto and their respective successors or assigns. No  
14 assignment hereof or sublease shall be valid for any purpose without the  
15 prior written consent of the other party, and any attempt by one party to  
16 assign or license the rights or obligations hereunder without prior written  
17 consent will give the other party the right, at its written election, to  
18 immediately terminate this Agreement or take any other lesser action  
19 with respect thereto. The above requirement for consent shall not apply  
20 to (1) any disposition of all or substantially all of the assets of a party;  
21 (2) any corporate merger, consolidation, or reorganization, whether  
22 voluntary or involuntary; (3) a sublease or assignment of this Agreement  
23 (in whole or in part) to a wholly-owned subsidiary, affiliate, or parent  
24 company; or (4) a sale, lease, or other conveyance by City, subject to  
25 those requirements set forth in Section 19 of this Agreement; provided,  
26 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



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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 25. NOTICES**

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

Regional Transit Authority  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

And to:

CITY OF TACOMA  
Attention: City Clerk  
747 Market Street, Room 220  
Tacoma, WA 98402

CITY OF TACOMA  
Attention: City Manager  
747 Market Street, 12th Floor  
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 26. MISCELLANEOUS**

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

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

C. The parties shall not be deemed in default with provisions of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond SOUND

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1 TRANSIT's or the City's control; the unforeseeable unavailability of labor  
2 or materials; labor stoppages or slow downs, or power outages  
3 exceeding back-up power supplies. This Agreement shall not be  
4 revoked or the parties penalized for such noncompliance, provided that  
5 the parties take immediate and diligent steps to bring themselves back  
6 into compliance and to comply as soon as practicable under the  
7 circumstances without unduly endangering the health, safety, and  
8 integrity of the parties' employees or property, or the health, safety, and  
9 integrity of the public, Public Rights-of-Way, public property, or private  
10 property.

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

17 E. This Agreement constitutes the entire agreement of the parties with  
18 respect to the subject matters hereof, and supersedes any and all prior  
19 negotiations (oral and written), understandings, and agreements with  
20 respect hereto.

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

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

26 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 27. 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.



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**Section 28. INTERPRETATION**

This Agreement is executed by all parties under current interpretations of applicable federal, state, or local statute, ordinance, law, or regulation.

**Section 29. BILLING PROCEDURES**

- A. Errors or Disputes. If any portion of a bill is in dispute, the debtor nonetheless shall pay, on a timely basis, the undisputed portion. No exception to any bill shall be honored, recognized, or considered if filed after the expiration of two years from the last day of the calendar month during which the bill is rendered. No bill shall be rendered later than two years after either (1) the last day of the calendar month in which the expense covered thereby is incurred; or (2) with respect to a project for which a roadway completion report is required or with respect to unliquidated liability claims, then 60 days following the date the amount is settled and/or the liability is established.
  
- B. Books and Records. The parties shall maintain accurate books and records with respect to amounts due or claimed to be due under this Agreement. Either party, at a reasonable time, upon reasonable notice, and at its own expense, may inspect and/or audit the books, accounts and records of the other party, to the extent that the same relate to matters covered by this Agreement. If any discrepancy is found, the party owing money shall pay the difference to the other party within 30 days.

**Section 30. SEVERABILITY**

- A. In case any term of this Agreement shall be held invalid, illegal, or unenforceable, in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement shall in any way be affected thereby.
  
- B. Notwithstanding the foregoing, the material provisions of this Agreement are not severable. In the event that a court, agency, or legislature of competent jurisdiction acts or declares any nonmaterial provision of this Agreement is unenforceable according to its terms, or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that a court, agency, or legislature of competent jurisdiction acts so that, or declares that, any material provision of this Agreement is unenforceable according to its terms, or is otherwise void, the City and SOUND TRANSIT agree to

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1 immediately enter into negotiations in good faith to restore the relative  
2 burdens and benefits of this Agreement, consistent with applicable law.

3 C. Notwithstanding the foregoing, if either SOUND TRANSIT or the City  
4 believes a provision is not material, it must commence an action  
5 challenging the materiality within 14 days of a request by the other that it  
6 enter into negotiations. The obligation to negotiate is not tolled, and the  
7 City and SOUND TRANSIT must discharge their negotiation  
8 responsibility notwithstanding the dispute as to materiality. If there is a  
9 dispute as to materiality, the remedies provided for in the proceeding  
10 paragraph shall be additive, not alternative. The remedies provided for  
11 herein do not prevent the City or SOUND TRANSIT from contending that  
12 a particular provision is enforceable, or foreclose any remedies if a  
13 provision is enforceable.

### 9 Section 31. EXECUTION

10 SOUND TRANSIT shall execute and return to the City three original  
11 countersigned copies of this Agreement and a signed acceptance of this  
12 Agreement granted hereunder within 30 days after the date of passage of the  
13 Agreement by the City Council. The acceptance shall be in a form acceptable  
14 to the City Attorney, and in accepting this Agreement, SOUND TRANSIT  
15 warrants that it has carefully read the terms and conditions of this Agreement  
16 and unconditionally accepts all of the terms and conditions of this Agreement  
17 and agrees to abide by the same and acknowledges that it has relied upon its  
18 own investigation of all relevant facts, that it has had the assistance of counsel,  
19 that it was not induced to accept this Agreement, that this Agreement  
20 represents the entire agreement between SOUND TRANSIT and the City. The  
21 countersigned Agreement and acceptance shall be returned to the City  
22 accompanied by: (1) evidence of insurance; and (2) a payment for publication  
23 costs. The rights granted herein shall not become effective until all of the  
24 foregoing is received in acceptable form.

25 Passed JAN 2 2001

26 *Doris Sorum*

*Mike Lawler*  
Mayor

Attest: City Clerk

Approved as to form and legality

*Christopher A. Backus*  
Assistant City Attorney



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**SOUND TRANSIT  
ACCEPTANCE OF CITY RIGHT OF USE AGREEMENT**

Ordinance No. \_\_\_\_\_, effective \_\_\_\_\_, 2000.

I, \_\_\_\_\_, am the \_\_\_\_\_ of  
SOUND TRANSIT and am the authorized representative to accept the  
above-referenced City Right of Use Agreement on behalf of SOUND TRANSIT.

I certify that this Right of Use Agreement and all terms and conditions  
thereof are accepted by SOUND TRANSIT, without qualification or reservation.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2000.

SOUND TRANSIT

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

Witness: \_\_\_\_\_

109

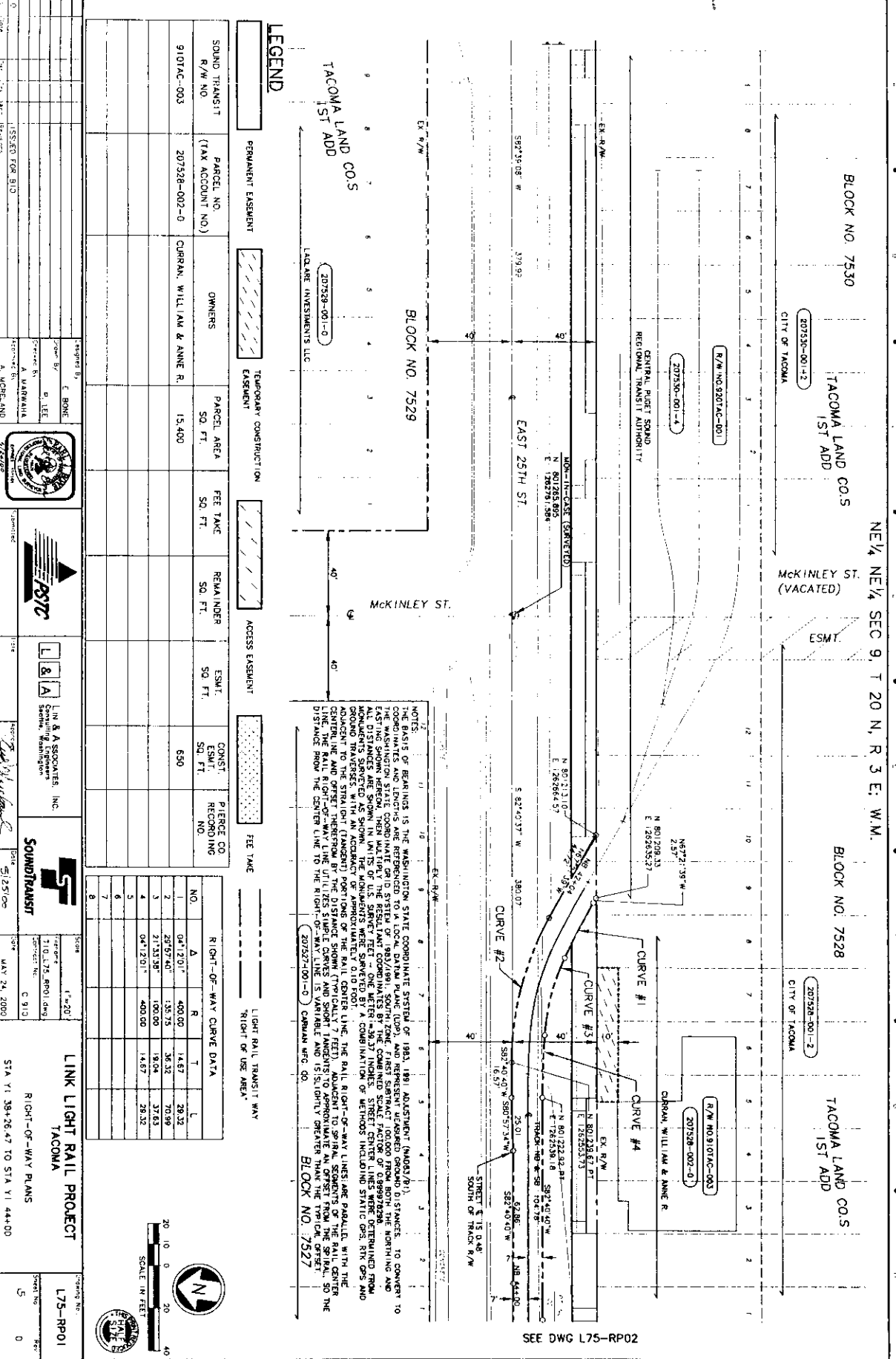


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**EXHIBIT A**

**Description of Right-of-Way Area**

110



**LEGEND**

- PERMANENT EASEMENT
- TEMPORARY CONSTRUCTION EASEMENT
- ACCESS EASEMENT
- FEE TAKE
- RIGHT-OF-WAY AREA
- LIGHT RAIL TRANSIT WAY

SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDER SQ. FT.	ESMT SQ. FT.	CONST. SQ. FT.	PIERCE CO RECORDING NO.
9101AC-003	207528-002-0	CURRAN, WILLIAM & ANNE R.	15,400				650	

NO.	RIGHT-OF-WAY CURVE DATA			
	A	R	T	L
1	04°12'01"	400.00	14.67	28.32
2	29°57'40"	135.75	36.32	70.99
3	21°53'58"	100.00	19.04	37.63
4	04°12'01"	400.00	14.67	28.32
5				
6				
7				

ISSUED FOR BID

Prepared By: E. BONE  
 Checked By: P. LEE  
 Drawn By: A. YAMAMOTO  
 A. MORELAND

Reviewed By: [Signature]

DATE: MAY 24, 2000

SCALE: 1"=20'

STATIONING: STA 11.39+26.47 TO STA 11.44+00

LINK LIGHT RAIL PROJECT  
 TACOMA

CONTRACT NO. L75-RP01

**NOTES:**

1. THE BASIS OF BEARINGS IS THE WASHINGTON STATE COORDINATE SYSTEM OF 1883, 1881 ADJUSTMENT (NAD83).

2. THE BASIS OF DISTANCES IS THE WASHINGTON STATE COORDINATE GRID SYSTEM OF 1983/1981, SOUTH ZONE, FIRST SIBERACT, 100,000 FROM BOTH THE NORTHING AND EASTING SHOWN HEREON. THEN MULTIPLY THE RESULTING COORDINATES BY THE COMBINED SCALE FACTOR OF 0.999978288. DISTANCES DERIVED FROM THIS SYSTEM ARE SHOWN IN METERS. METERS SHALL BE CONSIDERED THE BASIS OF ALL DISTANCES UNLESS OTHERWISE SPECIFIED BY THE CONTRACT DOCUMENTS.

3. ALL DISTANCES ARE SHOWN IN METERS. METERS SHALL BE CONSIDERED THE BASIS OF ALL DISTANCES UNLESS OTHERWISE SPECIFIED BY THE CONTRACT DOCUMENTS.

4. ALL DISTANCES ARE SHOWN IN METERS. METERS SHALL BE CONSIDERED THE BASIS OF ALL DISTANCES UNLESS OTHERWISE SPECIFIED BY THE CONTRACT DOCUMENTS.

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10. ALL DISTANCES ARE SHOWN IN METERS. METERS SHALL BE CONSIDERED THE BASIS OF ALL DISTANCES UNLESS OTHERWISE SPECIFIED BY THE CONTRACT DOCUMENTS.

11. ALL DISTANCES ARE SHOWN IN METERS. METERS SHALL BE CONSIDERED THE BASIS OF ALL DISTANCES UNLESS OTHERWISE SPECIFIED BY THE CONTRACT DOCUMENTS.

12. ALL DISTANCES ARE SHOWN IN METERS. METERS SHALL BE CONSIDERED THE BASIS OF ALL DISTANCES UNLESS OTHERWISE SPECIFIED BY THE CONTRACT DOCUMENTS.

13. ALL DISTANCES ARE SHOWN IN METERS. METERS SHALL BE CONSIDERED THE BASIS OF ALL DISTANCES UNLESS OTHERWISE SPECIFIED BY THE CONTRACT DOCUMENTS.

14. ALL DISTANCES ARE SHOWN IN METERS. METERS SHALL BE CONSIDERED THE BASIS OF ALL DISTANCES UNLESS OTHERWISE SPECIFIED BY THE CONTRACT DOCUMENTS.

15. ALL DISTANCES ARE SHOWN IN METERS. METERS SHALL BE CONSIDERED THE BASIS OF ALL DISTANCES UNLESS OTHERWISE SPECIFIED BY THE CONTRACT DOCUMENTS.

16. ALL DISTANCES ARE SHOWN IN METERS. METERS SHALL BE CONSIDERED THE BASIS OF ALL DISTANCES UNLESS OTHERWISE SPECIFIED BY THE CONTRACT DOCUMENTS.

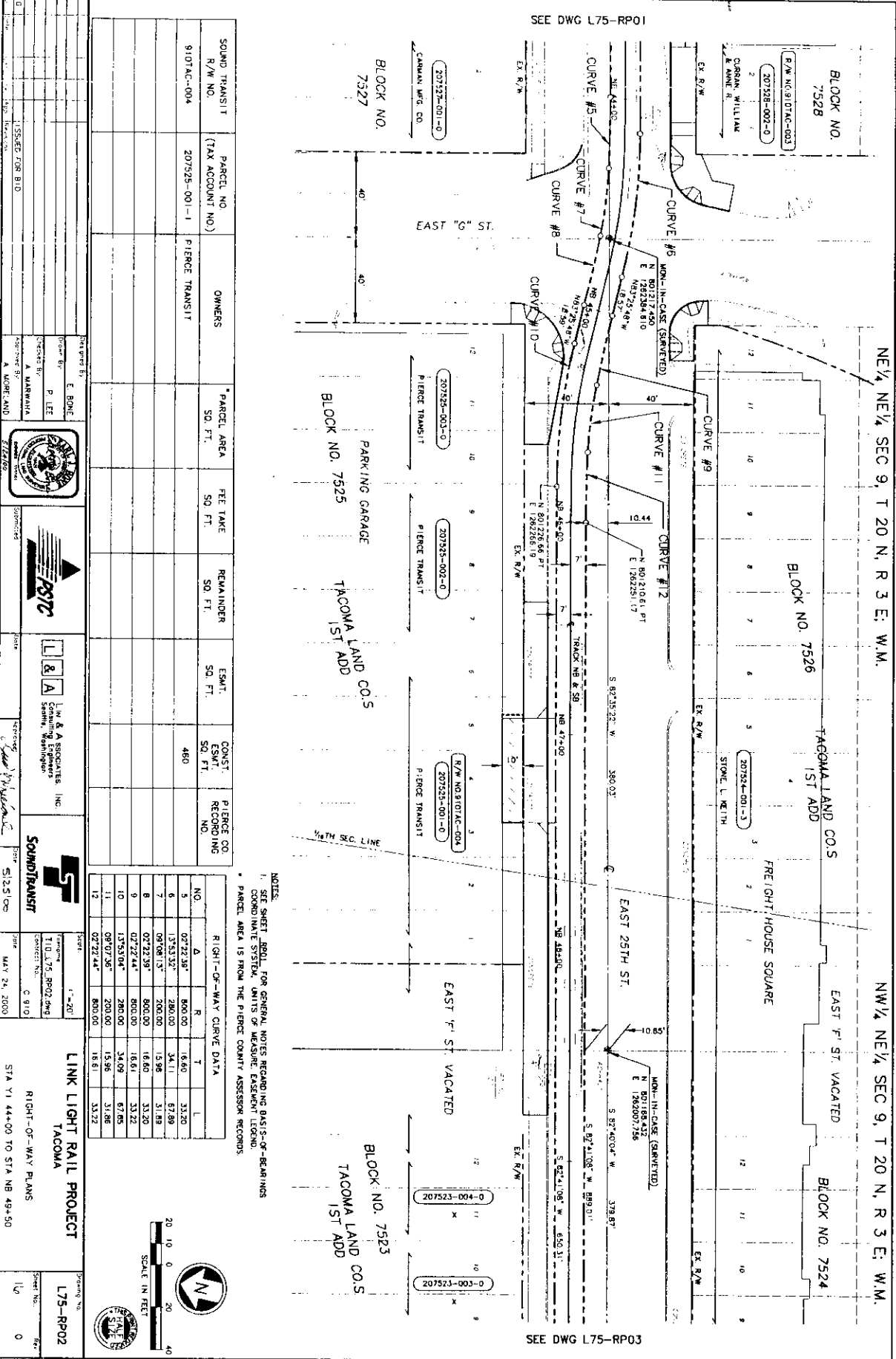
17. ALL DISTANCES ARE SHOWN IN METERS. METERS SHALL BE CONSIDERED THE BASIS OF ALL DISTANCES UNLESS OTHERWISE SPECIFIED BY THE CONTRACT DOCUMENTS.

18. ALL DISTANCES ARE SHOWN IN METERS. METERS SHALL BE CONSIDERED THE BASIS OF ALL DISTANCES UNLESS OTHERWISE SPECIFIED BY THE CONTRACT DOCUMENTS.

19. ALL DISTANCES ARE SHOWN IN METERS. METERS SHALL BE CONSIDERED THE BASIS OF ALL DISTANCES UNLESS OTHERWISE SPECIFIED BY THE CONTRACT DOCUMENTS.

20. ALL DISTANCES ARE SHOWN IN METERS. METERS SHALL BE CONSIDERED THE BASIS OF ALL DISTANCES UNLESS OTHERWISE SPECIFIED BY THE CONTRACT DOCUMENTS.





SEE DWG L75-RP01

SEE DWG L75-RP03

SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDER SQ. FT.	ESMT. SQ. FT.	CONST. ESMT. SQ. FT.	PIERCE CO. RECORDING NO.
9101AC-004	207525-001-1	PIERCE TRANSIT					480	

NOTES:  
1. SEE SHEET R001 FOR GENERAL NOTES REGARDING BASIS-OF-BEARINGS  
2. CONDUIT SYSTEM, UNITS OF MEASURE, EASEMENT LEGEND.  
3. PARCEL AREA IS FROM THE PIERCE COUNTY ASSESSOR RECORDS.

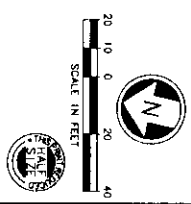
NO.	A	R	T
1	02'22.35"	800.00	18.60
2	13'53.32"	280.00	34.11
3	09'08.13"	200.00	13.98
4	02'22.35"	800.00	18.60
5	02'22.44"	800.00	18.61
6	13'53.04"	280.00	34.09
7	09'07.35"	200.00	15.96
8	02'22.44"	800.00	18.61

RIGHT-OF-WAY CURVE DATA

LINK LIGHT RAIL PROJECT  
TACOMA

RIGHT-OF-WAY PLANS  
STA. Y1 44+00 TO STA. NB 49+50

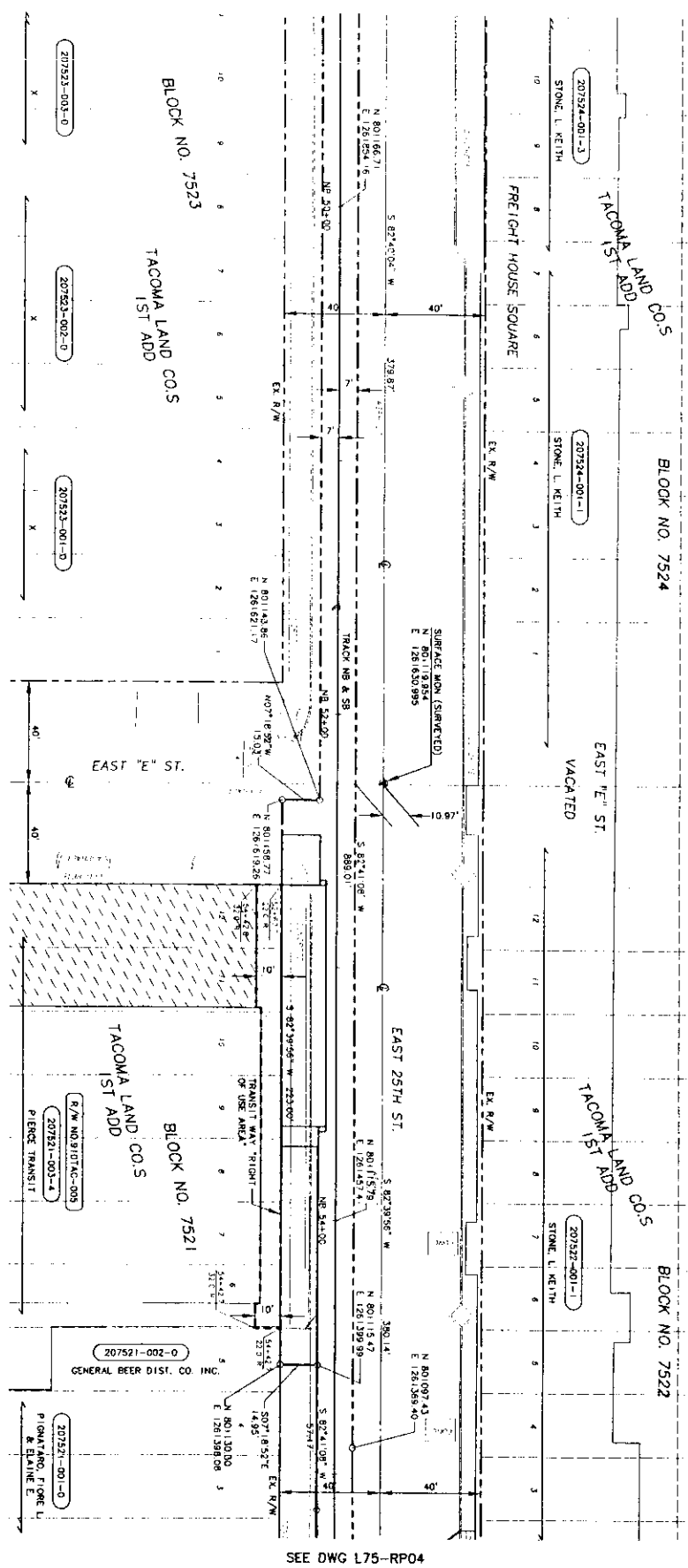
Form No. L75-RP02  
Sheet No. 1 of 0



112

SEE DWG L75-RP02

NW 1/4 NE 1/4 SEC 9, T 20 N, R 3 E, W.M.

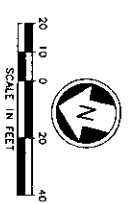


SEE DWG L75-RP04

SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDER SQ. FT.	ESMT. SQ. FT.	CONST. ESMT. SQ. FT.	PIERCE CO. RECORDING NO.
9107AC-005	207521-001-4	PIERCE TRANSIT	22,750			1530	5790	

NO.	RIGHT-OF-WAY CURVE DATA
1	Δ
2	R
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4	L
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NOTES:  
1. SEE SHEET 800L FOR GENERAL NOTES REGARDING BASIS-OF-BEARINGS  
COORDINATE SYSTEM, UNITS OF MEASURE, EASEMENT LEGEND,  
PARCEL AREA IS FROM THE PIERCE COUNTY ASSESSOR RECORDS.



ISSUED FOR BLD	DESIGNED BY A. MARAWA	CHECKED BY A. MARAWA	DATE MAY 24, 2000
PROJECT NO.	DATE	SCALE	BY
PROJECT NAME	DATE	SCALE	BY
PROJECT NO.	DATE	SCALE	BY

**LINK LIGHT RAIL PROJECT**  
TACOMA

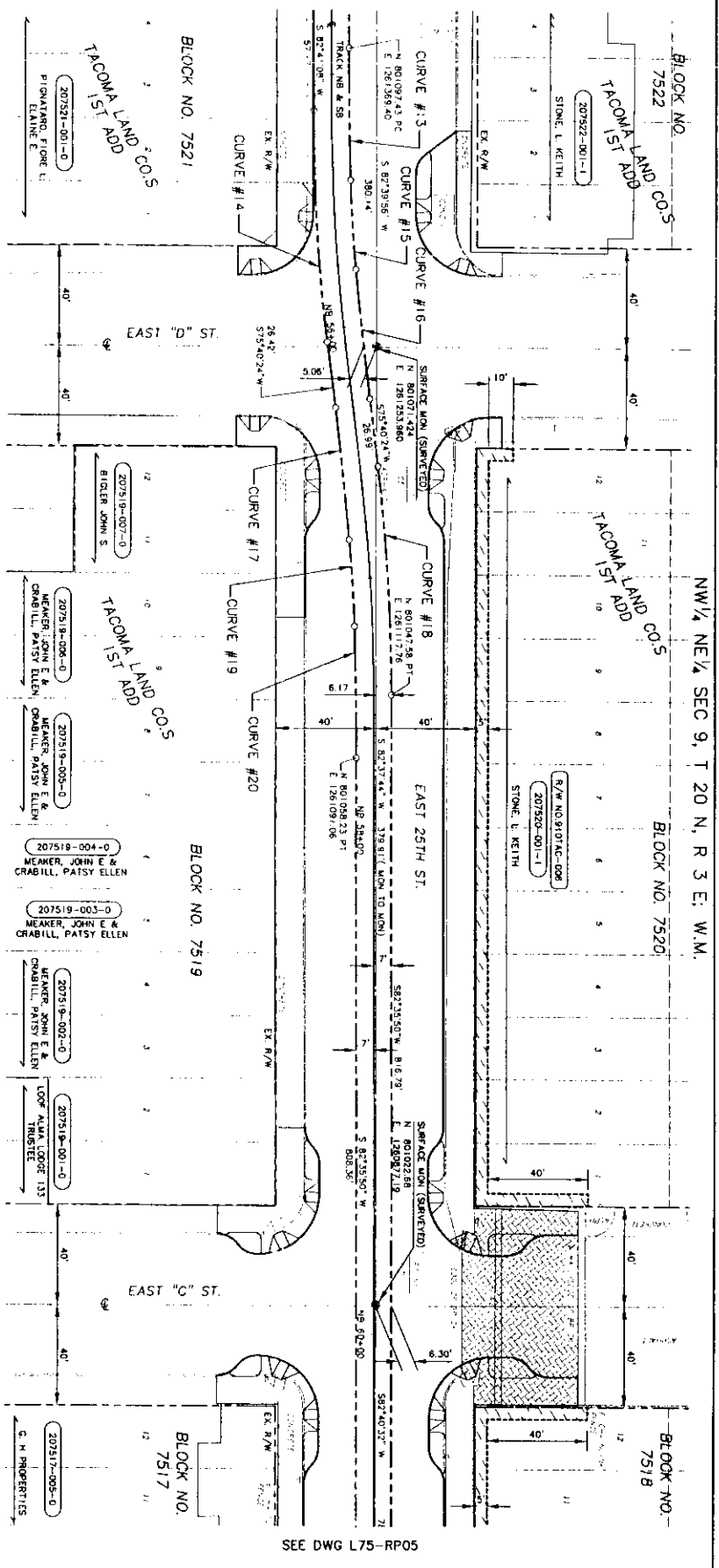
RIGHT-OF-WAY PLANS

DRAWING NO. **L75-RP03**

SHEET NO. **17** OF **0**

113

SEE DWG L75-RP03



SEE DWG L75-RP05

SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDER SQ. FT.	ESMT. SQ. FT.	CONST. ESMT. SQ. FT.	PIERCE CO RECORDING NO.
9107AC-006	207520-00-1-1	STONE, L. KEITH					1750	

RIGHT-OF-WAY CURVE DATA			
NO.	A	R	T
13	0'128'19"	2000.00	25.88
14	0'700'44"	750.00	45.85
15	0'402'06"	500.00	17.81
16	0'128'19"	2000.00	25.88
17	0'130'13"	2000.00	26.24
18	0'652'26"	750.00	45.37
19	0'395'01"	500.00	17.10
20	0'129'13"	2000.00	26.24

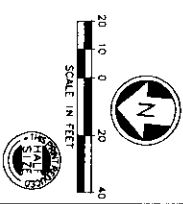
Prepared by: E. BONIC  
 Checked by: P. LEFT  
 Created by: A. WAKAMANA  
 Approved by: A. MORELAND

L & A  
 L. N. & A. ASSOCIATES, INC.  
 Consulting Engineers  
 Seattle, Washington

SOUND TRANSIT  
 TACOMA  
 RIGHT-OF-WAY PLANS  
 STA NB 55+00 TO STA NB 60+50

Owners No. L75-RP04  
 Sheet No. 18 of 0

NOTES:  
 1. SEE SHEET, RPO4 FOR GENERAL NOTES REGARDING BASIS-OF-BEARINGS  
 COORDINATE SYSTEM, UNITS OF MEASURE, EASEMENT LEGEND.  
 \* PARCEL AREA IS FROM THE PIERCE COUNTY ASSESSOR RECORDS.



114

NO.	DESCRIPTION	DATE	BY	CHKD.
1	ISSUED FOR BIDD		A. MORELAND	

DESIGNED BY	E. BONE
CHECKED BY	D. LEE
PROJECT NO.	A. MARAHMA
DATE	5/23/09

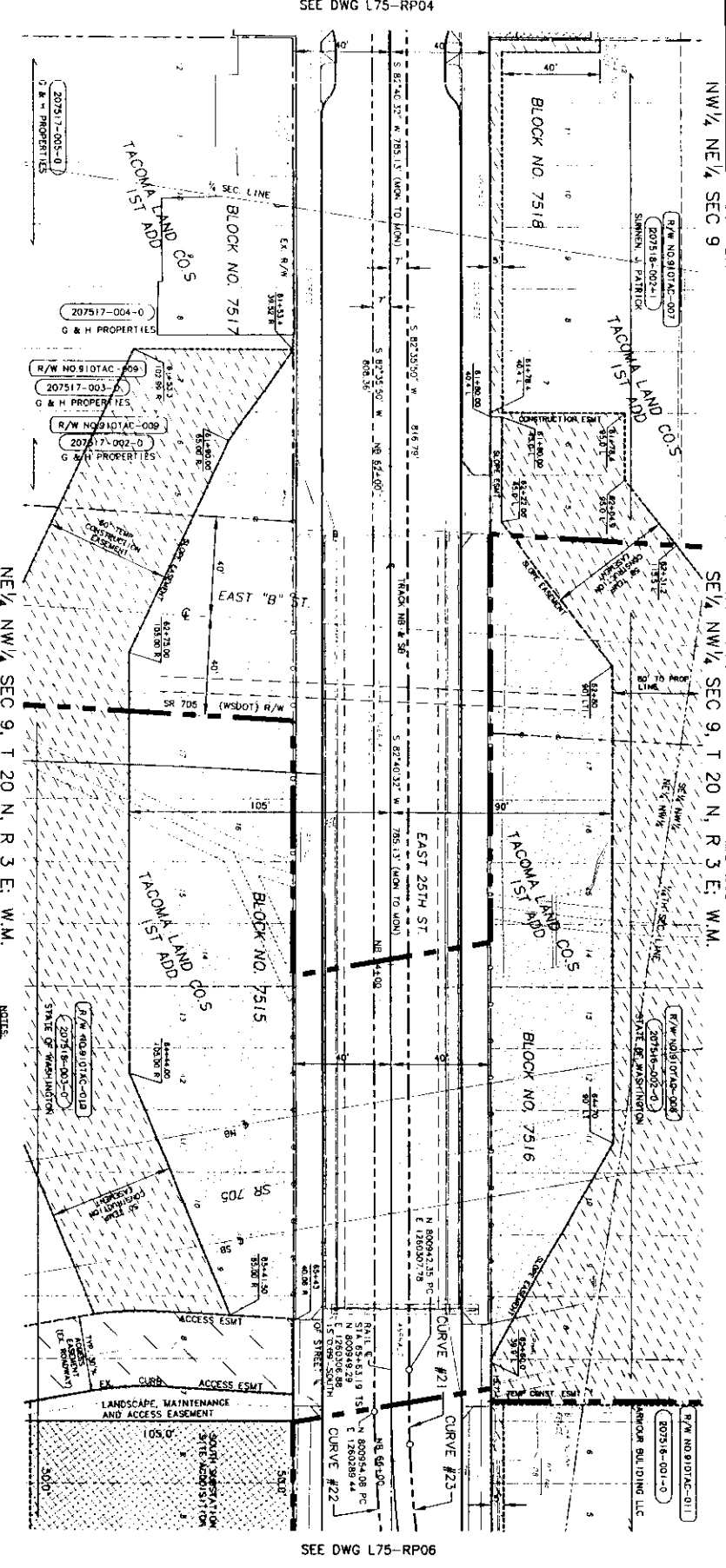
  

SCALE	1"=20'
TITLE	LINK LIGHT RAIL PROJECT
DATE	MAY 24, 2000
PROJECT NO.	STA NB 60+50 TO STA NB 66+00

DRAWING NO.	L75-RP05
SCALE	1"=0'

SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDER SQ. FT.	ESMT SQ. FT.	CONST. ESMT SQ. FT.	PIERCE CO RECORD NO.
9107AC-007	207518-002-1	SUNNEN, J. PATRICK	15,400			SLOPE 230	5720	
9107AC-008	207518-002-0	STATE OF WASHINGTON	NA			SLOPE 216	1514	
9107AC-009	207517-003-0	G & H PROPERTIES	3250			SLOPE 1289	2233	
9107AC-010	207515-003-0	STATE OF WASHINGTON	NA			SLOPE 13,760	12,580	
9107AC-011	207516-001-0	ARMOUR BLDG				ACCESS 1885 LANDSCAPE 1275	760	



NOTE:

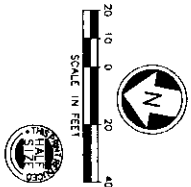
- SEE SHEET, RBL FOR GENERAL NOTES REGARDING BASIS-OF-BEARINGS
- COORDINATE SYSTEM, UNITS OF MEASURE, EASEMENT LEGEND
- PARCEL AREA IS FROM THE PIERCE COUNTY ASSESSOR RECORDS

NO.	Δ	R	T	L
21	0°10'30"	1500.00	14.94	29.88
22	0°7'34.22"	480.00	33.86	67.61
23	0°57'23"	400.00	19.64	39.26
24				
25				
26				

RIGHT-OF-WAY CURVE DATA



SEE DWG L75-RP04

SEE DWG L75-RP06

115

SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDER SQ. FT.	ESMT. SQ. FT.	CONSTR. SQ. FT.	PIERCE CO. RECORDING NO.
910TAC-012	207513-001-0	HANEYS, LLC	1375				1200	
910TAC-013	207414-002-0	CRIL ASSOC., LLC	325				325	
910TAC-013	207414-003-0	CRIL ASSOC., LLC	325				325	

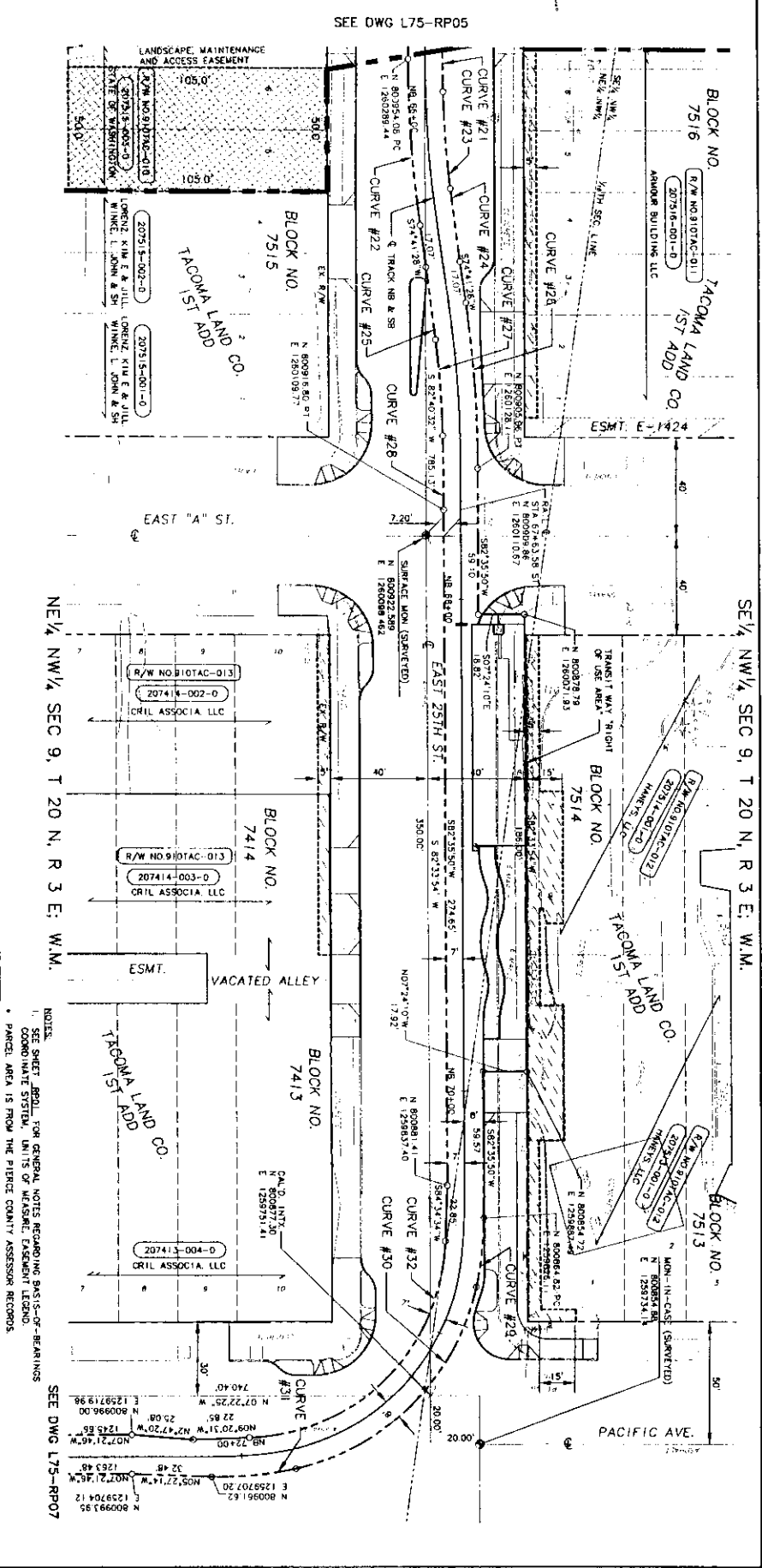
NO.	Δ	R	T	L
21	01°08'30"	1500.00	14.94	28.88
22	07°54'22"	480.00	33.86	67.61
23	05°37'23"	480.00	19.84	28.26
24	01°08'30"	1500.00	14.94	28.88
25	01°08'30"	1500.00	14.94	28.88
26	07°54'22"	480.00	33.86	67.61
27	05°37'23"	480.00	19.84	28.26
28	01°08'30"	1500.00	14.94	28.88

RIGHT-OF-WAY CURVE DATA
RIGHT-OF-WAY CURVE DATA

Scale: 1" = 20'  
 Drawing No. L75-PP06  
 STA NB 66+00 TO STA NB 71+50



NOTES:  
 1. SEE SHEET, PROJ. FOR GENERAL NOTES REGARDING BASIS-OF-BEARINGS  
 2. SEE SHEET, PROJ. FOR COORDINATE SYSTEM, UNITS OF MEASURE, EASEMENT LEGEND.  
 \* PARCEL AREA IS FROM THE PIERCE COUNTY ASSESSOR RECORDS.

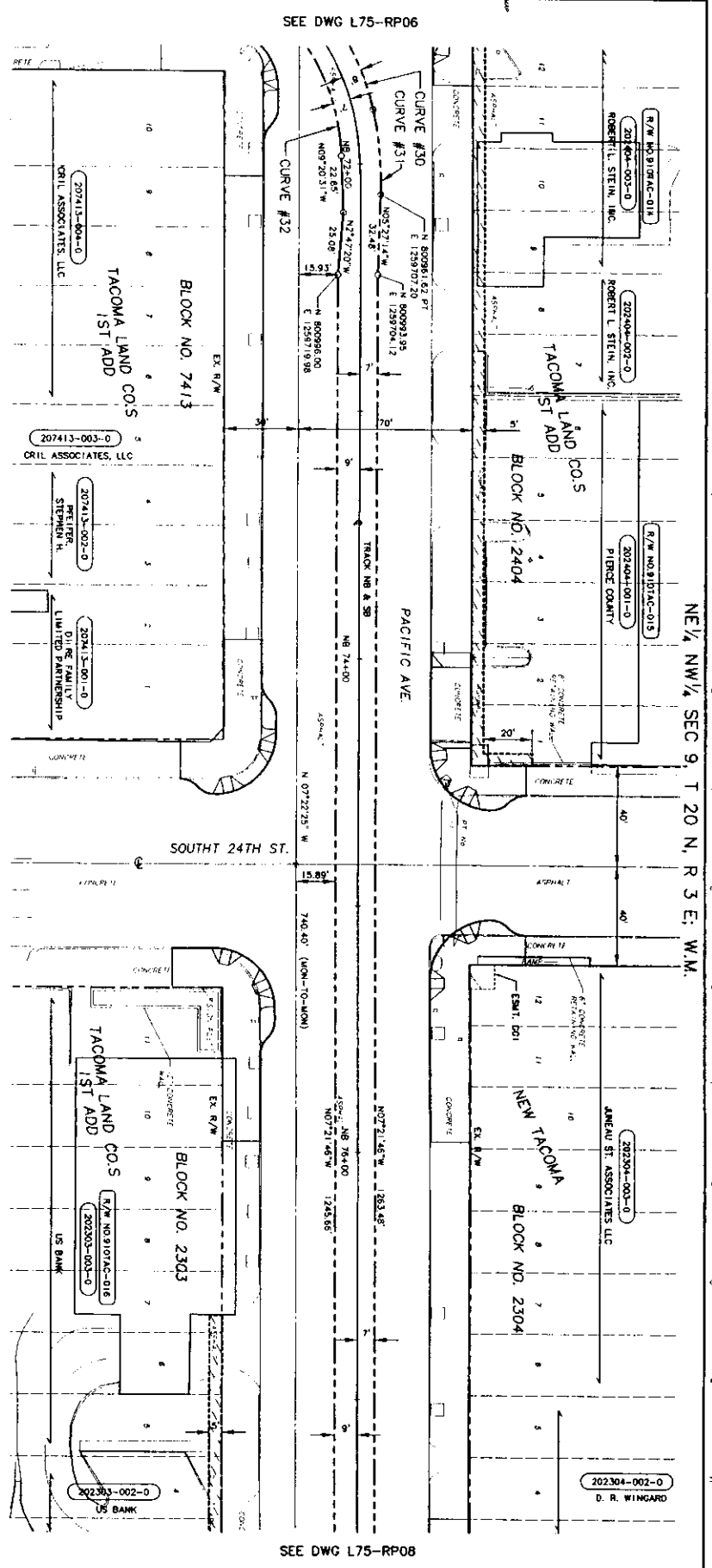
SEE DWG L75-PP07

116

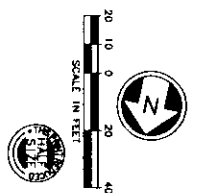
ISSUED FOR BLD	APPROVED BY: A. MORLAND	DATE: 5/25/00	SCALE: 1"=20'
DESIGNED BY: A. MORLAND	DATE: 5/25/00	SCALE: 1"=20'	DATE: 5/25/00
CHECKED BY: A. MORLAND	DATE: 5/25/00	SCALE: 1"=20'	DATE: 5/25/00
APPROVED BY: A. MORLAND	DATE: 5/25/00	SCALE: 1"=20'	DATE: 5/25/00

SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	* PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDER SQ. FT.	ESMT. SQ. FT.	CONST. ESMT. SQ. FT.	PIERCE CO. RECORDING NO.
910TAC-014	202404-002-0	ROBERT L. STEIN, INC.	750					
910TAC-015	202404-003-0	PIERCE COUNTY	850					
910TAC-016	202303-002-0	US BANK	540					
	202303-003-0							

NOTES:  
 1. SEE SHEET 800L FOR GENERAL NOTES REGARDING BASIS-OF-BEARINGS  
 2. COORDINATE SYSTEM, UNITS OF MEASURE, ELEVATION RECORDS.  
 \* PARCEL AREA IS FROM THE PIERCE COUNTY ASSESSOR RECORDS.



NO.	Δ	R	T	L
20	0.106130°	1300.00	14.84	28.88
21	127.4395°	728.07	14.22	28.48
30	64.26307°	98.00	6.92	11.0.45
31	142.3830°	134.44	17.27	34.53
32	60.0495°	83.00	77.51	124.70
33				
34				
35				



117

Parcel No.	Parcel No. (Tax Account No.)	Owners	Parcel Area (SQ. FT.)	Fee (SQ. FT.)	Remainder (SQ. FT.)	ESMT. (SQ. FT.)	Const. (SQ. FT.)	Pierce Co. Recording No.
910TAC-017	202203-001-0	MILLAN, MITCHELL N. & AGNES I.					625	
910TAC-018	202104-009-0	LABOR REAOY, INC.					500	
910TAC-019	202104-004-0	HORIZON PARTNERS, INC.					500	

RIGHT-OF-WAY CURVE DATA	
NO.	Δ
30	
31	
32	
33	
34	
35	
36	
37	

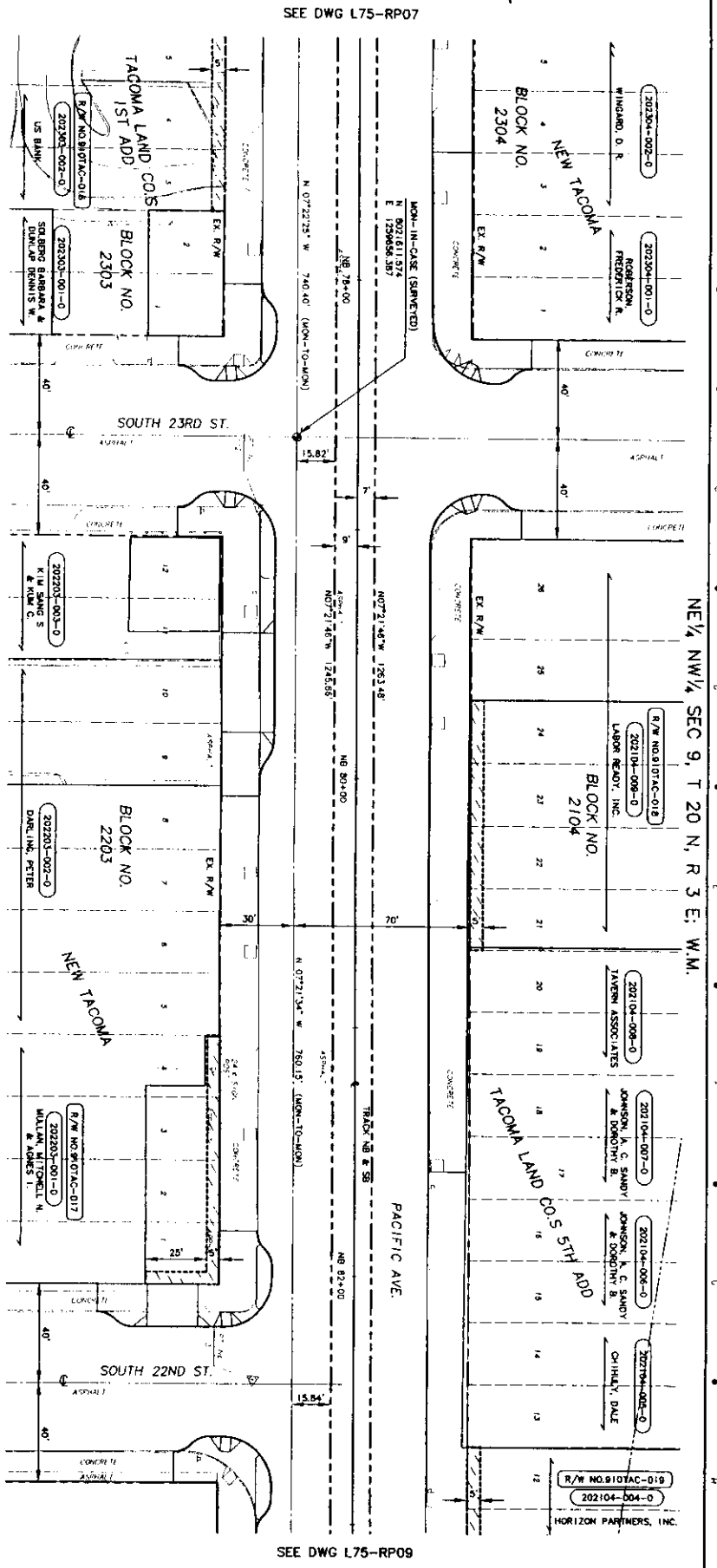
  

Prepared By: E. BONI	Checked By: P. LEE	Approved By: A. MARLAND
Drawn By: P. LEE	Checked By: A. MARLAND	Approved By: A. MARLAND

Scale: 1"=20'	Project: LINK LIGHT RAIL PROJECT
Drawn: T.O.L.T.D. PRO/DWC	Project No.: C 910
Scale: 1"=20'	Project: LINK LIGHT RAIL PROJECT
Drawn: T.O.L.T.D. PRO/DWC	Project No.: C 910
Scale: 1"=20'	Project: LINK LIGHT RAIL PROJECT
Drawn: T.O.L.T.D. PRO/DWC	Project No.: C 910

NOTES:  
1. SEE SHEET RPO7 FOR GENERAL NOTES REGARDING BASIS-OF-BEARINGS COORDINATE SYSTEM, UNITS OF MEASURE, EASEMENT LEGEND.  
\* PARCEL AREA IS FROM THE PIERCE COUNTY ASSESSOR RECORDS.

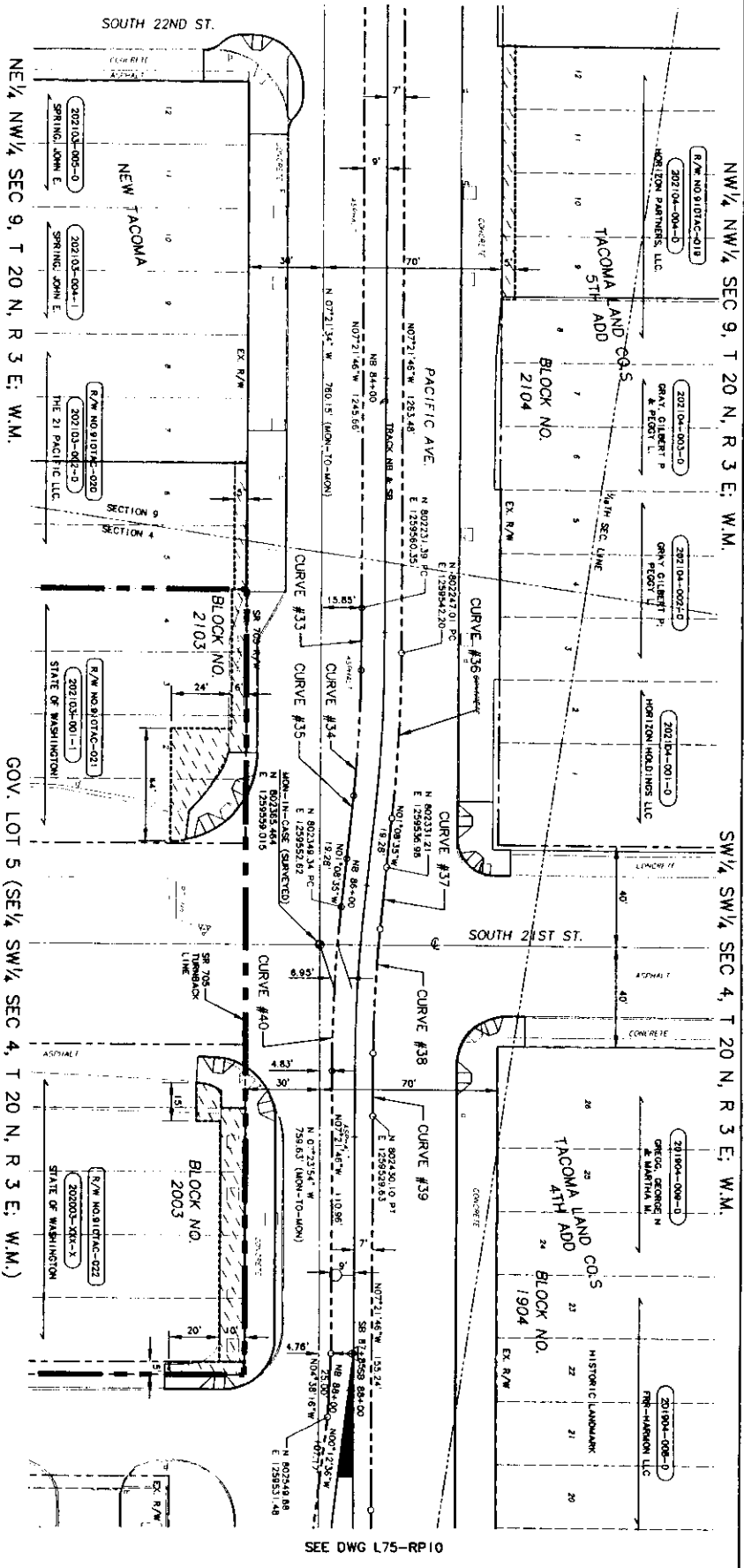


SEE DWG L75-RP07

SEE DWG L75-RP09

811

SEE DWG L75-RP08



SEE DWG L75-RP10

SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDER SQ. FT.	ESMT. SQ. FT.	CONST. ESMT. SQ. FT.	PIERCE CO. RECORDING NO.
910TAC-020	202103-002-0	THE 21 PACIFIC LLC		250			1,100	
910TAC-021	202103-001-1	WSOFT, STATE OF WA					1,250	
910TAC-022	202103-XXX-X	WSOFT, STATE OF WA						

NO.	Δ	R	T	L
33	0°7'34.04"	2498.00	12.38	24.75
34	0°05'03.53"	598.00	24.77	49.52
35	0°7'34.04"	2498.00	12.38	24.75
36	0°7'31.11"	602.00	32.60	65.13
37	0°7'34.04"	2500.00	12.39	24.77
38	0°05'03.53"	598.00	24.86	49.69
39	0°7'34.04"	2500.00	12.39	24.77
40	0°7'31.11"	602.00	32.60	65.13

ISSUED FOR BID

Prepared By: E. BONE  
 Checked By: P. LEE  
 Drawn By: A. MANIYALA

Approved By: A. WONELAND

Submitted: [Stamp]

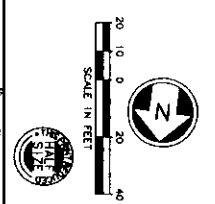
DATE: MAY 24, 2000

Scale: 1"=20'  
 T.O.L.L.S. RECORDING CONTRACT NO. C 910

**LINK LIGHT RAIL PROJECT**  
 TACOMA

RIGHT-OF-WAY PLANS  
 STA NB 92+50 TO STA NB 88+00

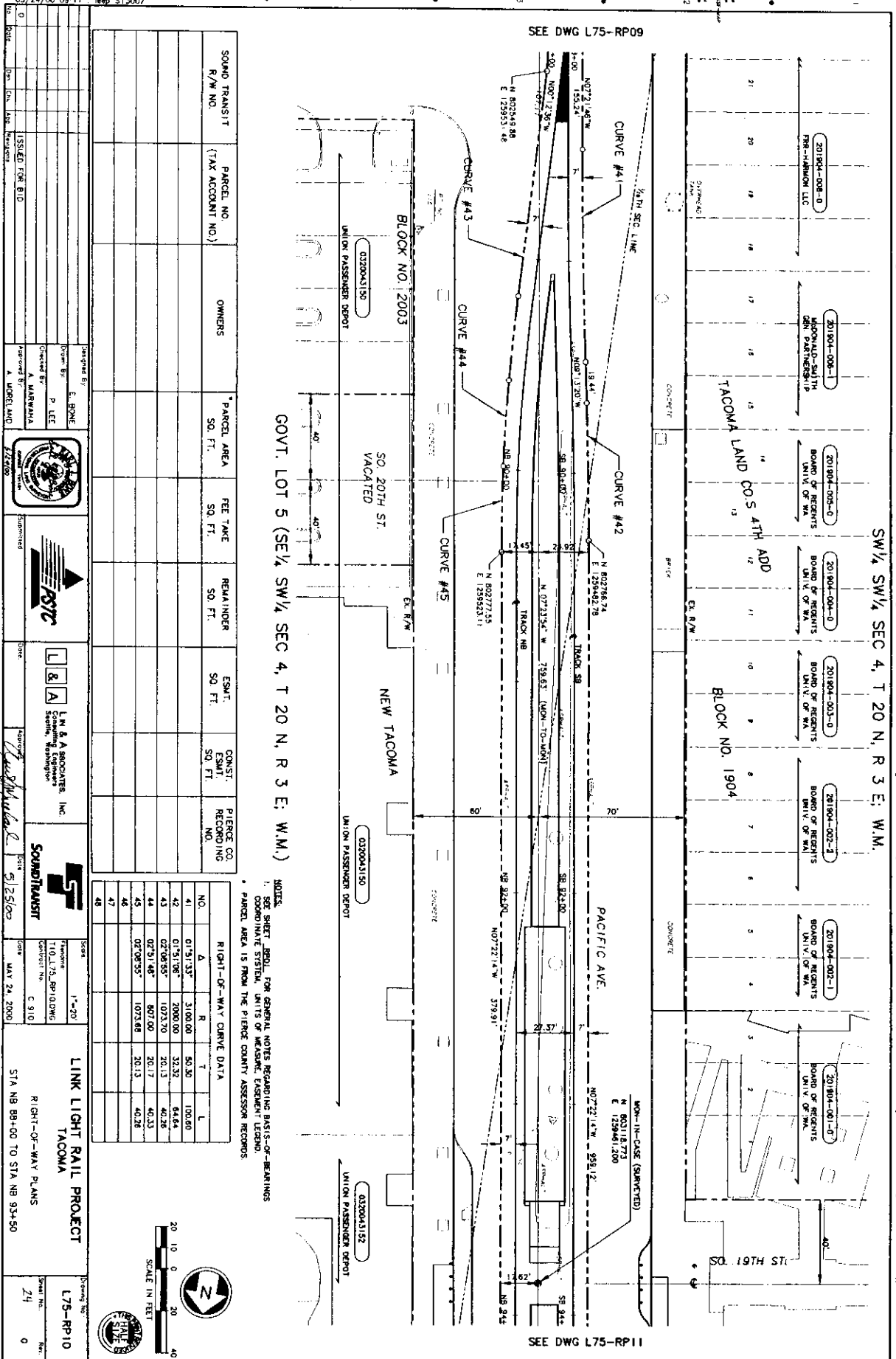
Sheet No. 23 of 25



119



Work T103  
05/24/00 09:11  
RP10.DWG  
leap ST3007



GOVT. LOT 5 (SE 1/4 SW 1/4 SEC 4, T 20 N, R 3 E, W.M.)

- NOTES:**
- 1. SEE SHEET AB001 FOR GENERAL NOTES REGARDING BASIS OF BEARINGS
  - COORDINATE SYSTEM, UNITS OF MEASURE, EASEMENT LEGEND.
  - \* PARCEL AREA IS FROM THE PIENICE COUNTY ASSESSOR RECORDS.

SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDR SQ. FT.	ESMT. SQ. FT.	CONST. SQ. FT.	PIENICE CO. RECORDING NO.

**RIGHT-OF-WAY CURVE DATA**

NO.	Δ	R	T	L
41	0°15'13"	3100.00	50.30	100.80
42	0°15'10"	2000.00	32.32	64.64
43	0°27'06"	1073.30	20.15	40.28
44	0°27'14"	807.00	20.17	40.33
45	0°27'06"	1073.68	20.15	40.28
46				
47				
48				

**LINK LIGHT RAIL PROJECT**  
TACOMA

RIGHT-OF-WAY PLANS

L75-RP10

Scale: 1" = 20'

Scale in Feet: 20, 10, 0, 20

North Arrow

Scale 1" = 20'

Drawn By: E. BONE  
Checked By: P. LEE  
Reviewed By: A. MORGAN  
Approved By: A. MORGAN

DATE: 5/25/00

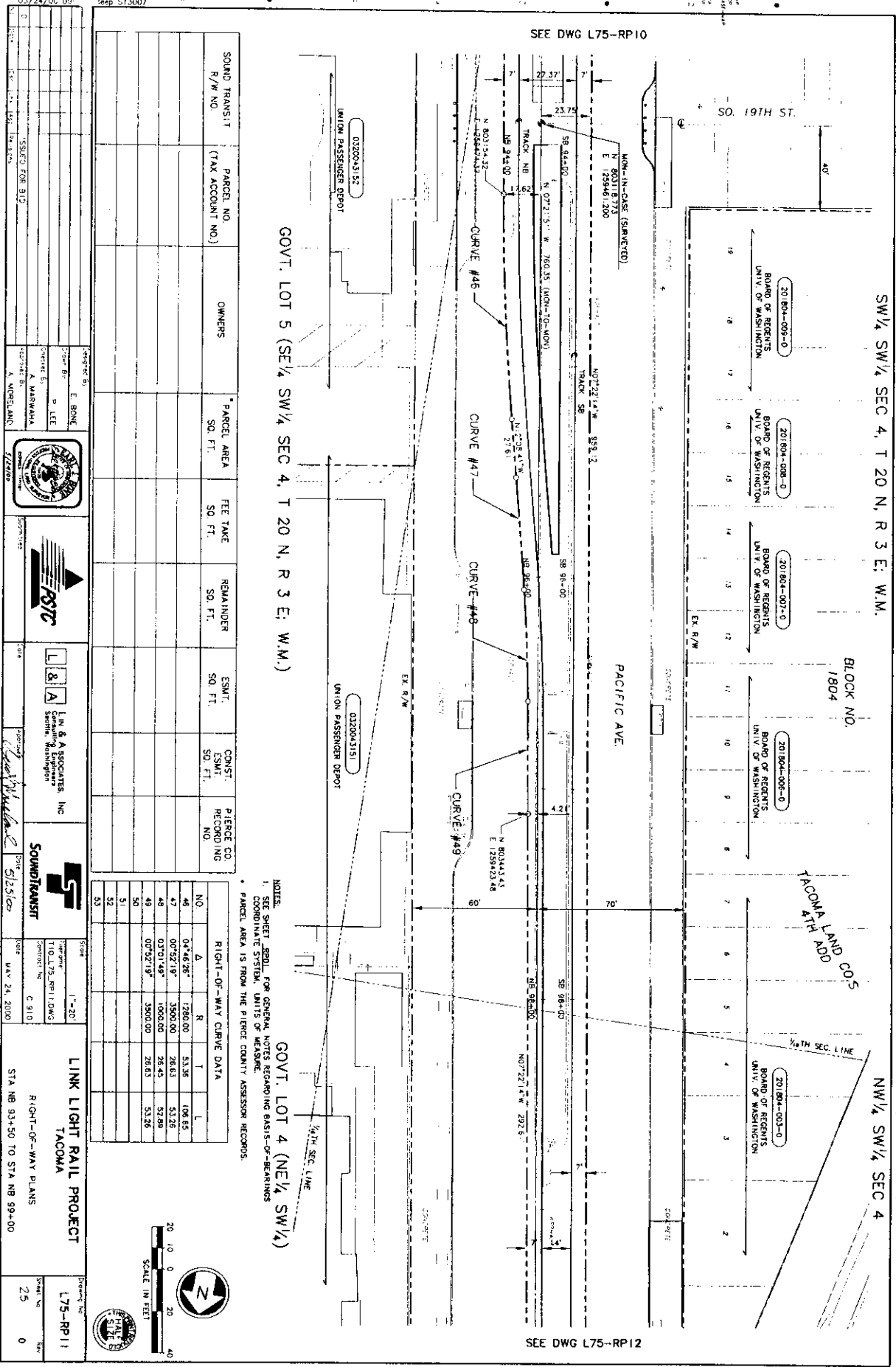
PROJECT: STA NB 88+00 TO STA NB 93+50

Scale: 1" = 20'

Sheet No.: 24

Total Sheets: 0

120



SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDER SQ. FT.	ESMT. SQ. FT.	CONST. SQ. FT.	PIERCE CO. RECORDING NO.

NOTES:  
1. SEE SHEET 890L FOR GENERAL NOTES REGARDING BASIS OF BEARINGS  
COORDINATE SYSTEM, UNITS OF MEASURE.  
\* PARCEL AREA IS FROM THE PIERCE COUNTY ASSESSOR RECORDS.

NO.	RIGHT-OF-WAY CURVE DATA			
	Δ	R	T	L
46	04°46'28"	1260.00	53.36	106.65
47	00°52'18"	3500.00	26.63	51.26
48	03°01'48"	1050.00	26.43	52.89
49	00°52'18"	3500.00	26.63	53.20
50				
51				
52				
53				

LINK LIGHT RAIL PROJECT  
TACOMA

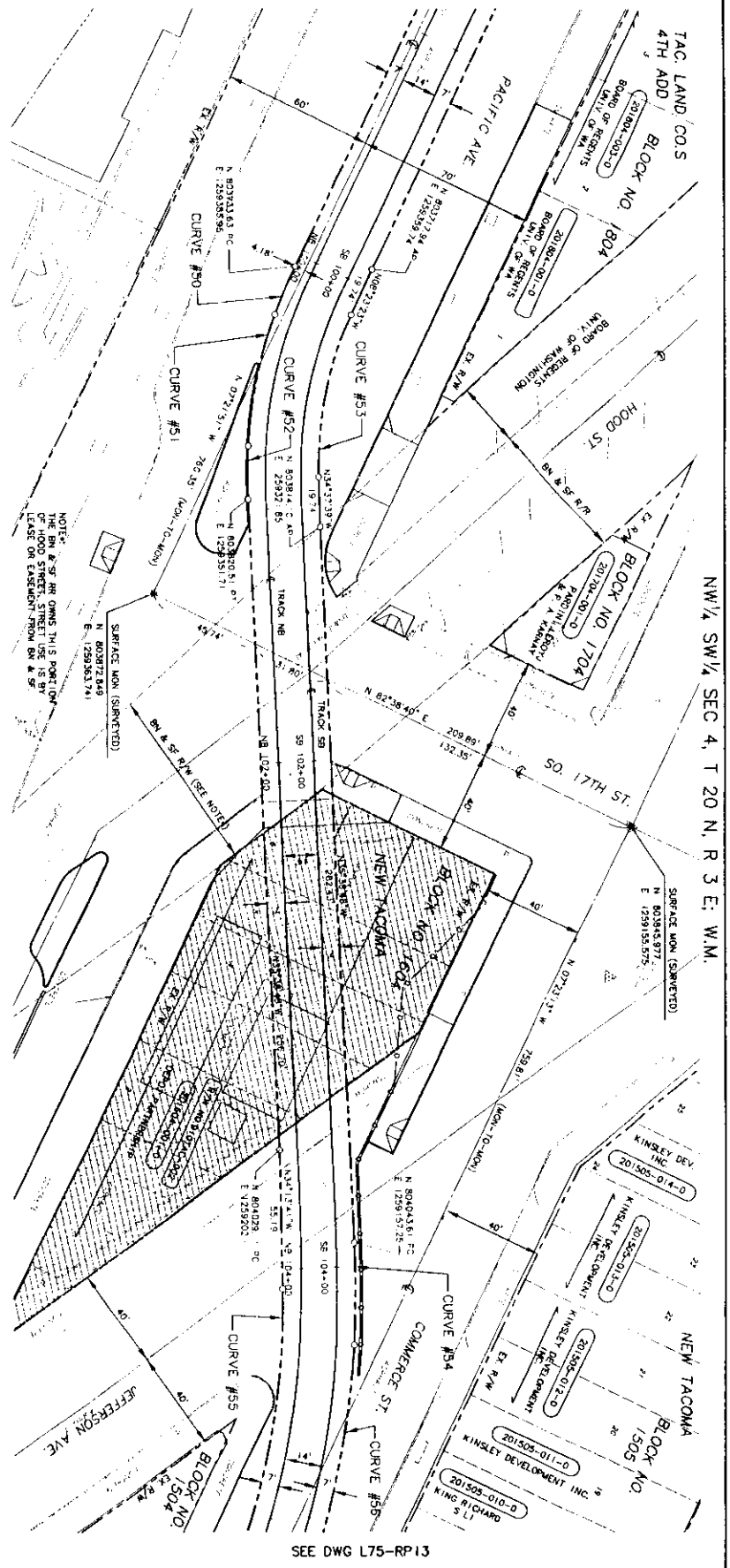
RIGHT-OF-WAY PLANS  
STA NB 93+50 TO STA NB 99+00

Scale 1" = 20'  
DATE MAY 24, 2000  
CONTRACT NO. C 910

DESIGNED BY: L75-RP11  
SCALE: 25' 0'

121

SEE DWG L75-RP11



NW 1/4 SW 1/4 SEC 4, T 20 N, R 3 E, W.M.

SEE DWG L75-RP13

SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDER SQ. FT.	ESMT. SQ. FT.	CONST. SQ. FT.	PIERCE CO. RECORDING NO.
9107AC-002	201604-001-0	DEPOT PARTNERSHIP	15,700	15,700	0	~2940		
9107AC-042	002310-105-0 & 000310-105-0	BN & SF RAILROAD						

NOTE: SHEET PROJ. FOR GENERAL NOTES REGARDING BASIS-OF-BEARINGS, COORDINATE SYSTEM, UNITS OF MEASURE, EXISTENT LEGEND. PARCEL AREA IS FROM THE PIERCE COUNTY ASSESSOR RECORDS.

NO.	A	R	T	L
50	50°14'14"	225.82	10.33	20.64
51	17°48'06"	171.10	26.80	53.16
52	03°14'42"	226.82	10.33	20.64
53	28°14'18"	148.00	33.33	83.48
54	03°27'37"	426.78	20.35	40.67
55	25°25'25"	283.00	68.09	130.01
56	17°20'56"	321.80	49.07	97.39
57				

LINK LIGHT RAIL PROJECT  
 TACOMA

RIGHT-OF-WAY PLANS  
 STA NB 99+00 TO STA NB 104+00

SCALE IN FEET  
 1" = 20'

L75-RP12  
 SHEET 26 OF 0

DESIGNED FOR BID	ISSUED FOR BID	DATE	BY

DESIGNED BY: A. MORILLANO  
 DRAWN BY: A. MORILLANO  
 CHECKED BY: F. LEE  
 DATE: 5/24/00

DESIGNED BY: E. BONNE  
 DRAWN BY: F. LEE  
 CHECKED BY: A. MORILLANO  
 DATE: 5/24/00

DESIGNED BY: A. MORILLANO  
 DRAWN BY: A. MORILLANO  
 CHECKED BY: F. LEE  
 DATE: 5/24/00

DESIGNED BY: A. MORILLANO  
 DRAWN BY: A. MORILLANO  
 CHECKED BY: F. LEE  
 DATE: 5/24/00

DESIGNED BY: A. MORILLANO  
 DRAWN BY: A. MORILLANO  
 CHECKED BY: F. LEE  
 DATE: 5/24/00

DESIGNED BY: A. MORILLANO  
 DRAWN BY: A. MORILLANO  
 CHECKED BY: F. LEE  
 DATE: 5/24/00

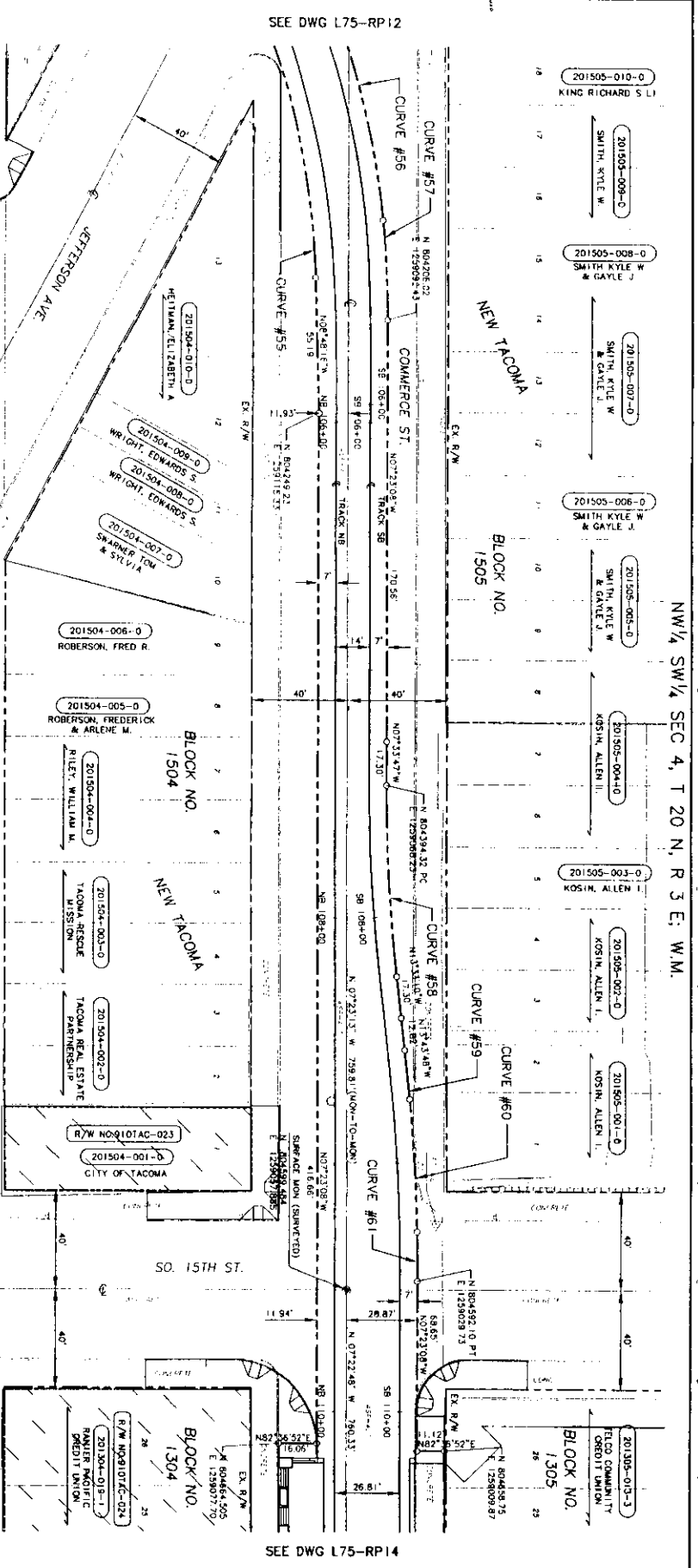
DESIGNED BY: A. MORILLANO  
 DRAWN BY: A. MORILLANO  
 CHECKED BY: F. LEE  
 DATE: 5/24/00

202

NO.	DATE	BY	REVISION
1	11-20	LEP	ISSUED FOR BID
2	11.0.L75-RP13.0WG	LEP	REVISED
3	05/24/00	LEP	REVISED

SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDER SQ. FT.	ESMT. SQ. FT.	CONSTR. ESMT. SQ. FT.	PIERCE CO. RECORDING NO.
9107AC-023	201504-001-0	CITY OF TACOMA						
9107AC-024	201504-019-1	RANIER PACIFIC CREDIT UNION						

NO.	A	R	T	L
35	252,292.57	293,100	66,039	1,301.01
36	1,720,218.78	32,180	48.07	97.39
37	69,777.98	426.78	20.33	40.87
38	67,592.23	743,500	38,337	77.67
39	01,708.45	1,008.98	10.07	20.14
40	04,030.98	737.00	28.78	53.54
41	01,084.45	1,007.01	10.07	20.14
42				



NW 1/4 SW 1/4 SEC 4, T 20 N, R 3 E, W.M.

NOTES:

- SEE SHEET RP14 FOR GENERAL NOTES REGARDING BASIS-OF-BEARS AND COORDINATE SYSTEM. UNITS OF MEASURE: FATHOM; LEGEND.
- PARCEL AREA IS FROM THE PIERCE COUNTY ASSESSOR RECORDS.

RIGHT-OF-WAY CURVE DATA

LINK LIGHT RAIL PROJECT  
TACOMA

DATE: 11-20  
DRAWN BY: TIO.L75-RP13.0WG  
CHECKED BY: C 910  
DATE: MAY 24 2000

STA NB 104+50 TO STA NB 110+00

SCALE IN FEET

20 10 0 20 40

27 0

123

SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDER SQ. FT.	ENST. SQ. FT.	CONSTR. ESTMT. SQ. FT.	PIERCE CO. RECORDING NO.
9101AC-025	201304-001-0 TO 201304-018-0	PIERCE COUNTY					ACCESS & 5650	
9101AC-026	201305-013-2	TELECOM COMMUNITY CREDIT UNION					1200	
9101AC-027	201305-012-0	GREAT WESTERN EQUITIES LTD.					885	

NO.	Δ	R	T	L
62	0°10'45"	1087.00	10.07	2014
63	0°04'44"	797.00	26.96	33.88
64	0°10'45"	1087.00	10.07	2014
65	0°00'57"	743.00	39.04	78.01
66				
67				
68				
69				

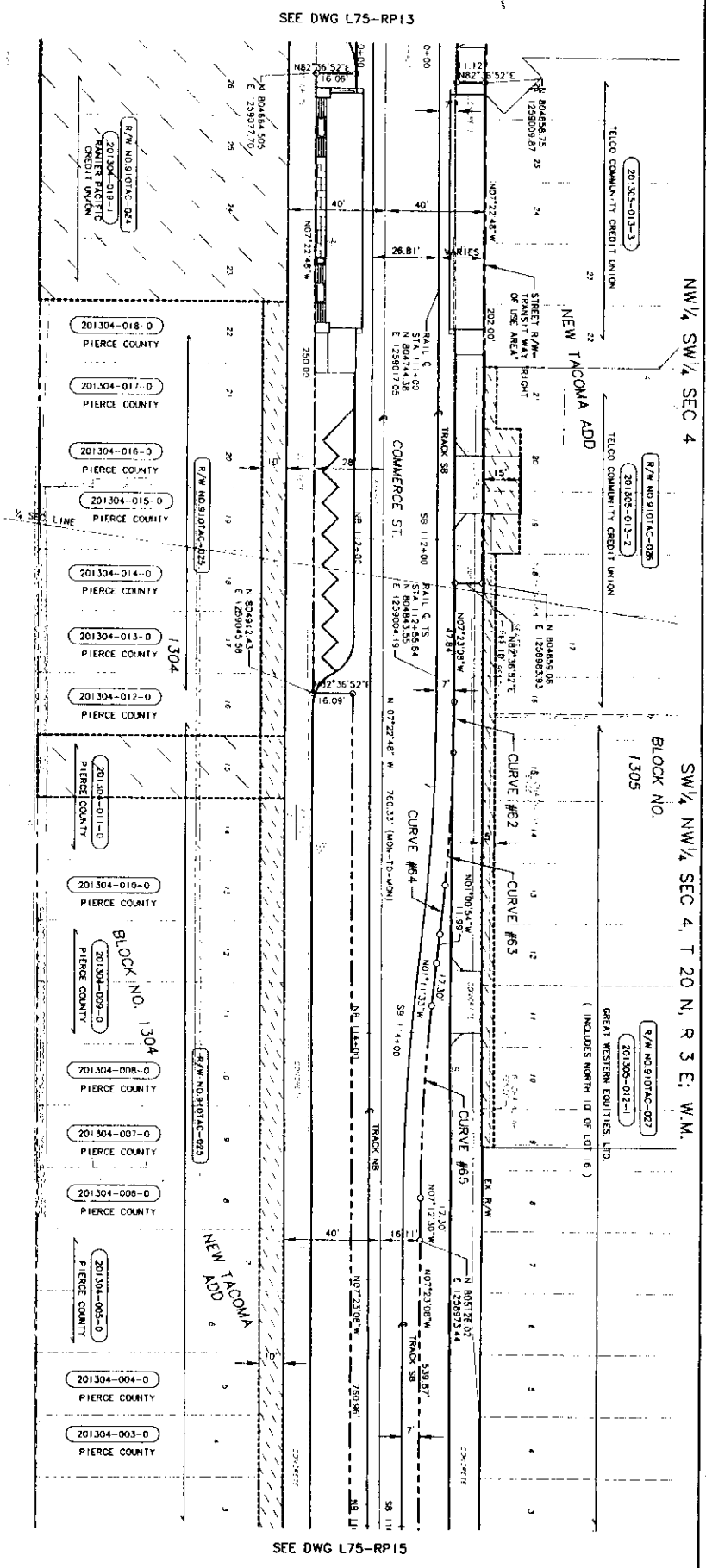
  

RIGHT-OF-WAY CURVE DATA
RIGHT-OF-WAY CURVE DATA

NO.	Δ	R	T	L
62	0°10'45"	1087.00	10.07	2014
63	0°04'44"	797.00	26.96	33.88
64	0°10'45"	1087.00	10.07	2014
65	0°00'57"	743.00	39.04	78.01
66				
67				
68				
69				

NOTES:  
 1. SEE SHEET R8D1 FOR GENERAL NOTES REGARDING BASIS-OF-BEARINGS COORDINATE SYSTEM, UNITS OF MEASURE, EASEMENT LEGEND.  
 \* PARCEL AREA IS FROM THE PIERCE COUNTY ASSESSOR RECORDS.



SEE DWG L75-RP13

SEE DWG L75-RP15

ISSUED FOR BLDG

REGISTERED ENGINEER  
 E. BOHE  
 P. LEE  
 A. VANHARMA  
 A. MODELAND

REGISTERED PROFESSIONAL ENGINEER  
 LIN & A ASSOCIATES, INC.  
 Consulting Engineers  
 Seattle, Washington

SOUND TRANSIT

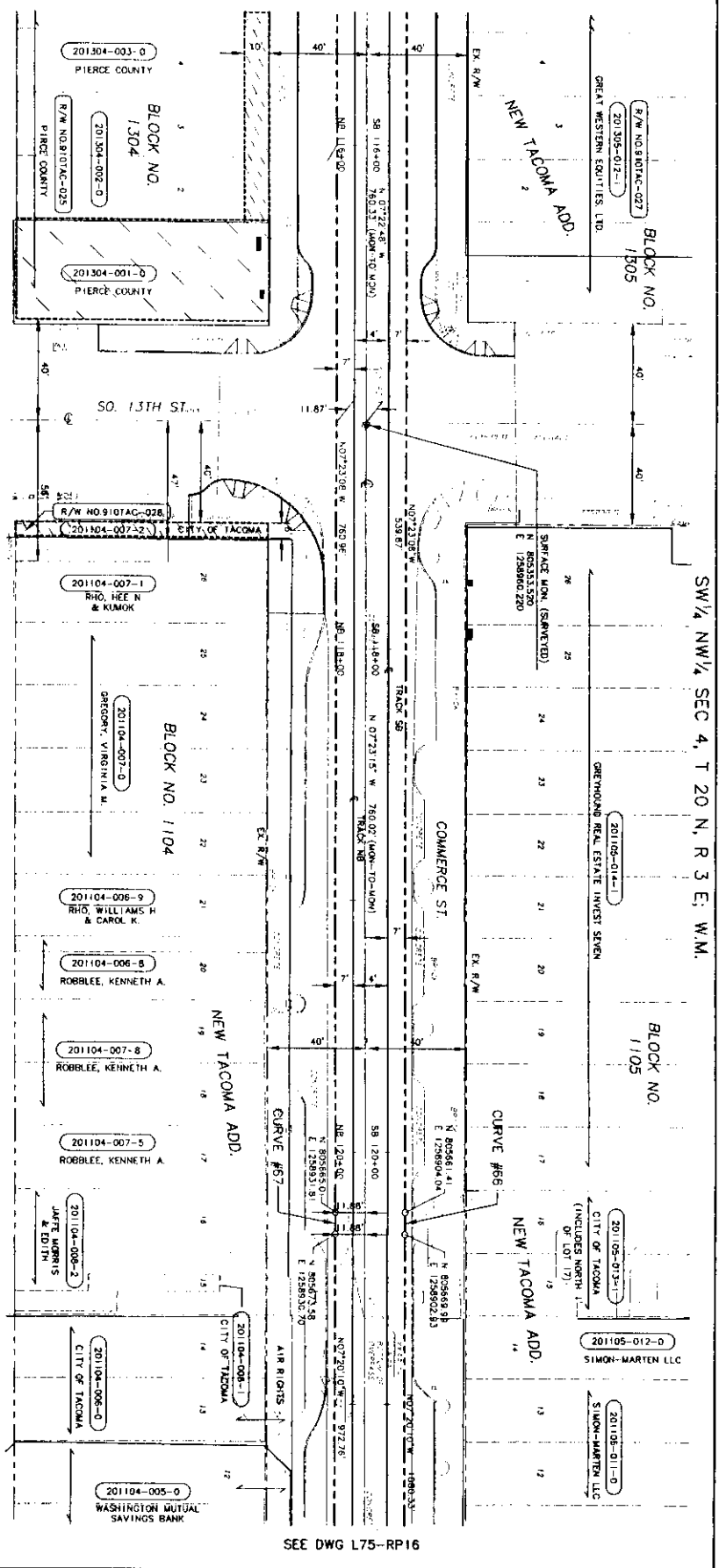
LINK LIGHT RAIL PROJECT  
 TACOMA

RIGHT-OF-WAY PLANS  
 STA NB 110+00 TO STA NB 115+50

Sheet No. 2B of 0

124

SEE DWG L75-RP14



SOUND TRANSIT R/W NO.	PARCEL NO (TAX ACCOUNT NO.)	OWNERS	PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDER SQ. FT.	ESMT. SQ. FT.	CONST. ESMT. SQ. FT.	PIERCE CO RECORDING NO.
910TAC-028	201104-007-2	CITY OF TACOMA					600	

NOTES:  
1. SHEET 2001 - FOR GENERAL NOTES REGARDING BASIS-OF-BEARINGS  
2. RECORDING SYSTEM UNITS OF MEASURE: FATHOM, F. LB. 20.  
3. PARCEL AREA IS FROM THE PIERCE COUNTY ASSESSOR RECORDS.

NO.	Δ	R	T	L
66	00°02'58"	10007.00	4.32	8.85
67	00°02'58"	9993.00	4.32	8.63
68				
70				
71				
72				
73				

RIGHT-OF-WAY CURVE DATA

NO.	Δ	R	T	L
66	00°02'58"	10007.00	4.32	8.85
67	00°02'58"	9993.00	4.32	8.63
68				
70				
71				
72				
73				

LINK LIGHT RAIL PROJECT  
TACOMA

RIGHT-OF-WAY PLANS  
STA NB 115+50 TO STA NB 121+00

SCALE IN FEET

0 20 40

ISSUED FOR BID

DESIGNED BY: E. BONE  
CHECKED BY: B. LEE  
DRAWN BY: B. LEE  
DATE: MAY 24, 2000

PIERCE COUNTY

PS&T

L & A

LIN & ASSOCIATES, INC.  
SOUND TRANSIT

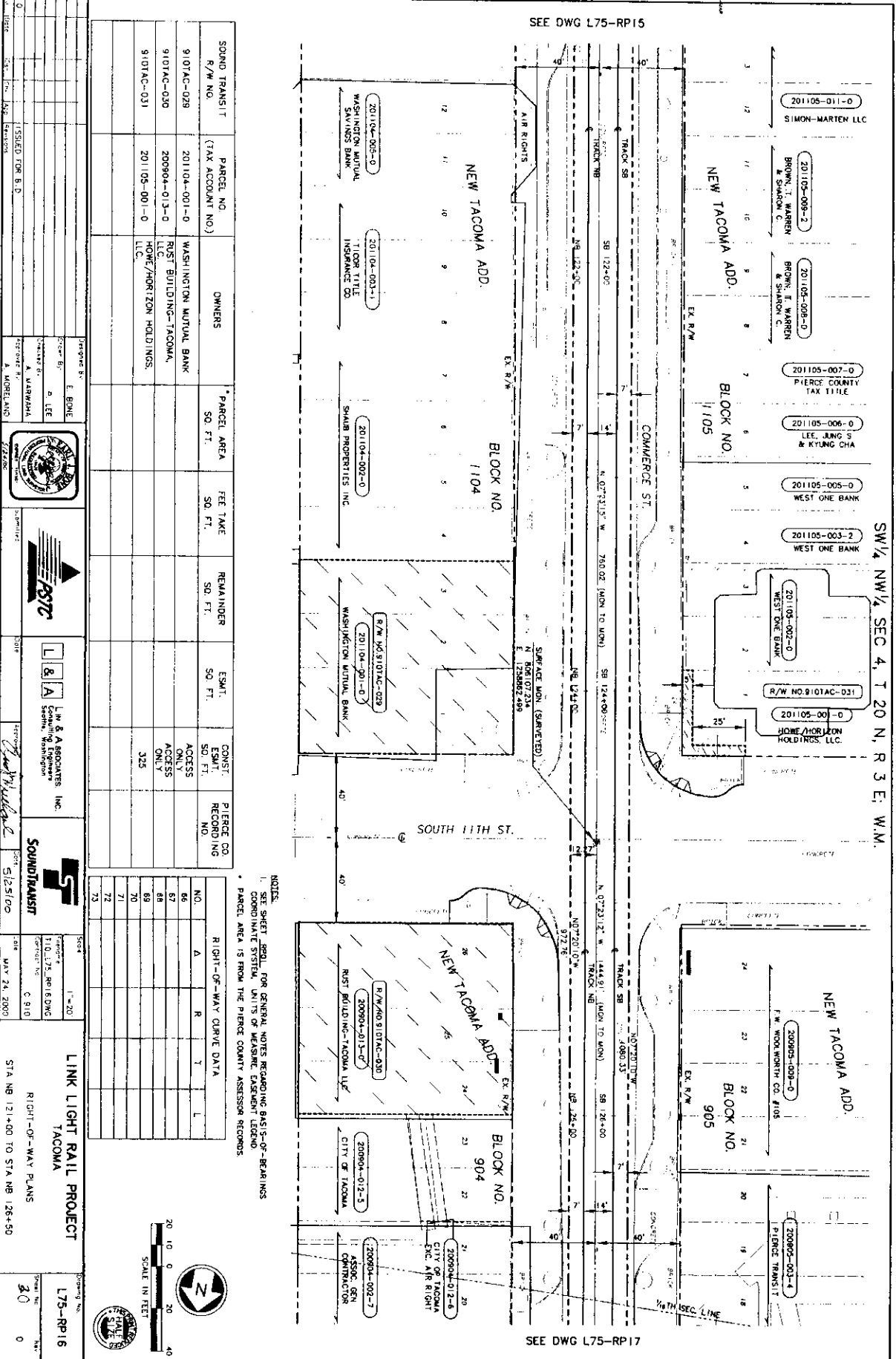
STATIONING: STA NB 115+50 TO STA NB 121+00

PROJECT NO: L75-RP15

DATE: 05/24/00

125

SEE DWG L75-RP15



SW 1/4 NW 1/4 SEC 4, T 20 N, R 3 E, W.M.

SEE DWG L75-RP17

SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDER SQ. FT.	ESMT. SQ. FT.	CONSTR. ESMT. SQ. FT.	PIERCE CO. RECORDING NO.
9101AC-029	201104-001-0	WASHINGTON MUTUAL BANK						
9101AC-030	200904-013-0	RUST BUILDING-TACOMA, LLC						
9101AC-031	201105-001-0	HOME/HORIZON HOLDINGS, LLC					335	

NOTES:  
1. SEE SHEET 800L FOR GENERAL NOTES REGARDING BASIS-OF-BEARINGS COORDINATE SYSTEM, UNITS OF MEASURE, EASEMENT LEGEND.  
\* PARCEL AREA IS FROM THE PIERCE COUNTY ASSESSOR RECORDS.

NO.	Δ	R	T	L
66				
67				
68				
69				
70				
71				
72				
73				

RIGHT-OF-WAY CURVE DATA				
NO.	Δ	R	T	L
66				
67				
68				
69				
70				
71				
72				
73				

DESIGNED BY: E. BONE  
CHECKED BY: D. LEE  
APPROVED BY: A. MARIYAMA  
A. MORELAND

DATE: 5/24/00

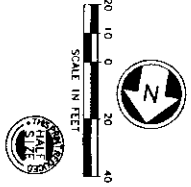
SCALE: 1"=20'

PROJECT: LINK LIGHT RAIL PROJECT  
TACOMA

DATE: MAY 24, 2000

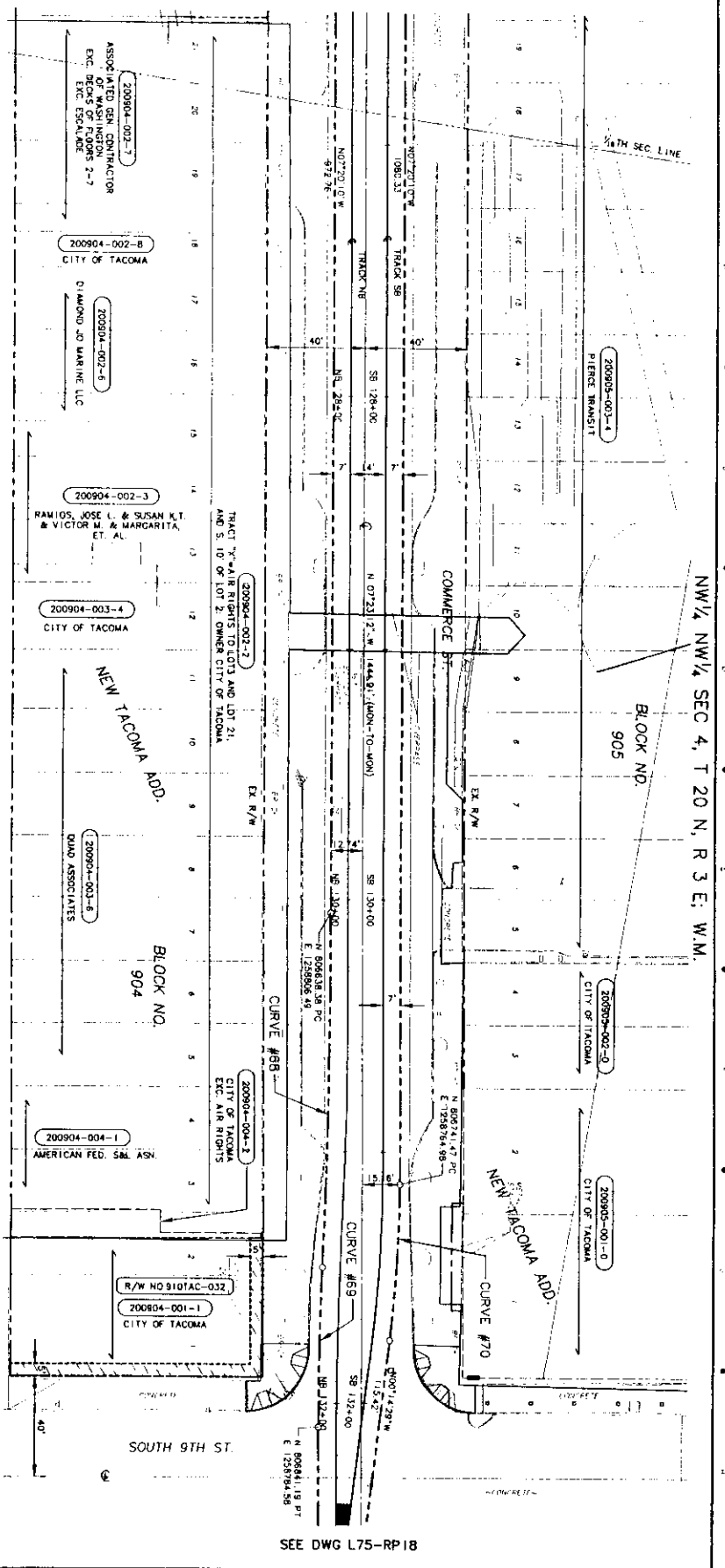
STATIONING: STA NB 121+00 TO STA NB 128+50

PROJECT NO.: L75-RP16



126

SEE DWG L75-RP16



NW 1/4, NW 1/4, SEC 4, T 20 N, R 3 E, W.M.

BLOCK NO. 905

BLOCK NO. 904

SOUTH 9TH ST.

SEE DWG L75-RP18

- NOTES:  
1. SEE SHEET ABPL FOR GENERAL NOTES REGARDING BASIS OF BEARINGS  
COORDINATE SYSTEM, UNITS OF MEASURE, EASEMENT LEGEND.  
\* PARCEL AREA IS FROM THE PIERCE COUNTY ASSESSOR RECORDS.

SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDER SQ. FT.	ESMT. SQ. FT.	CONST. ESMT. SQ. FT.	PIERCE CO. RECORDING NO.
910TAC-032	200904-001-0	CITY OF TACOMA					765	

RIGHT-OF-WAY CURVE DATA							
NO.	Δ	R	T	L			
88	07°21'29"	3420.00	70.38	140.75			
89	07°24'57"	1500.00	31.63	63.25			
70	07°06'42"	500.00	31.00	61.81			
71							
72							
73							
74							
75							

DESIGNED BY: E. BONE  
CHECKED BY: P. LEE  
DRAWN BY: A. MARWANA  
DATE: 5/24/00

SCALE: 1" = 40'

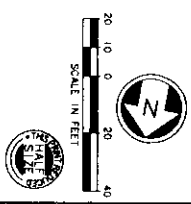
DATE: MAY 24, 2000

LINK LIGHT RAIL PROJECT  
TACOMA

RIGHT-OF-WAY PLANS

STA NB 126+50 TO STA NB 132+00

Sheet No. 31 of 0

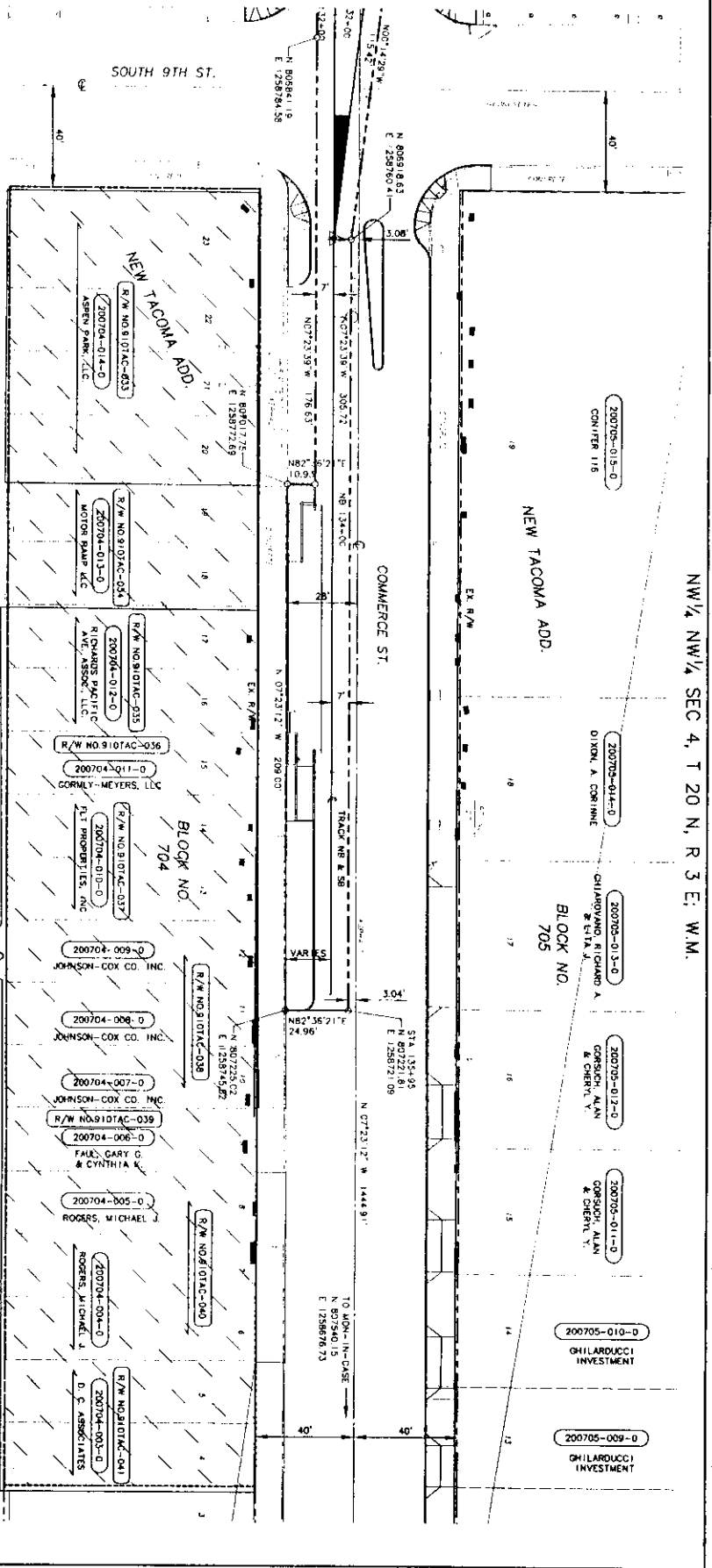


127



C:\Work\T16.L P18.DWG  
05/24/00 08:31  
Imp: S13007

SEE DWG L75-RP17



SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	*PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINING SQ. FT.	ESMT SQ. FT.	CONST. ESMT SQ. FT.	PIERCE CO. RECORDING NO.
9101AC-033	200704-014-B	ASPEN PARK, LLC					ACCESS ONLY	
9101AC-034	200704-013-0	MOTOR RAMP, LLC					ACCESS ONLY	
9101AC-035	200704-012-0	RICHARDS PAC, AVE ASSOC, LLC					ACCESS ONLY	
9101AC-036	200704-011-0	COHLY-MEYERS, LLC					ACCESS ONLY	
9101AC-037	200704-010-0	D.T. PROPERTIES, LLC					ACCESS ONLY	
9101AC-038	200704-007-0 TO 009	JOHNSON-COX CO. INC.					ACCESS ONLY	
9101AC-039	200704-008-0	PAUL, CARY G. & CYNTHIA K.					ACCESS ONLY	
9101AC-040	200704-001-0 TO 005	ROBBERS, MICHAEL J.					ACCESS ONLY	
9101AC-041	200704-003-0	D.C. ASSOCIATES					ACCESS ONLY	

**NOTE:**  
THIS SHEET SHALL BE FOR GENERAL NOTES REGARDING BASIS OF BEARINGS AND CURVE DATA. THE PIERCE COUNTY ASSESSOR'S RECORDS SHALL BE THE AUTHORITY FOR THE PIERCE COUNTY ASSESSOR'S RECORDS.

**RIGHT-OF-WAY CURVE DATA**

NO.	A	R	T	L
68				
69				
70				
71				
72				
73				
74				
75				

**LINK LIGHT RAIL PROJECT TACOMA**

RIGHT-OF-WAY PLANS  
STA NR 132+00 TO STA NR 136+39

Scale: 1" = 20'  
DATE: MAY 24, 2003

Project No.: L75-RP18  
Sheet No.: 32 of 0

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## EXHIBIT B

### **Archeological Materials Procedure**

During the course of excavation for the Tacoma Link light rail system and related improvements, it is important to be aware of historic materials that will be disturbed in order to minimize the losses to the City of Tacoma. When dealing with paving materials observe the following general guidelines:

1. Disturb existing pavement as little as possible.
2. Leave brick and granite pavers and curbs in place, or re-use them near the same place.
3. Salvage materials that must be removed using techniques that will keep them intact. This may require hand removal to minimize fragmenting.
4. When removing historic paving materials, salvage and store as many as possible.
5. Stack salvaged materials in orderly fashion and discard broken bricks, pavers, etc.
6. Salvaged materials may be stored temporarily at the Cavanaugh building.
7. Advance notice of delivery to the Cavanaugh Building is required. Contact Hardy Hanson at Public Works, Streets & Grounds (591-5261) a minimum of 24 hours in advance and arrange for temporary or long-term storage.

In reference to archeological materials, workers should be alert to changes in soil color and the presence of ash or shell layers, as well as bones. Supervisors should call a halt at frequent intervals during digging and examine the fresh cut for traces of these materials. Historic artifacts and remains should be respected, as well as prehistoric sites and artifacts.

Should any bones, artifacts or deposits ash or shell be encountered, notification of the State Archaeologist, Rob Whitlam, (360-407-0771) and of my office (591-5220 or 591-5191) is necessary. A qualified archaeologist can record inadvertent finds and determine if other finds are probable.

Supervisors and all workers should be particularly alert in the sensitive areas that have been identified. The Tacoma Archeological Resource Survey (1996) determined that there may be remains of pre-contact house sites or burials in the route of the Link Light Rail project. Excavation for new utility lines and access systems have a potential to affect these cultural resources. The areas that have been identified as sensitive are:

- 24th Street and Pacific Avenue – house sites
- Jefferson Avenue and Pacific Avenue – house site 20' x 40', also Puyallup seasonal camp
- 15th Street intersections A Street through Commerce Street - Puyallup village site

In these three areas, digging operations must be halted every two hours and a thorough examination of a minimum of three cubic yards of excavated material inspected for artifacts.

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**EXHIBIT C**  
**Project Labor Agreement**

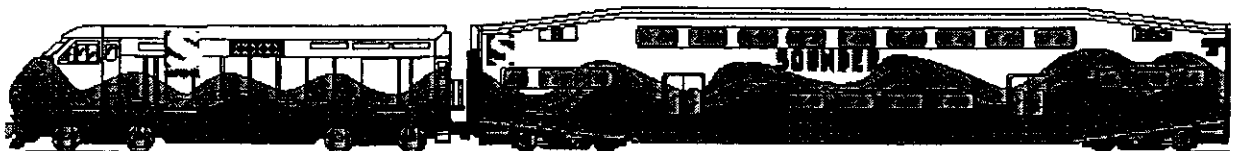
130



**CENTRAL PUGET SOUND**

**REGIONAL TRANSIT AUTHORITY**

Project Labor Agreement  
for the Construction of  
Sounder Commuter  
and  
Link Light Rail Projects



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**SOUNDER COMMUTER AND LINK LIGHT RAIL**

**PROJECT LABOR AGREEMENT**

**ARTICLE 1**

**PURPOSE**

The Central Puget Sound region is known to have some of the worst traffic congestion in the nation. Sound Transit was created to develop and deliver a cost-effective regional public transportation system to the urbanized portions of King, Pierce and Snohomish counties.

On May 31, 1996, the Sound Transit Board adopted "Sound Move"- a 10 year Regional Transit System Plan. Included in this plan is a commuter rail and link light rail system. Requirements for timely completion of the work associated with these two components of the transit system without interruption or delay and at-budget are vital to Sound Transit and the region.

On July 8, 1999, the Sound Board executed Sound Transit Resolution No. R99-21 which established the intent to use project labor agreements for these portions of the Project.

This Project Labor Agreement, hereinafter, "PLA", entered into on December 1, 1999, by and between the Central Puget Sound Regional Transit Authority (hereinafter referred to as "Sound Transit"); contractors with whom Sound Transit executes a construction contract for a project to which this Project Labor Agreement ("PLA") applies, hereinafter referred to as "Contractors"; the Building and Construction Trades Department, AFL-CIO, along with the Washington State Building and Construction Trades Council, the Seattle/King County Building and Construction Trades Council, the Pierce County Building and Construction Trades Council, the Northwest Washington Building and Construction Trades Council and their affiliated unions who become signatory hereto, all of whom are collectively referred to as the "Unions", with respect to the construction work within the scope of this PLA owned and contracted by the Central Puget Sound Regional Transit Authority, hereinafter referred to as "Sound Transit", for the construction execution of Link Light Rail Projects and certain Sounder Commuter rail projects located in the Puget Sound region of the State of Washington, hereinafter known as the "Project".

Upon acceptance by the parties to this PLA, this PLA will become the policy of Sound Transit. The construction work covered by this PLA shall be contracted exclusively to Contractors who agree to execute and be bound by the terms of this PLA. Therefore, the Unions agree that any Contractor may execute this PLA for purposes of covering such work. Sound Transit, and/or its Labor Coordinator, hereinafter Coordinator, shall monitor the compliance of this PLA by all Contractors who, through their execution of this PLA, or a Letter of Assent binding them to this PLA, together with their subcontractors, shall have become bound hereto.

The term "Contractor" shall include all construction contractors and subcontractors of whatever tier engaged in onsite construction work within the scope of this PLA.

The Unions and all signatory Contractors agree to abide by the terms and conditions contained in this PLA; and further, acknowledge that unless specifically identified otherwise herein or provided by law, this PLA represents the complete understanding of the parties. No Contractor shall be required to sign any other agreement with any signatory union as a condition of performing work within the scope of this PLA.

No practice, understanding or agreement between a contractor and a union performing work on this Project which is not specifically set forth in this PLA will be binding on any other party unless endorsed in writing by Sound Transit or its Coordinator.

The Unions agree that this PLA will be made available to, and will fully apply to, any successful bidder for Project work who becomes signatory hereto, without regard to whether the successful bidder performs work at other sites as either a union or a non-union Contractor, and without regard to whether employees of such bidder are or are not members of any labor union. This PLA shall not apply to the work of any Contractor which is not specifically included in this PLA or its Addendums.

The purpose of this PLA is to ensure that all the construction work associated with the Project proceeds continuously, efficiently, economically and with due consideration for the protection of labor standards, wages and working conditions as well as to promote fairness in employment for both union and non-union contractors and craft workers, without discrimination. The parties hereto agree and do establish and put into practice effective and binding methods for the settlement of all misunderstandings, disputes, or grievances that may arise between the Contractor and the Unions, or their members, to the end that Sound Transit, the Contractors and the Unions are assured of complete and safe continuity of operation without strikes, slowdowns or interruptions of any kind that labor-management peace is maintained.

The parties are committed to providing open access to bidding and employment opportunities for all contractors, prospective craft workers and other parties. The parties agree to work jointly to promote access to construction opportunities and training to interested applicants from throughout the local region.

The parties commit to the principles and policies set forth in Sound Transit's Guiding Principles for Employment and Contracting which identify the following four key objectives:

- a. Workforce diversity reflective of the region
- b. Maximum use of local businesses
- c. Maximum use of small businesses
- d. Maximum use of minority, women and disadvantaged businesses in a manner consistent with applicable federal and state laws, regulations, policies and grant requirements.

The Project is subject to federal funding, which may require that certain conditions of federal grants and regulations apply including the requirements of the USA Department of Transportation, Federal Transit Administration's Master Agreement (FTA Master Agreement). In such cases, said conditions will prevail over conflicting provisions of this PLA. This PLA shall be subordinate to any and all such stipulated requirements and other relevant statutes.

Section 22 of the FTA Master Agreement includes important provisions requiring compliance with Titles of the Civil Rights Act of 1964 as amended, ensuring use of non-discrimination provisions, providing for Equal Employment Opportunities for Construction Activities, and assuring measures to facilitate participation by Disadvantaged Business Enterprises (DBE).

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## **ARTICLE 2**

### **SCOPE OF AGREEMENT**

This PLA shall apply and is limited to all new construction as defined in Section 2.1 of this Article and performed by those Contractor(s) and their subcontractor(s) of any tier who have been awarded contracts for such work, or for whom bids have been received for contracts on or after the effective date of this PLA, and covering construction, including rework, and other construction related activities necessary to the Sound Transit Project and specifically described below.

2.1 The Project is specifically referred as and limited to:

(a) The Sounder Commuter Rail Stations at the following locations:

- Puyallap
- Tukwila
- Tacoma Dome
- Lakewood
- Edmonds
- Mukiteo

(b) The following projects for Link Light Rail, including contract packages for the heavy civil, systems and finishes work:

- N120-NE 60th to Pacific St. (new light rail alignment)
- N230-45 St. to Capital Hill Cross Over (new light rail alignment)
- N240-DSTT to Capital Hill (renovation of existing bus tunnel)
- N250-Station Finishes, Pacific St. to 45<sup>th</sup> St. (new light rail stations)
- C500-DSTT (renovation of existing bus tunnel)
- S700-International District to East of I-5 (new light rail alignment)
- M600-Central Yard and Maintenance Facility (new light rail vehicle maintenance facility)
- S740-Beacon Hill Tunnel (new light rail alignment)
- S720-E. Beacon Hill Tunnel Portal to Walden (new light rail alignment)
- S730-Walden St. To S. Holly St. (new light rail alignment)
- S740-S. Holly St. to Norfolk (Boeing Access) (new light rail alignment)
- S750-Boeing Access Road to 130<sup>th</sup> St. (new light rail alignment)
- S760-130<sup>th</sup> St. to 150<sup>th</sup> St. (new light rail alignment)
- S770-150<sup>th</sup> St. to South Sea-Tac (188<sup>th</sup> St.) (new light rail alignment)
- S780-188<sup>th</sup> St. to South of 200<sup>th</sup> St. (new light rail alignment)

It is understood by the parties that Sound Transit may at its sole discretion and at any time modify, delete or add to the list of Projects defined in Section 2.1 above. In so doing, Sound Transit will first notify the Washington State Building and Construction Trades Council of their intended changes.

2.2 The following items are specifically excluded from the scope of this PLA:

(a) Work for non-manual employees, including but not limited to, superintendents, supervisors, assistant supervisors, staff engineers, inspectors, quality control and quality assurance personnel, timekeepers, mail carriers, clerks, office workers, including messengers, guards, safety personnel, emergency medical and first aid technicians, and other professional, engineering, administrative, community relations



or public affairs, environmental compliance, supervisory and management employees.

- (b) Work by employees of a manufacturer or vendor necessary to maintain such manufacturer's or vendor's warranty or guarantee, including the on-site supervision of such work.
- (c) All work by employees and/or consultants of Sound Transit, including tenants or concessionaires doing business at Sound Transit facilities.
- (d) All non-construction support service contracted by Sound Transit or its contractor(s) of any tier in connection with the Project.
- (e) All equipment, machinery and facilities owned and/or operated by Sound Transit or its assigns.
- (f) Furniture, fixture, and equipment installers retained by Sound Transit, or its assigns.
- (g) Artists retained by Sound Transit, or its assigns, during the course of the Project.
- (h) Employees engaged in any work performed on or near, or leading to or into, the Project site(s) by state, county, city or other governmental bodies or their contractors; Burlington Northern Santa Fe Railroad, Amtrak, or their contractors; or public utilities or their contractors.

- 2.3 Sound Transit and/or Contractors performing work on this Project have the right to select any qualified bidder and award contracts or subcontracts without regard to the Contractor(s) being signatory to any collective bargaining agreement with any Union party to this PLA, or any other union so long as such Contractor(s) become signatory to and comply with all terms and conditions of this PLA, or Letter of Assent, should such Contractor(s) be awarded work covered by this PLA.

It is understood that this PLA, together with the Schedule A's and Addendums, constitutes a stand alone agreement, and by virtue of becoming signatory to this PLA, or Letter of Assent, the Contractor or subcontractor will not be obligated to sign any other labor agreement as a condition of performing work within the scope of this PLA.

Sound Transit and/or its Coordinator will obtain from each Contractor or Subcontractor who has been awarded work on this Project either a fully executed PLA or Letter of Assent to this PLA and forward a copy to the Union(s) upon receipt.

- 2.4 This PLA shall only be binding upon the signatory parties hereto.

- 2.5 This PLA covers the work as set forth in 2.1 of this Article, as well as work covered in Attachments B and C of this PLA, for which bids have been received after the effective date of this PLA. Nothing contained herein shall be construed to prohibit, restrict, or interfere with the performance of any other operation, work or function awarded to any Contractor before the effective date of this PLA or which may be performed or contracted by Sound Transit for its own account on the property or in and around the Project.

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- 2.6 It is understood that the liability of the Contractor and the liability of the separate Unions under this PLA shall be several and not joint. The Unions agree that this PLA does not have the effect of creating any joint employment status between or among Sound Transit and/or any Contractor.
- 2.7 None of the provisions of this PLA shall apply to Sound Transit employees, nor shall Sound Transit employees be restricted from performing work not covered by this agreement on the Project site.
- 2.8 It is further agreed that, where there is a conflict, the terms and conditions of this PLA shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except that the work of the International Union of Elevator Constructors on this Project shall be performed under the terms of its National Agreements, with the exception of Article 15, Work Stoppages and Lockouts; Article 16, Jurisdictional Disputes; and Article 17, Grievance Procedure, of this PLA, which shall apply to such work.

### **ARTICLE 3**

#### **UNION RECOGNITION, REPRESENTATION, DUES, REFERRAL AND SECURITY**

- 3.1 Union Recognition
- (a) The Contractor(s) recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this PLA.
  - (b) All employees covered by this PLA who are currently members of a Union and who are working for a contractor signatory to a collective bargaining agreement other than this PLA, shall remain members in said Union during the term of this PLA.
  - (c) For all employees not presently members of a Union, becoming and remaining a member of the Union shall not be a requirement for employment under this PLA.
  - (d) The Contractor(s) agree to deduct Union Dues or Representation Fees and remit same to the Union on a monthly basis. Employees will be required to sign an authorization form (Attachment A).
- 3.2 Union Representation
- (a) Authorized Union representatives shall have reasonable access to the Project, provided they do not interfere with the work of the employees, and further provided that such representatives fully comply with the visitor, safety and security rules established for the Project.
  - (b) The Business Representative(s) for each of the Local Unions signatory hereto shall have the right to designate for each shift worked with each Contractor one (1) working journey-level worker as Steward for all related craft personnel, who shall be

recognized as the Union's representative for a signator hereto. Such designated Stewards shall be qualified workers assigned to a crew and shall perform the work of their craft. Under no circumstances shall there be a non-working steward on the job.

- (c) The working Steward shall be paid at the applicable wage rate for the job classifications in which they are employed.
- (d) Steward(s) for each craft of the signatory Unions employed on the Project shall be permitted on the Project site at all times. They shall not be subjected to discrimination or discharge on account of performing proper union business. The Unions agree that such business shall not unreasonably interfere with the Steward's work for the Contractor.
- (e) It is recognized by the Contractor that the employee selected as Steward shall remain on the job as long as there is work within their craft for which they are qualified, willing and able to perform. The Contractor shall be notified in writing of the selection of each Steward. The Contractor shall give the Unions prior written notice before discharging a Steward for any reason.
- (f) The Steward may not cause or encourage a work stoppage and, if found guilty of instigating such action, will be subject to disciplinary action by the Contractor, including discharge.
- (g) The Steward's duties shall not include hiring and termination.
- (h) The Stewards shall be given the option of working all reasonable overtime within their craft and shift provided they are qualified to perform the task assigned.

### 3.3 Dues

Dues shall be according to the requirements of Local Unions signatory to this PLA, except for those non-members a Representation Fee of 94% of regular dues shall be required.

### 3.4 Union Referral and Security

In the event that Local Unions are unable to fill any request for employees within forty-eight (48) hours after such request is made by the Contractor (Saturdays, Sundays and Holidays excepted), the Contractor may employ applicants from any other available source. The Contractor shall inform the Union of the name and social security number of any applicants hired from other sources and shall refer the applicant to the Local Union for dispatch to the Project within twenty-four (24) hours after they are hired.

## ARTICLE 4

### COMMUNITY REPRESENTATION

- 4.1 As diverse and low-income communities are underrepresented in the construction industry, the parties to this PLA support the direct involvement of FAST JOBS Coalition Community Representative and Agents hereinafter referred to as "FJC-Rep" and "FJC-A's", to insure the securement and successful retention of people of color and women. In accordance with Sound Transit resolution R99-21, FJC-Reps and FJC-A's will be trained in the jobsite monitoring and advocacy of community interests in the implementation of the social justice provisions contained in this agreement.
- 4.2 FJC-Reps are employees of contractors party to this agreement. FJC-A's are representatives of the FAST JOBS Coalition, hereinafter referred to as "FAST".
- (a) All FJC-Reps and FJC-A's will be recruited and selected by FAST. FJC-Reps will be journey level workers in their respective trades.
- (b) All FJC-Reps and FJC-A's will complete a comprehensive training program and will receive certification cards from FAST. Elements of this training will include but not be limited to:
- FAST Objectives
  - Monitoring of the provisions of this PLA
  - Communication Skills
  - Responsibilities
  - Accountability of Activities and Reporting
  - Jobsite Safety
  - Mentoring
  - Community Resource and Referral (to services)
- (c) The FJC will train and certify twenty-five (25) journey level workers.
- 4.3 FJC-Reps may be designated on any project or contract valued at \$1 million dollars or more.
- (a) For projects meeting the above criteria, the FAST will notify the PLA Coordinator in writing, with the name of the employee to represent FAST as a FJC-Rep under this Article.
- (b) Such designated FJC-Rep shall be a qualified worker assigned to a crew and shall perform the work of their craft. Under no circumstances shall there be a non-working FJC-Rep on the Project.
- (c) FAST may appoint a FJC-Rep for each shift.
- (d) FJC-Reps selected by FAST on applicable Projects shall be permitted on the jobsite at all times. They shall not be subjected to discrimination or discharge on account of proper FJC-Rep activities. FAST agrees that such activities shall not unreasonably interfere with the FJC-Reps work for the Contractor.
- (e) It is recognized by the Contractor that the employee selected as the FJC-Rep shall remain on the job so long as there is work within their craft which they are qualified, willing and able to perform. The Contractor shall give FAST prior written notice

before discharging a FJC-Rep for cause. For purposes of this section, "cause" shall mean incompetence, unexcused absenteeism, disobedience of orders, unsatisfactory performance of duties, or violation of Project Work Rules.

- (f) The FJC Rep shall be given the option of working all reasonable overtime within their craft and shift providing they are qualified to perform the task assigned.
  - (g) FJC Reps and FJC-A's shall have reasonable access to the Project, provided they do not interfere with the work of the employees, and fully comply with the visitor, safety, and security rules established for the Project.
- 4.4 All FJC-Reps and FJC-A's will contact FAST if non-compliance or other irregularities are observed or reported. Activities include, but are not limited to:
- (a) Monitoring of the stated goals for the participation of workers of color and women within the construction trades workforce, as contained in this PLA.
  - (b) Support, mentoring and problem solving for all workers, including workers of color and women, to promote harmony and safety on the jobsite, and to increase retention of workers of color and women in the industry.
  - (c) Act as a liaison for workers of color and women and the FJC, between employers and their Union representatives to enhance effective communication and expedite resolution of issues.
  - (d) Participate as needed in the implementation of Sound Transit Project policy or mutually agreed upon contractor, Union, and/or FAST directives.
  - (e) Serve as a recruitment resource for employers, Unions, and the SAC apprenticeship programs consistent with the "RAPID" model contained in Article 8.
  - (f) None of the above activities shall interfere with established jobsite safety or the normal productivity of the job.
- 4.5 All FJC-Reps and FJC-A's will submit a monthly report to FAST detailing their activities.
- (a) FJC-Reps, when working for contractors under this PLA will notify the FAST of the following:
    - Name of contractor, jobsite telephone number, and name of supervisor.
    - Project name and location
    - Hours of work and schedule (shift)
    - Activities
  - (b) FAST reserves the right to report its findings to the JAC at anytime.
- 4.6 As it is recognized that the presence of FJC Reps are "value added", they will be paid for activities covered under this Article as part of their normal duties by their contractor, up to one-half (1/2) hour per week at the employee's normal rate of pay.

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## ARTICLE 5

### JOINT ADMINISTRATIVE COMMITTEE

- 5.1 The parties to this PLA will form a Joint PLA Administrative Committee, hereinbefore referred to in Article 4 as the "Committee", which shall serve in an advisory capacity to assist the parties in their implementation and interpretation of the PLA. Further, the Committee may amend the PLA, in accordance with the procedures identified herein. The purpose of the Committee shall be to promote harmonious relations on the Project, to ensure the provisions contained in this PLA are adhered to and to advance the efficiency, safety and quality of the crafts working on this Project. All parties acknowledge the importance of attendance and active support of the Committee and agree to participate in the meetings as required.
- 5.2 The Committee shall be comprised of representatives of the Unions and Management. For purposes of this Article, Management shall include: the Coordinator, the Contractor and FAST. The Committee shall be jointly chaired by two individuals, hereinafter referred to as the "Joint Chairs", one who is a representative appointed by the Unions and one who is a representative of Management.
- 5.3 For purposes of making amendments to the PLA, the Unions will have one voice and Management will have one voice regardless of the number of actual representatives of the Unions and Management who are present. (The development of the Management voice will be by consensus.) Amendments to the PLA must be by mutual agreement of the Unions and Management who shall commit their agreement to writing and sign it.
- 5.4 The Committee shall meet on a regularly scheduled monthly basis or at the call of the Joint Chairs to discuss the administration of the PLA, the progress of the Project, labor/management problems that may arise, and any other matters consistent with this PLA.
- 5.5 The Committee procedures to be mutually agreed after the Committee convenes.
- 5.6 Language regarding additional responsibilities of the Coordinator to be added e.g. Pre-Job Conferences, by the Committee.

## ARTICLE 6

### HIRING PROCEDURES, REFERRAL AND EMPLOYMENT

- 6.1 Unless otherwise required by this PLA or obligated to abide by other collective bargaining agreements, Contractors shall be required to use the dispatch resources or procedures of the signatory Unions hereto to acquire workers.
- 6.2 In the event that the Unions are unable to fill any request for employees within forty-eight (48) hours after such request is made by the Contractor (Saturdays, Sundays and all Holidays in this PLA excepted), the Contractor shall first consider referrals from FAST before seeking applicants from other available sources. The Contractor shall inform the Union of the name and social security number of any applicants hired from other sources and shall refer the applicant to the Local Union for dispatch to the Project within twenty-four (24) hours after they are hired.

6.3 The parties recognize Sound Transit's commitment to provide opportunities to participate on the Project to emerging business enterprises, as well as other enterprises which may not have previously had a relationship with the Unions signatory to this PLA. To ensure that such enterprises will have an opportunity to employ their core workers on this Project, the parties agree that in those situations where a Contractor not a party to a current collective bargaining agreement with the signatory Union having jurisdiction over the affected work and is a successful bidder, the Contractor may request by name and the Union will honor referral of core employees. The contractor must first demonstrate those persons possess the following qualifications:

- Possess any license required by state or federal law for the Project work to be performed.
- Have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years.
- Were on the Contractor's active payroll for at least sixty (60) out of the one hundred-eighty (180) calendar days prior to the contract award.
- Have the ability to perform safely the basic functions of the applicable trade.

Core employees who meet the aforementioned qualifications will be dispatched as follows:

(a) Contractors with six (6) or more craft employees may request by name, and the Union will honor by referral up to a maximum of five (5) persons in each craft on an alternating basis with the Contractor selecting first. All subsequent referrals will be through the respective Union hiring hall.

(b) Contractors with five (5) or fewer craft employees may request by name, and the Union will honor, by referral as follows:

- Core Employee
- Union Referral
- Core Employee
- Core Employee
- Union Referral
- Core Employee
- Union Referral
- Core Employee

All subsequent referrals will be through the respective Union hiring hall.

(c) It is agreed that specific terms and conditions governing hiring and assignment of union workers in supplement to small Contractors existing core employees (who would be displaced by the local referral procedure) may be negotiated jointly by Sound Transit, the Contractor, and applicable local Union.

6.4 It is the goal of the parties to increase the membership and participation of underrepresented groups, including women and people of color, in the construction of the projects to which this PLA applies. It is an additional goal of the parties, that said underrepresented groups, including low-income women and people of color, will perform one-third (33%), or more, of the total work hours on this project. A minimum threshold of one-quarter (25%) of the total labor hours will be performed by women and people of color. It is recommended that the sub-goals for women and people of color be reviewed by the Committee on an annual basis. These sub-goals are:

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People of color 21%  
Women 12%

The implementation of these goals will be a responsibility of the Committee, who will regularly review, no less than quarterly, actual participation and activities towards meeting these goals; and make recommendations or issue direction on specific means to increase participation of underrepresented groups. Underrepresented groups, including women and people of color, will be employed and receive training in all job classifications including foremen, leads, journey-level and apprenticeship positions.

## **ARTICLE 7**

### **APPRENTICESHIP**

- 7.1 Apprenticeship Program. The parties will jointly develop and implement an Apprenticeship Program that will increase the skill of the Puget Sound region work force, specifically women, people of color, and individuals who are low-income or under-represented on the work force, so that these workers can enter the pool of skilled labor, fully qualified for living wage jobs. Said Apprenticeship Program shall include the following components:
- (a) A Project-wide goal of 20% for the utilization of Washington State Apprenticeship Council (SAC) approved apprentices.
  - (b) Methods that will be used by the Committee to identify opportunities for the utilization of apprentices on specific contract packages.
  - (c) Means and methods for reporting, collecting and analyzing data related to the utilization of apprentices on the Project.
  - (d) Means and methods for monitoring and enforcing the apprenticeship efforts of the parties.
  - (e) Means and methods for ensuring the inclusion of women and people of color in the apprenticeship program as follows:
    - Women and people of color to perform at least 50% of all first-year apprentice hours in all trades.
    - Women and people of color to perform at least 33% of all apprentice hours worked.
  - (f) Means and methods for removing barriers to the inclusion of low income and under-represented individuals in the apprenticeship and pre-apprenticeship program.
- 7.2 Removing Barriers. The Seattle/King County, The Northwest Washington and the Pierce County Building and Construction Trade Councils and their affiliate member Unions ("Council") and other state-approved apprenticeship programs serving these counties will cooperate with Sound Transit and FAST to assist low-income residents to gain entrance to, and successfully complete, SAC apprenticeship programs. The Council and other state-approved apprenticeship programs, will inform the coordinators and sponsors of the apprenticeship and training programs and Union representatives of the goals and activities covered by this Agreement, and will provide advocacy and assistance to encourage,



support and involve the apprenticeship program coordinators in meeting these goals.

Examples of the advocacy and assistance that shall be provided include, but are not limited to:

- (a) Establish and facilitate discussions between various SAC programs and their apprenticeship coordinators, with FAST to identify policy or program enhancements to increase the participation of people of color and women.
  - (b) Immediate reporting from each SAC program indentures for the period 1994-1999 by class year the total number of indentured apprentices, numbers of male and female and racial breakdown.
  - (c) Projected or actual apprenticeship class size by program and trade for period 2000-2005.
  - (d) Report their internal diversity goals and timelines for the participation of people of color and women.
  - (e) A collaborative effort between the SAC programs and various community-based organizations to recruit in communities of color and women.
- 7.3 The parties shall exercise good faith and affirmative efforts to remove barriers that prevent women, people of color, and individuals who are low-income or under-represented on the work force in the apprenticeship programs. Barriers that need to be removed include, but are not limited to:
- (a) The requirement for a driver's license when a driver's license is not a bona fide requirement of the work.
  - (b) Questions about criminal history when the work does not involve exceptional and extraordinary security requirements.
  - (c) Requirement for apprenticeship application fees.
  - (d) Non-standardized testing.

## **ARTICLE 8**

### **PRE-APPRENTICE TRAINING PROGRAM**

The parties will develop and implement a program by which a Regional Apprenticeship Preparation Integrated Delivery System, hereinafter RAPID, will be established. RAPID will prepare unemployed and underemployed people to compete for entry -level positions as apprentices in the building and construction trades occupations. Unions and Contractors will actively recruit RAPID graduates for entrance to and successful completion of SAC.

The RAPID model will contain, but not be limited, to the following elements:

- 8.1 A funding mechanism consisting of a Pre-Apprentice Training Program Fund that will be established and that will continue in full force and effect during the term of this Agreement. Sound Transit will make contributions in the sum of no less than five cents

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(\$0.05) per hour worked by employees covered under this Agreement into said Fund. Said Fund will be administered by Sound Transit to compensate service providers involved in the RAPID program. A Fund Administration Committee consisting of representatives of labor, FAST and Sound Transit will be established to provide guidance to Sound Transit.

- 8.2 A tiered, integrated delivery system that will act as a pipeline for residents interested in a career in the building and construction trades and related transit project industries. The tiered system will be comprised on three levels that strive to provide the following services:
- (a) Entry Core Services – Individuals will enter the first tier and receive case management, an Individual Work Plan (IWP), career counseling, drug testing and rehabilitation, reinstatement of driver's license/transportation assistance, immigration assistance, child care, ex-offender's life skills training, English as a Second Language, paid stipends, problem solving skills, work ethics, mentoring, leadership development training, and work experience. Case managers will be given extensive training in the RAPID model.
  - (b) Apprenticeship Prep – Upon successful completion of the IWP, individuals will enter the second tier where they will receive placement in an approved pre-apprenticeship training program, industry specific training and education, work experience and mentoring.
  - (c) Apprenticeship – Individuals who successfully complete the Apprenticeship Prep tier will receive, but not be limited to, "Direct Entry" or "Special Consideration" into any SAC program where an articulation agreement has been developed in cooperation with that SAC approved program. Trade mentors will be assigned and continue to assist apprentices throughout their apprenticeships.

To the largest extent possible, the parties will utilize existing community-based organizations and resources in King, Snohomish, and Pierce Counties to provide services required to implement RAPID.

## **ARTICLE 9**

### **HOURS OF WORK, OVERTIME, SHIFTS AND HOLIDAYS**

- 9.1 Work Week/Work Day. The standard work week for the Project will be five (5) consecutive days Monday-Friday. Eight (8) consecutive hours, between 6:00a.m. and 6:00p.m., shall constitute a work day. There will be an unpaid one half-hour lunch period during the shift. The Contractor may vary the Starting Time to take advantage of daylight hours, weather conditions, shifts, or traffic conditions.

An alternate four (4) day ten (10) hour shift may be elected by the Contractor and will be Monday-Thursday. The ten (10) hour work day may be scheduled between the hours of 6:00a.m. and 8:00p.m. Prior to changing a shift from 5x8 hours to 4x10 hours, a contractor must give at least five (5) calendar days advance notice to the employees.

Nothing herein shall be construed as guaranteeing any employee forty (40) hours of work per week.

- 9.2 Overtime. All hours worked in excess of eight (8) daily on a 5x8 hour schedule Monday-Friday, and all hours in excess of ten (10) hours daily on a 4x10 hour schedule Monday-Thursday shall be paid for at one and one-half times the straight time rate of pay. The first ten (10) hours scheduled on Friday and Saturday of a 4x10 hour work week, and the first ten (10) hours scheduled on Saturday of a 5x8 hour work week will be paid for at one and one-half times straight time rate of pay. All hours in excess of ten (10) hours on Friday and Saturday of a 4x10 hour work week, or ten (10) hours Saturday of a 5x8 hour work week and all hours on Sunday and holidays for either 5x8 or 4x10 work week shall be paid for at two times the straight time rate of pay. When computing overtime pay, overtime work performed shall be paid in one-quarter (1/4) hour periods, and fractional parts of such period shall count as one-quarter (1/4) hour.
- 9.3 Shifts. Shifts may be established for some or all crews when considered necessary by a Contractor. When three (3) shifts are worked, the first, or day shift shall be established on an (8) hour basis, the second shift shall be established on a seven and one-half (7 1/2) hour basis and the third shift shall be established on seven (7) hour basis. The pay for the second and third shifts shall be equivalent of eight (8) hours pay at the employee's regular hourly rate. If only 2 shifts are worked, the second shift will work 7 1/2 hours for 8 hours pay for a 5X8 shift or 9 1/2 hours for 10 hours pay for a 4X10 shift. There shall be no split shifts. Shifts may be staggered on a crew basis. Other shift provisions may be established on a pre-bid basis by mutual consent of the parties. When shift work is established, it must continue for a minimum of three (3) consecutive days. In the event that an employee's shift is changed, the employee shall be offered a minimum of eight hours of rest before being required to work the following shift or will be paid applicable overtime for any hours worked for the following shift.
- 9.4 Recognized holidays shall be as follows: New Years Day, Martin Luther King Jr.'s Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, and Christmas Day. Work may be performed on Labor Day when conditions warrant, i.e., the preservation of life and/or property. In the event a holiday falls on Sunday, the following day, Monday, shall be observed as such holiday. In the event a holiday falls on Saturday, the preceding day, Friday, shall be observed as such holiday. Monday holidays shall be honored in keeping with Federal law. There shall be no paid holidays unless explicitly stipulated under a local collective bargaining agreement. If employees are required to work on a holiday, they shall receive the appropriate overtime rate.
- 9.5 Reporting Pay. Any employee who reports for work and for whom no work is provided shall receive two (2) hours pay provided the employee remains available for work. Any employee who reports for work and for whom work is provided shall be paid for actual time worked but not less than four (4) hours provided the employee remains available for work. Procedures for prior notification of work cancellation shall be determined at the pre-job conference.
- 9.6 Starting Time. The parties reaffirm their policy of a fair day's work for a fair day's wage. There shall be no pay for time not worked unless the employee is otherwise engaged at the direction of the Contractor. Employees shall be at their place of work at the Starting Time and shall remain at their place of work (as designated by the Contractor) performing their assigned functions until quitting time. The place of work shall be defined as the gang or tool box, or equipment at the employee's assigned work location or the place where the foreman gives instructions.

- 9.7 It will not be a violation of this PLA, when the Contractor considers it necessary to shut down work in whole or in part to avoid the possible loss of human life, because of an emergency situation that could endanger the life and safety of an employee. In such cases, employees will be compensated only for the actual time worked. In the case of a situation described above whereby the Contractor requests employees to stand by, the employees will be compensated for the "stand by time". In the event of any conflict, the appropriate local collective bargaining agreement shall apply.
- 9.8 In the event the Contractor deems it necessary, the parties agree to develop a mutually acceptable system(s) for employees checking in and out of the Project. This system, if necessitated, would be subject to the approval of the Committee.

## **ARTICLE 10**

### **WAGES AND BENEFITS**

- 10.1 In consideration of the mutual desires of the Contractor, Sound Transit and the Union that all construction work to proceed efficiently and economically, that the Project attract and retain an adequate supply of skilled workers, and that labor standards, wages and working conditions of the workers be protected, the parties agree that:
- (a) All employees covered by this Agreement shall be classified in accordance with work performed and paid the hourly wage rates for those classifications in compliance with the applicable prevailing rates as required by Chapter 39.12 of the Revised Code of Washington, as amended, and/or by the Davis-Bacon Act, 40 U.S.C. "276a et seq., whichever is greater. This requirement applies to laborers, workers and mechanics, employed by any Contractor at whatever tier, or by any other person who performs a portion of the work contemplated by this Agreement and which is covered by the terms hereof.
  - (b) The published prevailing hourly wage and fringe benefit rates set forth in the bid specifications for each contract in effect at the time of the bid shall remain in effect until the effective date of the Washington State prevailing rate adjustments published twice each year. Twice annually and effective on the date that the March and September adjustments are published and made effective for public works projects, the Contractor's wage rate(s) paid to its employees shall be adjusted to such newly published rate(s).
  - (c) The current prevailing wage rates as provided to Sound Transit by the Industrial Statistician of the Washington State Department of Labor and Industries and/or the U. S. Department of Labor, will be available from the Coordinator for review and are incorporated into this PLA as if set forth herein.
- 10.2 All Contractors shall make contributions in the amounts designated in the appropriate prevailing wage determination for fringe benefit contributions to each of the applicable Schedule A Funds and will make all employee-authorized deductions in the amounts designated. Such contributions shall be made in compliance with the applicable prevailing wage determination and shall be due and payable on the due date contained in the applicable Schedule A. Payment of cash in lieu of contributions shall not be permitted.

- (a) All Contractors adopt and agree to be bound by the written terms of the legally established trust agreements specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Schedule A Funds. Such Contractors authorize the parties to such Funds to appoint Trustees and successor Trustees to administer the Funds and hereby ratify and accept the Trustees so appointed as if made by the Contractors. Copies of the trust agreements are available upon request.
- 10.3 Contractors of whatever tier shall make regular and timely contributions required by Section 2 of this Article in amounts required by this PLA and on the time schedule set forth in the appropriate Schedule A.

#### **ARTICLE 11**

##### **PAYDAY**

- 11.1 All employees covered by this PLA shall be paid by payroll check, and shall be paid weekly no later than the end of shift Friday. No more than five (5) days wages may be withheld.
- 11.2 Lay-off is pay off. Any employee who is discharged or laid off shall be paid all accrued wages upon layoff or discharge.

#### **ARTICLE 12**

##### **MANAGEMENT RIGHTS**

- 12.1 The Contractor retains full and exclusive authority for the management of its operations required to perform its work under the contract documents of any Project to which this PLA applies. The Contractor shall direct its working forces at its sole prerogative, including, but not limited to, promotion, transfer, lay-off or discharge for just cause. Subject to the Grievance procedure contained in Article 17 of this PLA, the Contractor shall have the right to terminate any construction employee who in its opinion fails to satisfactorily, competently, professionally and diligently perform their assigned work, and to refuse to rehire such individual. All foremen and superintendents shall have the authority and responsibility to terminate any construction employee working under their supervision who fails to satisfactorily competently and diligently perform their assigned duties. No rules, customs, or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees. Sound Transit and the Contractor may, in their sole discretion, utilize the most efficient method or techniques of project delivery, design, construction means and methods, tools, or other labor-saving devices.
- 12.2 Upon referral or dispatch from applicable Union, "turnaround" or refusal of any worker by the Contractors, requires a written explanation that shall be communicated to the Coordinator, Union, FAST and Contractor within 48 hours.
- 12.3 The foregoing enumeration of management rights shall not be deemed to exclude other functions not specifically set forth. Sound Transit and the Contractor, therefore, retains all legal rights not specifically covered by this PLA.

- 12.4 Except as otherwise expressly stated in this PLA, there shall be no limitation or restriction upon Sound Transit's or the Contractor's choice of materials or design, nor, regardless of source or location, upon the full use and installation of equipment, machinery, package units, pre-casts, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor-saving devices, consistent with the contract documents for any Project to which this PLA applies. Sound Transit and the Contractor may without restriction install or otherwise use materials, supplies or equipment regardless of their source and in accordance with Washington State prevailing wage laws. The on-site installation or application of such items shall be generally performed by the craft having jurisdiction over such work; provided, however, it is recognized that other personnel having special talents or qualifications may participate in the installation, check-off or testing of specialized or unusual equipment.

### **ARTICLE 13**

#### **SUBCONTRACTING**

- 13.1 The Contractor(s) agrees that neither it nor any of its subcontractors will subcontract any work to be done on the Project except to a person, firm or corporation who is, or agrees to become party to, this PLA. Any Contractor or Subcontractor working on the Project shall, as a condition to working on said Project, become signatory to and perform all work under the terms of this PLA.

### **ARTICLE 14**

#### **GENERAL WORK RULES**

- 14.1 Slowdowns, standby crews and featherbedding practices will not be tolerated.
- 14.2 Sound Transit may establish reasonable project rules that will be uniformly applied and adhered to by all Contractors, Subcontractors and the Unions. These rules will be provided by the Coordinator to all Contractors and Subcontractors at the pre-job conference and available in writing to their employees. They may be amended thereafter as necessary by the Committee as described in Article 5 of the PLA.
- 14.3 Security procedures for control of tools, equipment and materials are the responsibility of the Contractor. Employees having any company property or the property of another employee in their possession without authorization are subject to immediate discharge. The Contractor will be responsible for the establishment of reasonable security measures for the protection of personal, company and Sound Transit property.
- 14.4 There shall be no restrictions on the use of any tools by any qualified employee in any emergency situation endangering life, limb or property; or on the use of any tools or equipment for the performance of work within the jurisdiction, provided the employee can safely use the tools and/or the equipment involved.
- 14.5 The selection of craft foreman and general foreman and the number of same required shall be entirely the responsibility of the Contractor, it being understood that in the selection of such individuals the Contractor will give primary consideration to the qualified individuals available in the local area. If none are available, the Contractor is free to pick foremen/ general foremen from out of the area.

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- 14.6 The Contractor shall have the sole and exclusive right to assign specific employees and/or crews to perform overtime work when such overtime work is necessary to accomplish the job.
- 14.7 The Contractor(s) shall provide a convenient and sanitary supply of drinking water, cooled in the summer months, and sanitary drinking cups.
- 14.8 The Contractor(s) shall provide adequate sanitary toilet facilities, water, and clean up facilities for the employees.
- 14.9 The Contractor(s) shall provide a safe place for storage of tools and facilities ventilated, lighted and heated for changing clothes.
- 14.10 All required safety equipment will be provided by the Contractor(s).
- 14.11 Parking will be provided at the jobsite. If parking is not available at the jobsite, compensation in accordance with determinations issued by the Washington State Department of Labor and Industries will be required, (Attachment H).

## **ARTICLE 15**

### **WORK STOPPAGES AND LOCKOUTS**

- 15.1 During the term of this Agreement there shall be no strikes, picketing, work stoppages, slow downs or other disruptive activity for any reason by the Union, its applicable Local Union or by any employee, and there shall be no lockout by the Contractor. Failure of any Union, Local Union or employee to cross any picket line established at the Project site is a violation of this Article.
- 15.2 The Union and its applicable Local Union shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Contractor's project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than ninety (90) days.
- 15.3 Neither the Union nor its applicable Local Union shall be liable for acts of employees for whom it has no responsibility. The International Union General President or Presidents will immediately instruct, order and use the best efforts of his office to cause the Local Union or Unions to cease any violations of this Article. An International Union complying with this obligation shall not be liable for unauthorized acts of its Local Union. The principal officer or officers of a Local Union will immediately instruct, order and use the best efforts of his office to cause the employees the Local Union represents to cease any violations of this Article. A Local Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

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- 15.4 In the event of any work stoppage, strike, picketing or other disruptive activity in violation of this Article, the Contractor may suspend all or any portion of the Project work affected by such activity at the Contractor's discretion and without penalty.
- 15.5 There shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity affecting the Project site during the duration of this PLA. Any Union or Local Union which initiates or participates in a work stoppage in violation of this Article, or which recognizes or supports the work stoppage of another Union or Local Union which is in violation of this Article, agrees as a remedy for said violation, to pay liquidated damages in accordance with Section 6 of this Article.
- 15.6 In Lieu of, or in addition to, any other action at law or equity, any party may institute the following procedure when a breach of this Article is alleged, after the Union(s) or Local Union(s) has been notified of the fact.
- (a) The party invoking this procedure shall notify \_\_\_\_\_, who the parties agree shall be the permanent Arbitrator under this procedure. In the event that the permanent Arbitrator is unavailable at any time, he or she shall appoint an alternate. Notice to the Arbitrator shall be by the most expeditious means available, with notice by facsimile, telegram or any other effective written means, to the party alleged to be in violation and the International Union President and/or Local Union.
  - (b) Upon receipt of said notice, the Arbitrator named above shall set and hold a hearing within twenty-four (24) hours if it is contended the violation still exists.
  - (c) The Arbitrator shall notify the parties by facsimile, telegram or any other effective written means, of the place and time he or she has chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.
  - (d) The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The award shall be issued in writing within three (3) hours after the end of the hearing, and may be issued without an Opinion. If any party desires an Opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of the award. The Arbitrator may order cessation of the violation of this Article, and such Award shall be served on all parties by hand or registered mail upon issuance.
  - (e) Such award may be enforced by any court of competent jurisdiction upon the filing of this PLA and all other relevant documents referred to herein above in the following manner. Facsimile or expedited mail or personal service of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's award as issued under Section 6 of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the Arbitrator's Award shall be served on all parties by hand or by delivery to their last known address by registered mail.



- (f) Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance therewith, are hereby waived by parties to whom they accrue.
  - (g) The fees and expenses of the Arbitrator shall be borne by the party or parties found in violation, or in the event no violation is found, such fees and expenses shall be borne by the moving party.
  - (h) If the Arbitrator determines that a work stoppage has occurred in accordance with Section 15.6 d above, the Union(s) and its applicable Local Union shall, within eight (8) hours of receipt of the Award, direct all the employees they represent on the Project to immediately return to work. If the trade involved does not return to work by the beginning of the next regularly scheduled shift following receipt of the Arbitrator's Award, and the Union(s) or its applicable Local Union Have not complied with Section 15.3 of this Article, then the Union and/or Local Union shall pay the sum of ten thousand dollars (\$10,000.00) as liquidated damages to Sound Transit, and shall pay an additional ten thousand dollars (\$10,000.00) per shift for each shift thereafter on which the trade has not returned to work. The Arbitrator shall retain jurisdiction to determine compliance with this Section and Article.
- 15.7 The procedures contained in Section 15.6 through 15.6 h shall be applicable to violations of this Article. Disputes alleging violation of any other provision of this PLA, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved under the grievance adjudication procedures of Article 17 Grievance Procedure.
- 15.8 Sound Transit is a party of interest in all proceedings arising under this Article and Articles 16 and 17 and shall be sent copies of all notifications required under these Articles and, at its option, may initiate or participate as a full party in any proceeding initiated under this Article.

**ARTICLE 16**

**JURISDICTIONAL DISPUTES**

- 16.1 The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the Plan) or any successor Plan (Attachment F).
- 16.2 All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and employees, parties to this PLA, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this PLA.
- 16.3 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractors assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

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- 16.4 Each Contractor will conduct a pre-job conference with the appropriate Building and Construction Trades Council prior to commencing work. The Coordinator and Sound Transit will be advised in advance of all such conferences and may participate if they wish.
- 16.5 Any award or resolution made pursuant to this procedure, shall be final and binding on the disputing Unions and the involved Contractor under this PLA only, and may be enforced in any court of competent jurisdiction in accordance with the Plan. Such award or resolution shall not establish a precedent on any construction work not covered by this PLA. In all disputes under this Article, Sound Transit shall be considered a party in interest.

## ARTICLE 17

### GRIEVANCE PROCEDURE

- 17.1 This PLA is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.
- 17.2 The Contractors, Unions, and the employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.
- 17.3 Any question or dispute arising out of and during the term of this PLA (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following steps:
- (a) Step 1-When any employee subject to the provisions of this PLA feels they have been aggrieved by a violation of this PLA, through their local union business representative or job steward, shall, within five (5) working days after the occurrence of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) alleged to have been violated. The business representative of the local union or the job steward and the work-site representative of the involved Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the PLA alleged to have been violated.

Should the Local Union(s) or any Contractor(s) have a dispute with the other party and , if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

- (b) Step 2-The International Union Representative and the involved Contractor(s) shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.
- (c) Step 3-If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to \_\_\_\_\_ the mutually agreed upon Arbitrator for this Article. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor(s) and the involved Local Union(s).

Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented, and shall not have authority to change, amend, add to or detract from any of the provisions of this PLA.

- 17.4 Sound Transit and/or the Coordinator shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

## **ARTICLE 18**

### **NON-DISCRIMINATION**

- 18.1 The Parties agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, creed, national origin, age, marital status or physical or mental disability in any manner prohibited by law or regulation. The parties further agree to cooperate to the fullest extent possible to achieve the Intent and purpose of the applicable regulations of the Civil Rights act of 1964. Any complaints regarding the application of this provision shall be brought to the immediate attention of the Committee, the involved Contractor, Union or the Coordinator for consideration and resolution. The Committee has the right to review alleged patterns of discrimination and to take remedial action.
- 18.2 It is recognized that special procedures may be established by joint agreement of the parties to this PLA for the hiring, employment, training, promotion, transfer or termination of persons who have not previously qualified to be employed on construction projects of the type covered by this PLA. The parties agree that they will make all good faith efforts to assist in the proper implementation of such orders, regulations or agreements for the general benefit of the residents of the Puget Sound region.
- 18.3 It is recognized that the Parties to this PLA are committed to advancing the utilization of business enterprises owned and/or controlled by disabled persons, people of color and/or women. The parties shall jointly endeavor to assure that these commitments are fully met and that any provisions of this PLA which may appear to interfere with any disabled person, person of color or woman owned business enterprise successfully bidding for work within the scope of this PLA shall be carefully reviewed, and adjustments made as may be

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appropriate and agreed upon among the parties, to assure full compliance with the spirit and the letter of the Parties commitments and all applicable Federal, State and Local rules and regulations relating to employment and utilization of disabled persons, people of color and/or women owned businesses.

## **ARTICLE 19**

### **SAFETY, ENVIRONMENTAL AND HEALTH**

- 19.1 It shall be the responsibility of each Contractor to ensure safe working conditions and employee compliance with any safety rules established by Sound Transit, or the Contractor, and in accordance with applicable Federal or State laws including, but not limited to OSHA, WISHA, and IMSHA.
- 19.2 The employees shall be bound by the safety, security and site access rules established by Sound Transit or the Contractor for the project. These rules will be published and given to each employee as part of their new-hire orientation, as well as posted throughout the project. Violators of these rules will be subject to termination for cause. If justifiably discharged for the above reason, the employee shall not be eligible for rehire on the project for a period of not less than ninety (90) days.
- 19.3 Sound Transit reserves the right to utilize a site-access drug and alcohol testing program, Attachment G, and require all Contractors and their employees to comply with the same. Prior to implementing any such program, the Committee reserves the right to review and comment on the established program.

## **ARTICLE 20**

### **SAVINGS CLAUSE**

- 20.1 If any Article or provision of this PLA shall be declared invalid, inoperative or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the Federal or any State government, the Contractor and the Union(s) shall suspend the operation of such Article or provision during the period of its invalidity, and the matter shall be referred to the Committee for consideration and resolution by substituting an Article or provision which will meet the objectives to its validity and which will be in accord with the intent and purpose of the Article or provision in question.
- 20.2 If any Article or provision of this PLA shall be held invalid, inoperative or unenforceable by operation of law or by any of the above mentioned tribunals of competent jurisdiction, the remainder of this PLA or the application of such Article or provision to persons or circumstances other than those as to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.

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**ARTICLE 21**

**DURATION OF PLA**

- 21.1 The PLA shall be effective on the date approved by the Sound Transit Board of Directors, and shall continue in full effect for the duration of the Project construction work as described in Article 2.1 of this PLA.
- 21.2 The PLA shall have no further force or effect on a particular contract for work, or portions of work, to which this PLA applies, once the work has, or portions of the work have, been designated by Sound Transit as being Substantially Complete, except to the extent that "punch list work" remains to be done. "Substantial Completion" is defined as the time at which the work (or a specified part) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the work (or specified part) can be utilized for the purposes for which it is intended. The PLA will apply to the performance of any "punch list work" until such time as a Notice of Acceptance or Final Acceptance has been issued, whichever comes first.

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**In witness whereof, the parties have caused this PLA to be executed and effective as of the day and year first above written:**

**For Sound Transit:**

\_\_\_\_\_

\_\_\_\_\_

**For the Union:**

\_\_\_\_\_  
President, Building and Construction Trades Department

\_\_\_\_\_  
Washington State Building & Construction Trades Council, Allan B. Darr

\_\_\_\_\_  
Seattle/King County Building & Construction Trades Council, Jack Gilchrist

\_\_\_\_\_  
Northwest Wash. County Building & Construction Trades Council, Steve Koch

\_\_\_\_\_  
Pierce County WA Building & Construction Trades Council, John H. Meier

\_\_\_\_\_  
Asbestos Workers Local #7, Ted Boskovich

\_\_\_\_\_  
Boilermakers Local #502, Ed Eixenberger

\_\_\_\_\_  
Bricklayers & Allied Crafts Local #1, Dave Sheppard

\_\_\_\_\_  
Pacific Northwest Regional Council of Carpenters, John Steffens

\_\_\_\_\_  
Cement Masons Local #528 Roger Betterman

\_\_\_\_\_  
IBEW Local #46, Gwendolyn Lee

\_\_\_\_\_  
IBEW #76, Mike Grunwald

\_\_\_\_\_  
IBEW Local #191, Milt Foster

\_\_\_\_\_  
Elevator Constructors Local #19, Jim Bender

\_\_\_\_\_  
Ironworkers Local #86, Doug Glockner

\_\_\_\_\_  
Laborers Local #242, Gary Hix

\_\_\_\_\_  
Laborers Local #252, Tom Freudenstein

\_\_\_\_\_  
Laborers Local #292, Dan O'Connor

\_\_\_\_\_  
Laborers Local #440, Gary Clune

\_\_\_\_\_  
Operating Engineers Local #302, Clyde Wilson

\_\_\_\_\_  
Operating Engineers Local #612, Gordon Howins

\_\_\_\_\_  
Painters District Council #5, Bob Matson

\_\_\_\_\_  
Plasterers Local #77, Rick Anderson

\_\_\_\_\_  
Plumbers & Pipefitters Local #32, Jim Moss

\_\_\_\_\_  
Plumbers & Pipefitters Local #82, Larry Overly

\_\_\_\_\_  
Plumbers & Pipefitters Local #265, Phillip Wells

\_\_\_\_\_  
Roofers Local #54, Paul Blaski

\_\_\_\_\_  
Roofers Local #153, Mark Martinez

\_\_\_\_\_  
Sheet Metal Workers Local #66, Sean Mahoney

\_\_\_\_\_  
Sprinkler Fitters, Local #699, Bart Scherck

\_\_\_\_\_  
Teamsters Local #174, Bob Hasegawa

\_\_\_\_\_  
Teamsters Local # 313

\_\_\_\_\_  
Teamsters Local #38, Rod Mendenhall

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**SCHEDULE A-Prevailing Wage/Fringe Rates**

**Craft**

**BOILERMAKERS**

Journey Level

**BRICK AND MARBLE MASONS**

Journey Level

**CARPENTERS**

Acoustical Worker

Carpenter

Creosoted Material

Drywall Applicator

Floor Finisher

Floor Layer

Floor Sander

Millwright and Machine Erectors

Piledrivers, Bridge, Dock & Warf Carpenters

Piledrivers, Driving, Pulling, Placing Collars and Welding

Sawfiler

Shingler

Stationary Power Saw Operator

Stationary Woodworking Tools

**CEMENT MASONS**

Journey Level

**DIVERS & TENDERS**

Diver

Diver Tender

**DRYWALL TAPERS**

Journey Level

**ELECTRICIANS-INSIDE**

Cable Splicer

Cable Splicer (Tunnel)

Certified Welder

Certified Welder (Tunnel)

Construction Stock Person

Journey Level

Journey Level (Tunnel)

Lead Covered Cable Splicer

Note: The Coordinator is responsible for obtaining the current prevailing wage rate, including the breakdown for fringe benefits and publishing wage/fringe rate sheets for each individual County for all Contractors. Additionally the Coordinator is responsible for obtaining and publishing all changes to the prevailing wage/fringe rates for this Project and listing the due dates for trust payments. Listed in this Section are the known existing craft classifications for construction work on the Sound Transit Project including, King, Snohomish, and Pierce Counties.

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**Craft**

**ELECTRICIANS-POWERLINE CONSTRUCTION**

Cable Splicer  
Certified Line Welder  
Groundperson  
Head Groundperson  
Heavy Line Equipment Operator  
Jackhammer Operator  
Journey Level Lineperson  
Line Equipment Operator  
Pole Sprayer  
Powderperson

**ELEVATOR CONSTRUCTORS**

Constructor  
Mechanic  
Mechanic in Charge  
Probationary Constructor

**FLAGGERS**

Journey Level

**GLAZIERS**

Journey Level

**HEAT & FROST INSULATORS AND ASBESTOS WRK.**

Mechanic

**IRONWORKERS**

Journey Level

**LABORERS**

Asphalt Raker  
Ballast Regulator Machine  
Batch Weighman  
Carpenter Tender  
Cassion Worker  
Cement Dumper/Paving  
Cement Finisher Tender  
Chipping Gun (Over 30 lbs.)  
Chipping Gun (Under 30 lbs.)  
Chuck Tender  
Clean-up Laborer  
Concrete Form Stripper  
Concrete Saw Operator  
Crusher Feeder  
Curing Laborer  
Demolition, Wrecking & Moving (Including Charred Materials)  
Ditch Digger  
Diver  
Drill Operator (Hydraulic, Diamond)  
Drill Operator, Airtrac



**Craft**

**LABORERS CONTINUED**

Dumpman  
Faller/Bucker, Chainsaw  
Final Detail Cleanup (i.e. dusting, vacuuming, window cleaning;  
NOT construction debris cleanup)  
Fine Graders  
Fire Watch  
Form Setter  
Gabion Basket Builder  
General Laborer  
Grade Checker & Transit Person  
Grinders  
Grout Machine Tender  
Hazardous Waste Worker Level A  
Hazardous Waste Worker Level B  
Hazardous Waste Worker Level C  
High Scaler  
Hod Carrier/Mortarman  
Jackhammer  
Laser Beam Operator  
Miner  
Nozzleman, Concrete Pump, green Cutter when using High Pressure Air  
& Water on Concrete & Rock, Sandblast, Gunite, Shotcrete, Water Blaster  
Pavement Breaker  
Pilot Car  
Pipe Reliner (Not Insert Type)  
Pipelayer & Caulker  
Pipelayer & Caulker (Lead)  
Pipewrapper  
Pot Tender  
Powderman  
Powderman Helper  
Powerjacks  
Railroad Spike Puller (Power)  
Re-Timberman  
Riprap Man  
Signalman  
Sloper Sprayman  
Spreader (Clary Power or Similar Types)  
Spreader (Concrete)  
Stake Hopper  
Stockpiler  
Tamber & Similar Electric, Air & Gas  
Tamber (Multiple & Self-Propelled)  
Toolroom Man (At Jobsite)  
Topper-Tailer  
Track Laborer  
Track Liner (Power)  
Tugger Operator  
Vibrating Screed (Air, Gas, or Electric)  
Vibrator  
Welder

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Craft

**LABORERS CONTINUED**

Well-Point Laborer

**LABORERS-UNDERGROUND SEWER & WATER**

General Laborer

Pipe Layer

**PAINTERS**

Journey Level

**PLASTERERS**

Journey Level

**PLUMBERS & PIPEFITTERS**

Journey Level

**POWER EQUIPMENT OPERATORS**

Assistant Engineers

Backhoe, Excavator, Shovel (3 YD & Under)

Backhoe, Excavator, Shovel (Over 3 YD & Under 6 YD)

Backhoe, Excavator, Shovel (6 YD and Over with Att.)

Backhoes, (75 HP & Under)

Backhoes, (Over 75 HP)

Barrier Machine (Zipper)

Batch Plant Operator, Concrete

Belt Loaders (Elevating Type)

Bobcat

Brooms

Bump Cutter

Cableways

Chipper

Compressors

Concrete Finish Machine-Laser Screed

Concrete Pump-Truck Mount with Boom Attachment

Concrete Pumps

Conveyors

Cranes, Thru 19 Tons, with Attachments

Cranes, 20-44 Tons, with Attachments

Cranes, 45-99 Tons, Under 150FT of Boom (Including JIB with Attachments)

Cranes, 100-199 Tons, Under 150FT of Boom (Including JIB with Attachments)

Cranes, 200-300 Tons, Under 250FT of Boom (Including JIB with Attachments)

Cranes, A-Frame, 10 Ton and Under

Cranes, A-Frame, Over 10 Ton

Cranes, Over 300 Tons, or 300 FT of Boom (Including JIB with Attachments)

Cranes, Overhead, Bridge Type (20-44 Tons)

Cranes, Overhead, Bridge Type (45-99 Tons)

Cranes, Overhead, Bridge Type (100 Tons & Over)

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**Craft**

**POWER EQUIPMENT OPERATORS CONTINUED**

Cranes, Tower Crane up to 175FT in Height, Base to Boom  
Cranes, Tower Crane over 175FT in Height, Base to Boom  
Crushers  
Deck Engineer/Deck Winches (Power)  
Derrick, Building  
Dozers, D-9 & Under  
Drill Oilers-Auger Type, Truck or Crane Mount  
Drilling Machine  
Elevator and Manlift, Permanent and Shaft-Type  
Equipment Service Engineer (Oiler)  
Finishing Machine/Bidwell Gamaco and Similar Equipment  
Fork Lifts (3000 lbs and over)  
Fork Lifts (Under 3000 lbs)  
Grade Engineer  
Gradechecker and Stakeman  
Hoists, Outside (Elevators and Manlifts ), Air Tuggers  
Horizontal/Directional Drill Locator  
Horizontal/Directional Drill Operator  
Hydralifts/Boom Trucks (10 Ton and Under)  
Hydralifts/Boom Trucks (Over 10 Ton)  
Loaders, Overhead (6 YD Up to 8 YD)  
Loaders, Overhead (8 YD & Over)  
Loaders, Overhead (Under 6 YD) Plant Feed  
Locomotives, All  
Mechanics, All  
Mixers, Asphalt Plant  
Motor Patrol Grader (Finishing)  
Motor Patrol Grader (Non-Finishing)  
Mucking Machine, Mole, Tunnel Drill And/or Shield  
Oil Distributors, Blower Dist. and Mulch Seeding Operators  
Pavement Breaker  
Piledriver (Other than Crane Mount)  
Plant Oiler (Asphalt Crusher)  
Posthole Digger, Mechanical  
Power Plant  
Pumps, Water  
Quad 9, D-10, and HD-41  
Remote Control Operator, Rubber Tired Earth Moving Equip.  
Rigger and Bellman  
Rollagon  
Roller, Other than Plant Road Mix  
Rollers, Plantmix or Multilift Materials  
Roto-Mill, Roto-Grinder  
Saws, Concrete  
Scrapers, Concrete and Carry All  
Scrapers, Self-Propelled (Under 45 YD)  
Scrapers, Self-Propelled (45 YD and Over)  
Screed Man  
Shotcrete Guniting  
Slipform Pavers

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**Craft**

**POWER EQUIPMENT OPERATORS CONTINUED**

Spreader, Topside Operator-Blaw Knox  
Subgrade Trimmer  
Tractors (75 HP & Under)  
Tractors (Over 75 HP)  
Transfer Material Service Machine  
Transporters, All Track or Truck Type  
Trenching Machines  
Truck Crane Oiler/Driver (Under 100 Tons)  
Truck Crane Oiler/Driver (100 Tons & Over)  
Wheel Tractors, Farmall Type  
Yo Yo Pay Dozer

**ROOFERS**

Journey Level  
Using Irritable Bituminous Materials

**SHEET METAL WORKERS**

Journey Level

**SIGN MAKERS & INSTALLERS-ELECTRICAL**

Journey Level  
Stock Person

**SIGN MAKERS & INSTALLERS-NON-ELECTRICAL**

Construction  
Construction "B"  
Journey Level  
Production Silk Screener  
Shop Person  
Sign Hanger  
Sign Painter  
Silk Screener

**SOFT FLOOR LAYERS**

Journey Level

**SPRINKLER FITTERS (FIRE PROTECTION)**

Journey Level

**SURVEYORS**

Chain Person  
Instrument Person  
Party Chief

**TERRAZZO WORKERS & TILE SETTERS**

Journey Level

**TILE, MARBLE & TERRAZZO FINISHERS**

Finisher

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Craft

**TRUCK DRIVERS**

- Dump Truck
- Dump Truck & Trailer
- Other Trucks
- Transit Mixer

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**ATTACHMENT A**

**AUTHORIZATION FOR PAYROLL DEDUCTION**

I hereby authorize my employer and/or Sound Transit to withhold monthly dues and/or representation fees and to forward those funds to my exclusive bargaining representative, Local Union No. \_\_\_\_\_, AFL-CIO. I understand that this authorization will go into effect within 30 days of receipt. I also understand it will take 30 days on receipt of written notification to terminate this authorization.

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Signature: \_\_\_\_\_

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**ATTACHMENT B**

**SHEET METAL**

**LETTER OF UNDERSTANDING RE: PREFABRICATION**

(Date)

Mr. Sean Mahoney  
Sheet Metal Workers, Local 66  
(address)

Re: Sound Transit, Project Labor Agreement, Article 12, Management Rights

Dear Mr. Mahoney:

This letter will confirm the discussions we had during the captioned Project Labor Agreement and the clarifications we made concerning the application of Article 12, Management Rights, of the Agreement. Consistent with the provisions of that Article, the on-site fabrication and installation of duct and ductwork components which are traditionally the work of SMWIA members will continue to be recognized as such.

As you know from the discussions in negotiations, if done off-site, this work will be performed in the Puget Sound Area and in the shops or at off-site assembly yards employing workers whose terms and conditions of employment equal or exceed those established in the area under the prevailing wage laws for employees represented by the Sheet Metal Workers, unless such work is performed otherwise pursuant to the provisions of this letter.

The Sheet Metal Workers recognize that the timely completion of this Project is vital to Sound Transit and the Community it is intended to serve. Therefore, if the nature of the work, the project schedule, or the contracting circumstances make it necessary to obtain fabrication outside the region or under conditions different than those described above, the Sheet Metal Workers agree to cooperate in accommodating the reasonable needs of the Project. The Contractor and the Union agree to discuss such circumstances affecting off-site fabrication contracting purchases where an accommodation is sought and any reasons making it necessary to depart from the conditions set forth above. The Sheet Metal Workers will not unreasonably withhold its consent to such accommodations and Local 66 agrees to install on-site any components fabricated pursuant to the terms of this letter without limitation. The parties will make every effort to keep an open channel of communication to ensure that both parties are fully informed of the facts affecting the substance of this letter.

If you agree this letter accurately sets forth the substance of our understanding and provides the basis for resolving any questions concerning the interpretation and application of Article 12 of the PLA. Please indicate your acceptance in the space provided below.

Signed:

By: \_\_\_\_\_, (for Sound Transit)

By: \_\_\_\_\_, Sean Mahoney, Local 66

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**ATTACHMENT C**

**UNITED ASSOCIATION**

LETTER OF UNDERSTANDING RE: PREFABRICATION

(Date)

Mr. James Moss, Business Manager, UA Local 32, Seattle, Washington  
Mr. Larry Overly, Business Manager, UA Local 82, Tacoma, Washington  
Mr. Phillip D. Wells, Business Manager, UA Local 265, Everett, Washington

Re: Sound Transit, Project Labor Agreement, Article 12, Management Rights

Dear Mr. Moss, Overly and Wells:

This letter will confirm the discussions we had during the captioned Project Labor Agreement and the clarifications we made concerning the application of Article 12, Management Rights, of the Agreement. Consistent with the provisions of that Article, the on-site fabrication and installation of pipe and pipe formations between manufactured components which are traditionally the work of UA members will continue to be recognized as such.

As you know from the discussions in negotiations, if done off-site, this work will be performed in the Puget Sound Area and in the shops or at off-site assembly yards employing workers whose terms and conditions of employment equal or exceed those established in the area under the prevailing wage laws for employees represented by the United Association, unless such work is performed otherwise pursuant to the provisions of this letter.

The United Association recognizes that the timely completion of this project is vital to Sound Transit and the Community it is intended to serve. Therefore, if the nature of the work, the project schedule, or the contracting circumstances make it necessary to obtain fabrication outside the region or under conditions different than those described above, the United Association agrees to cooperate in accommodating the reasonable needs of the Project. The Contractor and the Union agree to discuss such circumstances affecting off-site fabrication contracting purchases where an accommodation is sought and any reasons making it necessary to depart from the conditions set forth above. If it is necessary to vary from the terms of the Agreement to accommodate the needs of the Project, due consideration will be given to United Association Union Label Fabrication shops that may employ workers whose terms and conditions of employment do not equal or exceed those established in the area under the prevailing wage laws for employees represented by the United Association. The United Association will not unreasonably withhold its consent to such accommodations and Locals 32, 82 and 265 agree to install on-site any components fabricated pursuant to the terms of this letter without limitation. The parties will make every effort to keep an open channel of communication to ensure that both parties are fully informed of the facts affecting the substance of this letter.

If you agree this letter accurately sets forth the substance of our understanding and provides the basis for resolving any questions concerning the interpretation and application of Article 12 of the PLA. Please indicate your acceptance in the space provided below.

Signed:

By: \_\_\_\_\_, (for Sound Transit)  
By: \_\_\_\_\_, James Moss, UA Local 32  
By: \_\_\_\_\_, Larry Overly, UA Local 82  
By: \_\_\_\_\_, Phillip D. Wells, UA Local 265

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**ATTACHMENT D**

**TEAMSTERS**

LETTER OF UNDERSTANDING RE: DELIVERY OF ROCK, ASPHALT, SAND, GRAVEL, AGGREGATE, READYMIX CONCRETE REGARDLESS OF USE

(Date)

Secretary/Treasurer, Teamsters Local 174, Seattle, Washington  
Secretary/Treasurer, Teamsters Local 313, Tacoma, Washington  
Secretary/Treasurer, Teamsters Local 38, Everett, Washington

Re: Sound Transit, Project Labor Agreement, Article 12, Management Rights

Dear Sirs:

This letter will confirm the discussions we had regarding clarifications concerning the application of Article 12, Management Rights. Consistent with the provisions of that Article, applicable state and federal prevailing wage rates covering the subject referenced items will continue to be recognized.

This letter will also confirm Sound Transit's commitment to the provision of labor that will not sanction, aid or abet, encourage or continue, directly or indirectly, any work disruptions, slowdowns, sympathy strikes, picketing, work stoppages or other disruptive activity of any nature, including harm or threat of harm to any persons or property during the performance of any work related to the delivery, receipt and unloading of materials subject to this letter or the provision or receipt of construction related services pertaining to this letter at any designated laydown yard, storage area, or site of construction covered by the Sound Transit Project Labor Agreement.

Finally, this letter will confirm Sound Transit's intent that the provisions of the Sound Transit Project Labor Agreement, including this letter of understanding, will apply to every lower tier subcontract let for work on projects to which the PLA applies.

If you agree this letter accurately sets forth the substance of our understanding and provides a basis for resolving any questions concerning the interpretation and application of Article 12 of the Sound Transit Project Labor Agreement please sign in the space indicated below.

Signed:

By: \_\_\_\_\_, (for Sound Transit)  
By: \_\_\_\_\_, Secretary/Treasurer, Teamsters Local 174  
By: \_\_\_\_\_, Secretary/Treasurer, Teamsters Local 313  
By: \_\_\_\_\_, Secretary/Treasurer, Teamsters Local 38

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**ATTACHMENT E**

**TUNNEL PROVISIONS**

Except as noted below, the terms, conditions of employment, wage rates and fringe benefits of the Sound Transit PLA apply to underground tunnel work:

Change House-The individual employer shall establish and maintain a change house within reasonable distance of each portal, adit or shaft which shall include separate shower rooms, toilet facilities, lockers and heating; and drying facilities for both men and women workers in sufficient numbers to support the amount of workers in each crew.

Bull Gangs-When required to support tunnel construction operations, special shifts maybe established by the Contractor for tunnel "Bull Gangs". The Contractor will provide adequate notice to the Committee as well as the employees when a special shift is required for "Bull Gang" work.

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## ATTACHMENT F

### **THE PLAN FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES IN THE CONSTRUCTION INDUSTRY**

The Building and Construction Trades Department, AFL-CIO, on behalf of its fifteen affiliated National and International Unions and their Local Unions, have joined with five employer associations<sup>1</sup> to establish the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the Plan). The jurisdictional disputes procedure has been in effect since 1984 and replaced such predecessor plans as the Impartial Jurisdictional Disputes Board and the National Joint Board. The Building and Construction Trades Department's Constitution requires all jurisdictional disputes between crafts to be settled pursuant to the Plan. As the Plan is a voluntary dispute resolution mechanism, however, a case will not be processed unless the employer agrees to be bound to the Plan.<sup>2</sup>

When a jurisdictional dispute arises, the National or International Unions have five days to resolve the matter. Anytime within the five day period, the involved National or International Unions or the contractor responsible for making the assignment may request the matter be arbitrated. The parties then have three days to select an arbitrator from a permanent panel of arbitrators knowledgeable in the construction industry. Once selected, the arbitrator must hold the hearing within seven days. The arbitrator issues a decision within three days of the close of the hearing.<sup>3</sup> The arbitrator may not award back pay or damages for a miss-assignment of work nor may any party bring an independent action for damages based on the arbitrator's award. The losing party pays the fees and expenses of the arbitrator. The arbitrator's decision is final and binding. There is no appeal procedure.

The Plan prohibits work stoppages, slowdowns, NLRB and court actions, and grievances under a collective bargaining agreement where the issue involves a jurisdictional dispute or assignment of work by a stipulated contractor. If a union engages in such activity, the Plan provides for expedited arbitration to resolve the matter. Upon notice by the contractor of an impediment to job progress, the Administrator informs the appropriate General President. If the General President is unable to stop the impediment, the Administrator selects an arbitrator to hold a hearing within 24 hours. The sole issues at the hearing is whether there has been an impediment to job progress. The arbitrator must issue a decision within three hours after the close of the hearing. If court enforcement of an arbitrator's decision is necessary, the Administrator is authorized to file a court action to enforce the decision.

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<sup>1</sup> Mechanical Contractors Association, National Constructors Association, National Electrical Contractors Association, National Erectors Association, and Sheet Metal and Air Conditioning Contractors National Association.

<sup>2</sup> An employer may stipulate to the Plan by the terms of a collective bargaining agreement, signing a separate stipulation form, or by membership in an employers' association which binds its members to the Plan.

<sup>3</sup> The criteria utilized by Plan arbitrators in rendering decisions are: 1) whether a previous decision or agreement of record between the parties to the dispute governs; 2) if not, whether there is an applicable agreement between the crafts governing the case; and 3) if not, the arbitrator then considers the established trade practice and prevailing practice in the locality. In addition, the Plan provides that because efficiency, cost or continuity and good management are essential to the well-being of the industry, the arbitrator shall not ignore the interest of the consumer or the past practice of the employer.

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A third type of dispute processed under the Plan involves changes in original assignment. Under the Plan, a contractor may not change an assignment of work from one craft to another unless directed by a Plan arbitrator or there is agreement between the crafts involved. The Administrator decides all original assignment questions. The sole issue is whether there has been a change in assignment, not whether the assignment was correct. Any party may appeal an original assignment determination of the Administrator to a Plan arbitrator.

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**ATTACHMENT G**

**LINK LIGHT RAIL AND SOUNDER COMMUTER PROJECT**

**SUBSTANCE ABUSE PREVENTION PROGRAM**

The Local Unions signatory to this PLA and Sound Transit have agreed on this Substance Abuse Prevention Program ("Program") for application to all Contractor craft personnel working on the Project. This Program supersedes any policies negotiated for any other work outside of the Project by Contractors and the Unions that might otherwise apply. Nothing in this Agreement is intended to supersede or diminish more restrictive controlled substance or alcohol regulations imposed by federal or state agencies upon specific employee groups or categories of employees who are also covered by this Program. A summary of this Program shall be provided to all employees. The full Agreement shall be made available to any Union representative or to Project employees upon request.

The intention of this Program is to establish the Project as a drug- and alcohol- free workplace in order to assure safe and productive working conditions with due regard for the personal privacy interests of Project employees. It is not the intention of the parties that any Contractor intrude on off-duty activities of Project employees away from the Project site unless those activities have a job-related impact. The circumstances permitting controlled substance and alcohol testing in this Program have been carefully defined and intentionally restricted. The Sound Transit Substance Abuse Coordinator hereinafter "Substance Abuse Coordinator" will retain oversight over the Programs and will monitor test procedures, as well as Contractor, Union and Third Party Administration policy compliance.

**SUMMARY**

The basic elements of the Program are simple. Unauthorized use, possession or sale of controlled substances or alcohol on the Project is prohibited. Persons who violate this rule or who are convicted for selling, using, or possessing controlled substances off the job will not be permitted to work on the Project. Applicants for Project employment will be subject to pre-employment controlled substance, alcohol and adulterant testing. Thereafter, employees will be subject to reasonable cause, post-accident, random and return-to-work testing for the presence of controlled substances, alcohol or adulterants in their systems. Employees who report for work with alcohol, adulterants or unauthorized controlled substances in their system will not be permitted to remain on the Project. Employees who violate the substance abuse policy and applicants who fail the pre-employment testing, will be denied employment and will not be eligible for reassignment to any Contractor on the Project until a period of not less than ninety (90) calendar days has passed and the employee/applicant has successfully completed a Sound Transit-approved counseling or rehabilitation program, at the employee's expense. An employee/applicant will be deemed to have "successfully completed" a Sound Transit-approved counseling or rehabilitation program when Sound Transit is provided written documentation from the approved agency/organization that the employee/applicant has met all of the Program requirements. Such employees/applicants shall be subject to pre-employment, random and periodic controlled substance, adulterant or alcohol testing thereafter at the request of Sound Transit for up to one year. The program will apply to all Contractor craft personnel, union and non-union, at all construction sites covered by the PLA.

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Special safeguards have been undertaken to assure that testing will be conducted by licensed laboratories, under the strictest federal guidelines, with special provisions to assure test reliability, employee privacy and confidentiality. All testing will be conducted only by laboratories approved by the Substance Abuse and Mental Health Services Administration ("SAMHSA") (formerly the National Institute of Drug Abuse, or "NIDA") in accordance with the Mandatory Guidelines for Federal Workplace Testing Programs established by the U.S. Department of Health and Human Services, as amended.

### **CONTROLLED SUBSTANCES**

For purposes of this Program, "controlled substances" shall include any illegal drugs, such as cocaine, marijuana, opiates, phencyclidine (PCP) and/or amphetamines, which may alter or affect an individual's motor functions or mental capacity. Appendix A lists the controlled substances and the threshold levels for which an employee/applicant will be tested. Threshold levels of categories of controlled substances listed by DOT constituting positive test results shall be determined using the applicable SAMHSA threshold levels in effect at the time of the testing. The schedule of controlled substances to be tested for on this Project and their threshold levels are listed in Appendix A and shall be updated periodically to reflect SAMHSA and industry threshold changes.

### **PRESCRIPTION AND OVER-THE-COUNTER MEDICATION ABUSE**

Abuse of a drug or medication prescribed by a duly licensed health care provider, over-the-counter drug or medication, health supplement or designer and synthetic drug which may alter or affect an individual's motor function or mental capacity is prohibited and will be treated for the purposes of this Program as a controlled substance.

Employees may maintain on Project premises prescription and over-the-counter medications provided:

1. The prescription is written by a licensed health care provider for current use by the person in its possession and the medication is in its original container and in the employee's name.
2. Employees must not consume prescribed or over-the-counter medications more often or in greater dosages than as prescribed by the employee's health care provider or as per the instructions and they must not allow any other person to consume the prescribed medication.
3. Where an employee has been informed that the medication could cause adverse side effects while working or where the medication, either prescribed or over-the-counter, indicates such a warning, the employee must inform the Contractor prior to using such substances on the job. The use of a medication prescribed by a licensed health care provider for the individual employee is permitted, provided that it will not affect work performance. However, the Contractor at all times reserves the right to have a licensed health care provider determine if use of a prescription medication by an employee may produce effects which may increase the risk of injury to the employee or others while working. If such a finding is made, the Contractor may check with the prescribing health care provider (with permission of the employee) to see if other medications are available which would not seriously affect the employee's ability to work safely. If appropriate substitute medication is not available, the Contractor may limit or suspend the work activity of the employee during the period that the licensed

health care provider advises that the employee's ability to perform his job safely may be adversely affected by the consumption of such medication.

4. Any employee who tests positive for a prescribed medication or whose work site performance or behavior has been impaired or affected by the use of a prescribed or over-the-counter medication will be found in violation of this Agreement unless proper notice has been given as required by paragraph 3 above.

#### **ADULTERATED, SUBSTITUTED OR DILUTE SPECIMENS**

This Substance Abuse Prevention Policy will adhere to guidelines established in SAMHSA Public Document 035 dated September 28, 1998 for determining the validity of a specimen. This guideline is consistent with the Department of Transportation (DOT) regulations (49 CFR Part 40) that permit laboratories to conduct additional tests to determine the validity of a specimen.

An employee/applicant submitting a specimen for which an approved testing laboratory reports the existence of an "adulterant", "interfering substance" and/or "masking agent" or the sample is identified as a "substituted specimen" will be deemed in violation of this Agreement and will be processed as if the test result were positive. Those employees/applicants for whom the testing laboratory reports an "adulterated", "interfering substance", "masking agent" or "substituted" specimen will be prohibited from the Project for not less than ninety (90) calendar days and the employee/applicant will be required to successfully complete a Sound Transit-approved rehabilitation program.

The guideline issued in PD 035, in the SAMHSA September 28, 1998 memo uses the following reporting protocols:

a.) **Adulterated Specimen:** PD 035 includes three definitions for *Adulterated*:

- i) *adulterated* if the nitrite concentration is equal to or greater than 500 mcg/mL.
- ii) *adulterated* if the pH is less than or equal to 3, or if it is greater than or equal to 11.
- iii) *Adulterated* if a foreign substance is present, or if an endogenous substance (one that is normally found in urine) is present at a concentration greater than the normal physiological concentration.

b.) **Substituted Specimen:** one that has a creatinine of less than or equal to 5 mg/dL and a specific gravity less than or equal to 1.001 or greater than or equal to 1.020. These specimens do not exhibit the clinical signs or characteristics associated with normal urine.

c.) **Dilute Tests:** Protocol covering dilute specimens will follow guidelines established by SAMSHA PD 035 in their memo dated September 28, 1998. Specimens identified by the testing laboratory as dilute will require the employee/applicant to be retested. A second consecutive retest indicating a dilute specimen will require the employee/applicant to be prohibited from working on the Project for a minimum of ninety (90) calendar days. Refusal to retest or noncompliance with drug testing procedures will result in the employee being prohibited from working on the Project for at least ninety (90) calendar days. In all instances, such employee will not be allowed work on the Project until he has successfully completed a drug and alcohol test.

A "dilute specimen" is defined as: "one that has a creatinine reading less than 20 mg/dL, but greater than 5 mg/dL, and a specific gravity less than 1.003 but greater than 1.001.

### **JOB APPLICANTS**

1. The special circumstances of the Project, including its unique construction activities and working conditions, warrant special assurances that all Contractor personnel are certified as alcohol- and drug-free before they are eligible for regular employment. All offers of employment for Project positions will be conditional until the applicant has satisfactorily completed a controlled substance and alcohol test. Specimens will be collected during in-processing on the Project site or at a designated off-site location prior to the commencement of any work on the Project, but not more than twenty-four (24) hours prior to the commencement of any work. Applicants will be on the clock for all time spent in-processing, including specimen collection, with a minimum of four (4) hours paid show-up time.
2. Applicants for Project positions will be permitted conditional access to the Project pending receipt of final test results. If test results are confirmed positive for controlled substances without a valid prescription, alcohol or adulterants, the employee will be barred from the Project immediately. Such employees will be paid for all time worked. An applicant with a confirmed positive test may request in writing from Sound Transit for a copy of the drug test result.
3. Any conditional employee so barred will not be eligible for reapplication for employment on the Project until a period of not less than ninety (90) days has passed and the employee has successfully completed a Sound Transit-approved counseling or rehabilitation program, at the employee's expense. Before being hired, any such employee must provide written documentation of successful passage of the counseling or rehabilitation program to the Substance Abuse Coordinator and must complete a controlled substance and alcohol test conducted by a SAMHSA-approved laboratory at the employee's expense. Upon the successful completion of such a subsequent test, the applicant will be eligible for assignment to the Project provided the applicant further agrees in writing to submit thereafter to periodic controlled substance or alcohol testing at Sound Transit's request. Such periodic testing will be conducted for up to one year after the applicant is assigned to the Project, in addition to any other testing provided for in this Agreement. The applicant will be responsible for any costs associated with the periodic tests.
4. Any applicant who receives a negative result on his pre-employment controlled substance and alcohol test will not be required to submit to a second pre-employment test within one (1) year of the first such test and will be issued a drug testing "clean card". The "clean card" may be linked to, and valid on both the Sound Transit and Sea-Tac Airport Projects. If linkage with the Sea-Tac Airport Project is approved, Sound Transit will provide notification to the Contractor. Re-employment after the anniversary date that the clean card is issued will require the applicant to submit to normal pre-employment requirements. An employee who is issued a clean card will continue to be subject to reasonable cause, post accident, random and return-to-work testing.
5. Refusal on the part of any applicant or employee to comply with the testing procedure will disqualify the applicant or employee from consideration for continued employment on the Project for not less than ninety (90) calendar days.

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## ACTIVE EMPLOYEES

All regular employees are subject to a controlled substance or alcohol test while on the job or in a job status (such as on Contractor- or Owner-provided transportation) for the following reasons:

- (a) **Reasonable Cause Testing:** An employee will be tested for reasonable cause when specific, reliable objective facts and circumstances are sufficient to warrant a prudent person to believe that the employee more probably than not may have used a controlled substance or alcohol as evidenced by work performance, behavior or appearance while on the job site. If cause results from an observation, the observation must be confirmed by a second member of Contractor supervision and those Contractor representatives will endeavor to consult with the prime Contractor's Safety Representative or designee. The Contractor will notify the Substance Abuse Coordinator within one (1) working day of directing the employee to a reasonable cause test.
- (b) **Post-Accident Testing:** Any employee who is involved in an accident in the course of job duties which involved use of vehicles, heavy equipment, power tools or other dangerous instrumentalities or working conditions and which resulted in injury or property damage may be tested in cases where the designated Contractor safety representative or designee concludes that:
1. the accident was caused by human error or could have been avoided by reasonably alert action; and
  2. the employee to be tested was an active participant in the accident circumstances; and
  3. use a controlled substance or alcohol or abuse of a prescription or over-the-counter drug cannot be discounted as a contributing factor.

Any employee directed for post-accident testing shall be entitled to request the presence of a Union steward in pre-test meetings with Contractor management, provided a Union steward is readily available and the circumstances allow. The Contractor will notify the Substance Abuse Coordinator within one (1) working day of directing the employee to drug and alcohol test following an accident.

- (c) **Random Testing:** The Coordinator will conduct periodic random testing of regular employees for controlled substances and alcohol. Employees will be selected for testing by lottery; to be conducted solely by the Coordinator or a Project-designated Third Party Administrator (TPA). (Up to fifty percent (50%) of regular employees will be randomly tested annually.) Such testing will be in addition to any other testing permitted by this Agreement.
- (d) **Return-To-Work Testing:** An employee who has submitted a positive drug, adulterant or alcohol test for work on the Project and who seeks to return to work on the Project after successfully completing all Program requirements, will consent and submit to periodic testing for up to one (1) year from his return at the direction of the Substance Abuse Coordinator. These tests are in addition to any reasonable cause, post-accident and random testing requirements.

Employees removed from duty for reasonable cause and post-accident testing will remain off duty until test results are received. If the employee tests negatively, the employee will be reinstated with full backpay for lost time. Employees required to present for random testing will remain on duty unless and until the employee tests positively for a controlled substance and/or alcohol.

If the employee tests positively, the employee will be barred from the Project effective the date and time of the specimen collection. Any employee so barred will not be eligible for reemployment on the Project until a period of not less than ninety (90) calendar days has passed and the employee has successfully completed a Sound Transit-approved counseling or rehabilitation program, at the employee's expense. Before being rehired, any such employee must provide documentation of successful completion of the counseling or rehabilitation program to the Substance Abuse Coordinator and must complete a controlled substance test conducted by a Sound Transit-approved laboratory at the employee's expense. Such employees will be required to submit to periodic controlled substance and alcohol testing at Sound Transit's request, for up to one year after they return to the Project. Any costs associated with the periodic testing will be the responsibility of the employee. The employee's consent to such periodic testing, which shall be conducted in addition to reasonable cause and random testing, is a condition of reemployment.

Any employee/applicant convicted for selling, using, manufacturing or possessing a controlled substance in any court of law will notify the Substance Abuse Coordinator within one (1) working day of the conviction. The conviction will be treated as a positive test result and the employee/applicant will be held to the same requirements set for this violation. Failure to report a conviction to the Substance Abuse Coordinator may lead to prohibition from the Project for up to one (1) year.

#### **COLLECTION PROCEDURES**

An employee/applicant dispatched to the Project will present himself for collection of a specimen and breathalyzer test prior to the commencement of any work on the Project, but not earlier than one working day prior to the commencement of any work. The specimen will be divided into a split sample in the presence of the employee/applicant. Urine specimens shall be collected in such a manner as to give the employee/applicant as much privacy as possible without degrading the reliability of the test.

An employee/applicant undergoing urine testing will be given a maximum of three hours at the collection site to produce a valid specimen. All breathalyzer tests shall be conducted immediately upon the employee's/applicant's presentation for the test. Failure to produce a valid specimen constituting no less than 45ml of urine in one void within this time frame or to submit to the breathalyzer test will result in the employee being considered as "refusing to test" and he will be prohibited from working on the project for not less than ninety (90) calendar days and until he successfully passes an approved drug and alcohol test.

An employee/applicant who can not produce a valid specimen within the three hour time frame may contact the Medical Review Officer (MRO) for review of his circumstance. The MRO may refer the employee/applicant for a medical evaluation to a physician designated by the MRO to determine if there is a valid medical reason that would prevent the employee/applicant from providing a sufficient specimen. If the MRO finds documented evidence of a valid medical reason for failing to provide a sufficient specimen, he may authorize the employee/applicant to present himself for a new collection. The employee/applicant is responsible for all expenses pertaining to the medical evaluation. The Contractor to whom the employee/applicant is dispatched, will be responsible for the expenses related to the new collection and drug and alcohol test.

## **TEST PROCEDURES**

Testing procedures, including controlled substances to be tested, specimen collection, chain of custody and threshold and confirmation test levels shall comport with the Mandatory Guidelines For Federal Workplace Testing Programs established by the U.S. Department of Health and Human Services, as amended and the Federal Motor Carrier Safety Act regulations, where applicable. Controlled substance tests shall be conducted only by laboratories licensed and approved by SAMHSA, which comply with the American Occupational Medical Association (AOMA) ethical standards. Controlled substance tests shall be by urinalysis and shall consist of two procedures, a screen test (EMIT or equivalent) and if that is positive, a confirmation test (GC/MS or equivalent). Alcohol tests shall be by breathalyzer. Any test revealing a blood/alcohol level equal to or greater than .04 percent shall be positive and will be conducted under procedures consistent with Washington State law.

An employee/applicant presenting himself at a Sound Transit-approved drug collection site must have a minimum of one piece of government-issued photo identification and may not leave the collection site for any reason - unless authorized by the collection agency - until he has fully completed all collection procedures. Failure to follow all collection procedures will result in the employee/applicant being classified as "refusing to test" and being prohibited from working on the Project for a minimum of ninety (90) calendar days from the date of the scheduled test.

## **TEST RESULTS**

Any positive test for controlled substances, alcohol or an adulterant shall be reported to a Medical Review Officer (MRO) appointed by the designated laboratory. The Medical Review Officer shall review the test results and any disclosure made by the employee/applicant and shall attempt to interview the employee/applicant to determine if there is any physiological or medical reason why the result should not be deemed positive. If no extenuating reasons exist, the MRO shall designate the test positive. The MRO will make good faith efforts to contact the employee/applicant, but failing to make contact within two (2) working days, may deem the employee's/applicant's result a "lab positive". After the issuance of a lab positive, the employee/applicant will be barred from the Project until the employee/applicant makes contact with the MRO and the MRO sends the Substance Abuse Coordinator a written confirmation of a negative result.

If the MRO declares the test positive or adulterated, notification shall be provided, in writing, to the Substance Abuse Coordinator. The Substance Abuse Coordinator shall keep test results in confidence. A limited notification will be provided to the employing Contractor, by the Substance Abuse Coordinator, solely reporting that the employee is "ineligible" for further employment. The employing Contractor shall have no access to individual test files. In addition, the Substance Abuse Coordinator shall contact the appropriate Union representative and advise him of the employee's eligibility status for continued work on the Project. The Unions shall keep the test results in confidence and only use the results to determine the eligibility of the member to be re-dispatched to the Project. If written notification of termination is required, the Contractor will state that the employee is "in violation of the Link Light Rail and Sounder Commuter Project PLA Policy".

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## RE-TESTS

In the event of a positive controlled substance test, an automatic confirmation test will be performed on the original specimen by the testing laboratory at no cost to the employee. In addition, the testing laboratory shall preserve a sufficient specimen to permit independent re-testing at the request of the employee at his expense. Re-tests may be conducted by the same or any other approved Sound Transit laboratory. The laboratory shall endeavor to notify the MRO of positive controlled substance test results within five (5) working days after receipt of the specimen. The employee may request a re-test within five (5) working days from notice of a positive test result by the MRO. Costs of re-tests will be paid in advance by the requesting party.

## CONSENT FORMS

Employees must execute a written consent, in the form attached at Appendix B, to submit to the test and for the testing laboratory to release the report of test results to the Substance Abuse Coordinator. Failure to sign the appropriate release form or to comply with testing procedures otherwise will result in the employee or applicant being barred from the Project for not less than ninety (90) calendar days.

## SUBSTANCE ABUSE COORDINATOR

Sound Transit shall designate a Substance Abuse Coordinator to monitor compliance with this Agreement and to provide assistance to Project employees with questions concerning controlled substance or alcohol test procedures, availability of a Sound Transit-approved counseling or rehabilitation or any other substance- or alcohol-related matters. All inquiries to the Substance Abuse Coordinator will be confidential. The parties are eager to help employees with substance abuse problems. The Substance Abuse Coordinator will be prepared to assist employees in discussing insurance coverage and locating available counseling, rehabilitation and community resources.

## EMPLOYEE ASSISTANCE PROGRAMS

The Substance Abuse Coordinator will work with the signatory Unions to develop an "approved" list of counseling and rehabilitation programs to be used by employees/applicants who test positively for controlled substances, alcohol or adulterants. The cost of counseling and rehabilitation will be the responsibility of the employee/applicant.

## APPEAL PROCEDURE

Any disputes involving application of this Program shall be referred to the Dispute and Grievance Procedure established by Article 17 of the PLA. Such disputes may be initiated at Step 2. Nothing in the grievance procedure may void the application of this Substance Abuse Prevention Program on the Project.

## SAVINGS AND SEVERABILITY

It is not the intention of the Unions or Sound Transit to violate any applicable federal or state laws by enactment of this Program or in its application. In the event any provisions of the Program are held to be illegal or void as being in contravention of any law, the remaining provisions shall remain in full force and effect. The parties agree further to meet promptly to commence negotiations concerning the provision affected by such decision for the purpose of

achieving conformity with the requirements of the applicable law and the intent of the parties hereto.

REVISIONS OR AMENDMENTS

No revisions or amendments shall be made to this Program except with the written approval of the parties hereto. This Program shall be effective November 17, 1999, and shall remain in effect for the duration of the Project unless terminated or amended by mutual consent.

For The Signatory Unions:

For Sound Transit:

By \_\_\_\_\_

By \_\_\_\_\_

08/

APPENDIX A  
SUBSTANCE ABUSE PREVENTION AND DETECTION  
THRESHOLD LEVELS

CONTROLLED SUBSTANCE*	SCREENING METHOD	SCREENING LEVEL**	CONFIRMATION METHOD	CONFIRMATION LEVEL
Amphetamines	EMIT	1000 ng/ml**	GC/MS	500 ng/ml**
Barbiturates	EMIT	300 ng/ml	GC/MS	200 ng/ml
Benzodiazepines	EMIT	300 ng/ml	GC/MS	300 ng/ml
Cocaine	EMIT	300 ng/ml**	GC/MS	150 ng/ml**
Methadone	EMIT	300 ng/ml	GC/MS	100 ng/ml
Methaqualone	EMIT	300 ng/ml	GC/MS	300 ng/ml
Opiates	EMIT	2000 ng/ml**	GC/MS	2000 ng/ml**
PCP (Phencyclidine)	EMIT	25 ng/ml**	GC/MS	25 ng/ml**
THC (Marijuana)	EMIT	50 ng/ml**	GC/MS	15 ng/ml**
Propoxyphene	EMIT	300 ng/ml	GC/MS	100 ng/ml
Alcohol	Breathalyzer	.04 Percent	Breathalyzer	.04 Percent

\* All controlled substances including their metabolite components

\*\* SAMHSA specified threshold

A sample reported positive contains the indicated drug at or above the cutoff level for that drug. A negative sample either contains no drug or contains a drug below the cutoff level. Testing levels may be changed to meet SAMSHA or revised industry standards.

EMIT – Enzyme immunoassay

GC/MS – Gas Chromatography/Mass Spectrometry

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**APPENDIX B  
SUBSTANCE ABUSE PREVENTION PROGRAM**

CONSENT FORM

Employee Acknowledgment/Authorization

I am familiar with my obligations under the Link Light Rail and Sounder Commuter Project Substance Abuse Prevention Program. I also understand that the Program specifically requires that:

- Use, possession or sale of controlled substances or alcohol at the Project site is prohibited.
- Violation of this rule, or conviction for selling, using, or possessing controlled substances on or off the Project, will cause me to be barred from the Project.
- Use of prescribed or over-the-counter medication is permitted if it will not affect work performance.
- If prescribed or over-the-counter medication could affect work performance I must notify my Contractor-employer prior to using such substances on the job.
- I must submit to screening/testing for controlled substances, adulterants and alcohol as requested by the Contractor in accordance with the terms of the Program.
- The presence of one or more of a controlled substance, adulterant or alcohol in my system at or above the defined threshold levels will result in termination of employment and ineligibility for reemployment for at least ninety (90) calendar days.
- If terminated for failing a controlled substance, adulterant or alcohol test, I will be required to complete a Sound Transit-approved counseling or rehabilitation program and to agree to periodic testing at Sound Transit's request.
- My submission of an adulterated, substituted or dilute specimen, or my refusal to submit to the alcohol and controlled substances screening tests required by this Program will subject me to all disciplinary procedures and/or prohibitions provided in the Program.
- If I am employed, my refusal to submit to such testing will result in immediate termination of employment.

I authorize the release of all test results to the Substance Abuse Coordinator. In addition, I authorize the release of my job eligibility status to my Contractor-employer and the appropriate Union Representative.

I am signing this acknowledgment/authorization voluntarily with full knowledge and understanding of the Link Light Rail and Sounder Commuter Project Substance Abuse Prevention Program and I agree to be bound by its terms.

Employee Name (Print): \_\_\_\_\_

Employee Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Sound Transit Contract #: \_\_\_\_\_

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**APPENDIX C**  
**LINK LIGHT RAIL AND SOUNDER COMMUTER PROJECT**  
**SUBSTANCE ABUSE PROCEDURES**

1. Each craft employee must sign a consent form (See Appendix B) to allow the Substance Abuse Coordinator access to his testing information and results. Each craft worker is to be drug tested on the day of, but prior to, the commencement of any work. The signed consent form is to be photocopied. The original is to be kept on file by the Contractor and the copy is to be given to the employee.
2. A drug test "Clean Card" will be used for the Project. Craft workers who receive a dispatch for the Project and who receive a negative result on their pre-employment drug and alcohol tests will receive a "Clean Card" that is valid for one year from the date that it was issued. When issued, the "Clean Card" will exempt the craft worker from any pre-employment drug and alcohol testing for any contract on the Project during the year that it is valid. Contractors are to accept the "Clean Card" as evidence of testing and follow all procedures as if the "Clean Card" were a drug test receipt. If a craft employee possessing a valid "Clean Card" becomes employed by another Contractor on the Project, or moves with his Contractor-employer to another contract within the Project, he will be exempt from pre-employment drug and alcohol testing. After one year from issuance, the "Clean Card" will expire and the employee will be required to submit to pre-employment drug and alcohol testing if he changes Contractor or works on a different contract within the Project. If approved, the "Clean Card" will be linked to the Sea-Tac Project and Sound Transit will notify Contractors that they may accept a "Clean Card" from that project as evidence of testing. The "Clean Card" will not exempt an employee from any of the other drug testing requirements, such as reasonable cause, post-accident, random or return-to-work testing.
3. Craft employees who have been drug tested for projects other than those covered by this PLA – or Sea-Tac, if approved - must be re-tested prior to commencing any work. Craft employees who have been laid off or not worked on the Project for thirty (30) days or more must be re-tested unless they hold an unexpired "Clean Card" from this Project. Craft employees are to be paid for the time that they are being drug tested. Contractors are required to have the craft employee show them their drug test receipt (Evidence of testing) or unexpired Project "Clean Card" before they are allowed to perform any work. The Contractor will photocopy the drug test receipts – or "Clean Cards" -and maintain them in their files. The Contractor will maintain these files for both themselves and their Subcontractors.
4. A Project-approved drug and alcohol collection/testing/MRO/Third Party Administrator for the Project will be identified for the Contractor. The Contractor will be notified of the requirements of notification and procedures to be used with this service.
5. Contractors must fax daily to the Substance Abuse Coordinator (or his designee) a list of each new craft employee who started work on that day. This requirement also is in effect for craft employees who have worked on the Project previously, but have been absent from the Project for more than thirty (30) days.
6. Upon receipt of the information from the drug collection/testing/MRO service/Third Party Administration, the Substance Abuse Coordinator will notify the Contractor if any of the craft employees on that contract are "ineligible" for further employment. A Contractor may be required to have an individual re-tested or a specimen may be subjected to specialized



testing. The Substance Abuse Coordinator will communicate only to the Contractor about their own or their Subcontractor's craft employees concerning test results and will communicate only when the employee is "ineligible" for further employment. It is the responsibility of the Contractor to keep this information confidential.

7. A Contractor may be required to have an employee re-tested one or more times. In cases where an individual has produced two (2) consecutive dilute specimens, the individual will be prohibited from working on the Project for a minimum of ninety (90) calendar days. In circumstances where an individual can not, or who is unwilling to submit a valid specimen, an individual may be directed to the collection agency's office at or by a particular time or day and be prepared to stay in the office until he produces a valid specimen. Failure to comply with these directions will render an individual ineligible for employment on the Project for a minimum of ninety (90) calendar days. The Contractor will pay for all dilute specimen re-tests of its employees. When an employee fails a drug or alcohol test, the employee will pay for all re-tests that follow that positive test.
8. The Contractor will notify the Contractors' Representative and/or Substance Abuse Coordinator immediately when a craft employee is being tested for either "probable cause" or "post accident" purposes, refuses to comply with the Substance Abuse Policy and procedures, violates the "Firearms Prohibition" provision of the PLA or violates any local, state or federal law while on the Project site. A written statement as to the facts of each situation described above will be submitted to the Contractors' Representative and/or Substance Abuse Coordinator within three (3) calendar days of the event.

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ATTACHMENT H



STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES

General Administration Building • Olympia, Washington 98504-1401  
ESAC DIVISION - TELEPHONE (206) 956-5310  
PO BOX 44540, OLYMPIA, WASHINGTON 98504-4540

September 9, 1992

Jennifer Balliet, Business representative  
IBEW Local Union No. 46  
2700 First Avenue  
Seattle, Washington 98121

Dear Ms. Balliet:

Thank you for your letter dated January 31, in which you asked for a determination of whether or not the travel time you described is compensable.

Section 2.03 of the Contract W/F34-90, Volume 2A of 19, appears to clearly state that construction workers may not park their personal vehicles at the job site. That section further appears to state that contractors shall provide bus transportation from a staging area away from the job site.

If, and this appears to be the case, it goes to the benefit of the contractor to comply with this requirement by requiring workers to report to a designated staging area where they will be transported by bus to the work area, then the staging area would be considered the job site. The workers appear not to have an alternative way to get to the work area. For these reasons the time is compensable.

If you have any further questions, please do not hesitate to contact me at (206) 956-5310. Thank you for expressing your concerns and giving me the opportunity to respond.

Sincerely,

*Greg Mowat*

Greg T. Mowat,  
Employment Standards Manager



STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES  
EMPLOYMENT STANDARDS DIVISION (206) 958-5318  
P.O. BOX 44510, OLYMPIA, WASHINGTON 98504-4510

December 29, 1983

Valley Electric of Mount Vernon  
Mr. Ernest Ward

Dutton Electric of Everett  
Mr. Kim Dutton

Messrs Ward and Dutton:

The department has completed a full investigation of several complaints related to the work being performed for METRO on the West Point Water Treatment Plant project. The complaints specifically address the compensability of the time involved in travel from a remote staging/parking area to the actual construction site.

The department's investigation reveals the following facts:

1. The arrangement by which employees must assemble at the remote staging area and ride a shuttle bus to the actual site [approximately 4.8 miles from the actual site] is a requirement of the contract between Metro and all contractors working on the Treatment Plant.
2. Employees may not use any other means of reaching the actual construction site, they must ride the shuttle bus provided by the contractor and adhere to the schedule of that bus transportation.
3. The duration of the travel time is 10-15 minutes each way and is in addition to the eight (8) hour shift spent at the actual site.

The department believes that the travel time in question is compensable. Our analysis is as follows:

1. Chapter 49.48 RCW, the minimum wage act, clearly requires that an employee be compensated for all time worked at the agreed-to rate (regular rate) of pay. Further, time worked is defined as "all hours during which the employee is authorized or required by the employer to be at a prescribed work place." IWAC 286-126-002(8)]. Finally, Washington Courts consider "whether such time is primarily spent for the employer's or employee's benefit..."

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West Point Water Treatment Plant  
December 29, 1993  
Page 2

2. The travel time in question clearly accrues to the employee's benefit as it is based on a requirement of the contract with the awarding agency (METRO). It is also clear to us that the employer is in full control of the employee's activity from the time that the employee's board the shuttle bus, even to the prescription of the time that boarding takes place.
3. Associated with an initial determination in this matter we need to address the possible application of the Portal-to-Portal Act (29 U.S.C. 261 et seq.) The department does not believe that this body of Federal Statute is appropriately applied in this case. We are interpreting Washington State Wage and Hour statutes in this instance; if the Legislature of this state had felt compelled to apply the principles of the Portal-to-Portal Act, they would have enacted analogous legislation, they have not done so. Further, all the contractors on this job pay some portion of the travel time thus establishing a practice of doing so; if the Portal-to-Portal Act did apply, which we dispute, it would allow for travel time payment based on practice.

The department hereby determines that the travel time in question is compensable. Further, as all work done on the West Point Water Treatment Plant is public work as defined in Chapter 39.12 RCW, the appropriate pay rates are the prevailing rates as determined by the Industrial Statistion. We would see all past and present employees who have worked on this project compensated for the travel time they have accrued and paid for all travel time accrued in the future.

Sincerely,

  
Greg Mowat  
Program Manager  
Employment Standards Division

cc: Joseph Brewer III, Acting Assistant Director  
Bill Mirand, IBEW 48  
Glyde Wilson, IUOE 302  
James Kerlee, State Council of Carpenters  
Dahnie Cook, Metro



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**EXHIBIT D**

**Sound Transit Link Light Rail  
Levels of Service**

Following are the minimum and maximum levels of service approved for the Tacoma segment of the Link light rail system:

**Minimum Level of Service:**

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

Sunday – Trains shall operate a minimum of ten hours per day with no greater than 20-minute headways between trains

**Maximum Level of Service:**

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

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# REQUEST FOR ORDINANCE OR RESOLUTION

CITY CLERK USE

Request #:

8344

Ordinance #:

26749

Resolution #:

1. DATE: 11/14/00

2. REQUESTING DEPARTMENT/DIVISION/PROGRAM Public Works/Engineering	3. CONTACT PERSON (for questions): Alan M. Tebaldi	PHONE/EXTENSION 5272
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4. PREPARATION OF ~~AN ORDINANCE~~ IS REQUESTED FOR THE CITY COUNCIL MEETING OF TUESDAY DECEMBER 5.

5. SUMMARY TITLE/RECOMMENDATION: (A concise sentence, as it will appear on the Council Agenda)

Authorizing the appropriate City officials to enter into an agreement with Sound Transit to construct, maintain and operate a light rail system within city right-of-way.

6. BACKGROUND INFORMATION/GENERAL DISCUSSION: (Why is this request necessary? Are there legal requirements? What are the viable alternatives? Who has been involved in the process?)

Sound Transit has been working with the City on the terms and conditions of design, construction, operation and maintenance of the Link light rail system to be located in the downtown. Those efforts have resulted in a draft Right-of-Use agreement between the City and Sound Transit in accordance with the provisions of the City Charter and Tacoma Municipal Code. Once adopted and signed, this agreement sets the framework for the relationship between the City and Sound Transit related to the light rail system.

7. FINANCIAL IMPACT: (Future impact on the budget.)

None

8. LIST ALL MATERIAL AVAILABLE AS BACKUP INFORMATION FOR THE REQUEST AND INDICATE WHERE FILED:

Source Documents/Backup Material

Location of Document

Draft agreement

City Clerk

9. FUNDING SOURCE: (Enter amount of funding from each source)

Fund Number & Name:	State \$	City \$	Other \$	Total Amount
N/A				

If an expenditure, is it budgeted?  Yes  No Where? Org #

10. ATTORNEY CONTACT: (Enter Name of Attorney that you've been working with)  
Chris Bacha

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 CITY CLERK'S OFFICE  
 189

 11. Department Director/Utility Division Approval	Approved as to Availability of Funds  Director of Finance	City Manager/Director Utilities Approval
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**26749**

Ordinance No. \_\_\_\_\_

First Reading of Ordinance: DEC 05 2000 (*Set over for Final Reading on 1-2-01*)

Final Reading of Ordinance: JAN 2 2001

Passed: JAN 2 2001

Roll Call Vote:

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
<del>Mr. Crowley</del>				
Mr. De Forrest	✓			
Mr. Evans	✓			
Mr. Kirby				✓
Dr. McGavick	✓			
Mr. Miller	✓			
Ms. Moss	✓			
Mr. Phelps				✓
Mayor Ebersole				

*Crowley*

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Mr. Crowley				
Mr. De Forrest				
Mr. Evans				
Mr. Kirby				
Dr. McGavick				
Mr. Miller				
Ms. Moss				
Mr. Phelps				
Mayor Ebersole				