



Legislation Text

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Req.#8344

ORDINANCE NO. 26749

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

6 WHEREAS SOUND TRANSIT is a governmental entity vested with all
7 powers necessary to implement a high capacity transportation system within its
8 boundaries in King, Pierce, and Snohomish counties, and the state legislature,
9 through the Growth Management Act (RCW 36.70A), requires the City to plan
10 for and encourage regional high-capacity transportation facilities such as the
11 Central Link Light Rail Project and, pursuant to RCW 81.104 and 81.1 12, has
12 declared that a single regional agency such as SOUND TRANSIT is more
13 effective than several local jurisdictions working collectively at planning,
14 developing, operating, and funding a high-capacity public transportation street
15 improvement, and
16

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

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

25 WHEREAS included in the new facilities and services will be light rail,
26 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
9 infrastructure improvements within the City boundaries, where transit
10 improvements and light rail are proposed, and

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
15 construction, maintenance, operation, and ownership of the Passenger Rail
16 System, consistent with the provisions of Article VIII of the City Charter and
17 applicable City ordinances, which Right of Use Agreement shall detail the
18 conditions for construction, maintenance, operation, and SOUND TRANSIT
19 ownership of the Passenger Rail System within City right-of-way and revisions,
20 extensions, or amendments of the Agreement; Now, Therefore,

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
25 is mutually agreed that a Right of Use is hereby granted to the Central Puget
26 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,
2 maintain, and own a passenger rail system to provide passenger transportation
3 in the City within and along the right-of-way area and upon the following terms
4 and conditions:

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Section 1. DEFINITIONS

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

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- 1 F. Facilities. "Facilities" or "Facility" shall mean any and all improvements,
2 equipment, or property installed, constructed, owned, or maintained by
3 SOUND TRANSIT in the Right-of-Way Area.
- 4 G. Final Construction Plans. "Final Construction Plans" shall mean prints
5 showing, in detail, the proposed construction and specifications of the
6 Passenger Rail System, including each and every proposed element,
7 Facility, or improvement appurtenant thereto planned for location on the
8 Passenger Rail System,
- 9 H. Hazardous Materials. "Hazardous Materials" shall mean any chemical,
10 material, or substance that is now, or at the time in question is, regulated
11 or governed by any law, the release of which creates any liability under
12 any applicable law or any other material which, when released, would
13 cause significant ecological damage.
- 14 1. Liability. "Liability" shall mean all loss, damages, cost, expense
15 (including costs of investigation and attorneys fees and expenses at
16 arbitration, trial, or appeal and without institution of arbitration or suit),
17 liability, claims, and demands of whatever kind or nature (including those
18 arising under the Federal Employers Liability Act) arising out of an
19 occurrence relating to this Agreement or occurring on or relating to any
20 of the land, tracks, or other improvements described herein.
- 21 J. Memorandum of Agreement. "Memorandum of Agreement" shall mean
22 that Memorandum of Agreement for Intergovernmental Cooperation for
23 the Tacoma Light Rail Transit Line between the City and SOUND
24 TRANSIT, dated September 2, 1998.

- 17 K. Operator. "Operator" shall mean the operator or operators, if any,
18 appointed from time to time by SOUND TRANSIT, or its assignees, to
19 operate SOUND TRANSIT trains over the Property and/or to exercise
20 some or all of the respective rights and obligations of SOUND TRANSIT
21 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.
- 22 L. Passenger Rail Service. "Passenger Rail Service" shall mean the
23 operation of trains, authorized in writing by SOUND TRANSIT, which are
24 used to provide passenger rail service or any other related rail passenger
service activities.
- 25 M. Passenger Rail System. "Passenger Rail System" shall mean light rail
26 rapid transit within the Right-of-Way Area, together with any ancillary

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- 1 Facilities such as tracks, commuter parking, passenger station sites, bus,
2 auto, bicycle, and pedestrian access Facilities, all as authorized herein
3 by this Agreement and as described in the Final Construction Plans.
- 3 N. Passenger Station Site. "Passenger Station Site" shall mean,
4 collectively, any passenger station owned, [leased, or operated by or on
5 behalf of SOUND TRANSIT; any adjacent passenger parking lot owned,
6 leased, or operated by or on behalf of SOUND TRANSIT; any passenger
7 loading platform owned, leased, or operated by or on behalf of SOUND
8 TRANSIT; or any passenger waiting area owned, leased, or operated by
9 or on behalf of SOUND TRANSIT.
- 10 O. Passenger Station. "Passenger Station" shall mean all buildings and
11 other improvements owned or operated by or on behalf of SOUND
12 TRANSIT related to the Passenger Rail System that are located on any
Passenger Station Site.
- 13 P. Passenger Transportation Uses. "Passenger Transportation Uses" shall
14 mean the movement or transport of people over, along, or across the
15 Property by light rail rapid transit.
- 16 Q. Passenger. "Passenger" shall mean any person (including, without
17 limitation, an Employee of the City) aboard any SOUND TRANSIT train.
- 18 R. Property. "Property" shall mean the Right-of-Way Area.
- 19 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

20 example and not limitation, structures in the Public Rights-of-Way such
21 as utility poles and light poles.

22 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
23 for the non-exclusive use of the rights-of-way of the City within the
24 Right-of-Way Area in accordance with the terms and conditions of the
Agreement.

25 U. Right-of-Way Area. "Right-of-Way Area" shall mean the public
26 rights-of-way as described in Exhibit "A."

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

3
4 W. SOUND TRANSIT. "SOUND TRANSIT" shall mean the Central Puget
Sound Regional Transit Authority, and any other entity to the extent such
5 entity, as permitted under this Agreement, is exercising any rights to
operate Passenger Rail Service over any portion of the Property,
6 pursuant to a specific written grant of such rights by SOUND TRANSIT,
including any Operator.

7
8 X. SOUND TRANSIT Train. "SOUND TRANSIT Train" or "Train" shall
mean any train operated by or on behalf of SOUND TRANSIT.

9 Y. Third Party. "Third Party" shall mean any person or entity other than the
10 City, or an employee of the City, and any person other than SOUND
TRANSIT, or an employee of SOUND TRANSIT.

11 Z. Tracks. "Tracks" shall mean all tracks (including, without limitation,
12 passing tracks and sidings), turnouts, crossovers, interlocking devices
and plants, track improvements, and support structures that are located,
13 installed, and maintained by SOUND TRANSIT.

14
15 AA. Train. "Train" shall mean one or more light rail units operated by
SOUND TRANSIT within the Right-of-Way Area.

16 Section 2. GRANT OF RIGHTS BY CITY

17 A. Grant of Non-Exclusive Right of Use. The City grants to SOUND
18 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
19 Area in accordance with the terms and conditions of this Agreement.
SOUND TRANSIT expressly agrees that it will construct, operate, and
20 maintain the Passenger Rail System in compliance with this Agreement
and all applicable City ordinances and state and federal laws, rules, and
21 regulations.

- 22 B. Rights Limited to Passenger Rail System. The Right of Use is granted
23 solely for the purpose of construction, maintenance, operation, and
ownership of the Passenger Rail System detailed in the Final
24 Construction Plans, and for no other purpose. SOUND TRANSIT
intends, and shall have the right, to use the Right-of-Way Area solely for
25 Passenger Transportation Uses. SOUND TRANSIT agrees that it shall
not, without the City's written consent, construct on or along the
26 Right-of-Way Area any additions to or expansions of the Passenger Rail

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- 1 System subsequent to the construction, in accordance with the Final
Construction Plans.
- 2 C. Rights Sub*ect to Right-of-Way Uses. The City intends to continue using
3 the Right-of-Way Area, as burdened by SOUND TRANSIT, for use as a
right-of-way and any other activities that do not impair the ability of
4 SOUND TRANSIT to operate the Passenger Rail System. The rights of
SOUND TRANSIT are subject and subordinate to the prior and
5 continuing right of City (1) to use and maintain the entire Property subject
to the terms and conditions of the Agreement; (2) the City's right to
6 dispose of all or any part of the Property, including, but not limited to, the
air space above and the subsurface area below the SOUND TRANSIT
7 Facilities, subject to the terms and conditions of this Agreement; and
(3) to construct and operate, and to change, modify, or relocate railway
8 tracks (other than SOUND TRANSIT Facilities), signals, pipelines,
electric lines, other railway Facilities, and/or recreational and municipal
9 Facilities in, on, upon, over, under, along, across, or through any or all
parts of the Right-of-Way Area, or permit others to do so for City or for
10 other public improvement projects, all or any of which may be freely done
at any time or times by the City or others with the City's permission,
11 without liability to the City or to any other party for compensation or
damages, unless and except to the extent that this Agreement otherwise
12 expressly provides therefor.
- 13 D. City Use of Right-of-Way Area. SOUND TRANSIT understands and
14 agrees that the normal course of Public Right-of-Way use by the City
may involve construction, maintenance, demolition, leasing, licensing,
15 permitting, and similar activities that have the potential to cause
interruption to the Passenger Transportation Uses. SOUND TRANSIT
16 understands and agrees that such activities may be caused, from time to
time, by reasons including, but not limited to: (1) traffic conditions;
17 (2) public safety; (3) Public Rights-of-Way construction; (4) Public
Rights-of-Way repair (including resurfacing or widening); (5) change of
18 Public Rights-of-Way grade; (6) construction, installation, or repair of
sewers, drains, water pipes, power lines, signal lines, tracks,
19 government-owned communications systems, public works, public
Facilities or improvements, or any government-owned utility; and
20 (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
21 construction, operation, or repair of the Passenger Rail System.

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

25 E. Non-Exclusive Use. SOUND TRANSIT understands that the rights
26 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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1 Area occupied by SOUND TRANSIT Facilities by one or more other
2 person(s); provided, however, that any such subsequent occupancies
3 shall not unreasonably interfere with SOUND TRANSIT's rights. The
4 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.

5 F. Use Restricted. This Agreement does not authorize the provision of any
6 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
7 obligation to obtain any additional permits, authorizations, licenses, or
8 agreements to use the Right-of-Way Area to provide other services. The
9 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.

10 G. Ownership. SOUND TRANSIT shall own all tracks and other
11 improvements on the Property not reserved to the City, including, without
12 limitation, improvements constructed at the cost and expense of SOUND
13 TRANSIT; provided, however, that to the extent the City or other
governmental entity constructs, or causes to be constructed, a
14 Passenger Station on the Property, then the City or other governmental
15 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.

16 H. Inconsistent Use. Notwithstanding the above, no Public Rights-of-Way
17 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
18 were created or dedicated, or presently used under applicable laws.

19 1. No Rights by Implication. No rights shall pass to SOUND TRANSIT by
20 implication. Without limiting the foregoing, by way of example and not
limitation, this Agreement shall not include or be a substitute for:

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

23 2. Any permit, agreement, or authorization required in connection with
24 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.

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J. Utilities Aareements. 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

3

of the Tacoma Public Utilities Board is required for access to and use of light and water utilities.

4

Section 3. FINANCIAL SECURITY

5

The parties agree to meet on the 1 0-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.

6

Section 4. PAYMENT

7

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.

8

Section 5. CONSTRUCTION

9

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.

10

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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SOUND TRANSIT shall not commence construction along any portion of the Right-of-Way Area until Final Construction Plans for such portion have been approved by the City. If unforeseen conditions arise during construction of the Passenger Rail System, the City will promptly

2

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

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- 1 statutes, laws, ordinances, regulations, rules, codes, orders, or
2 specifications of any public body or authority having jurisdiction.
- 2 H. Apprentice Program. SOUND TRANSIT shall include in any
3 apprenticeship program for construction projects covered by this
4 Agreement the City's Local Employment and Apprenticeship Program
5 (LEAP) and Youth Building Tacoma Program. The City's staff charged
6 with enforcement of these programs shall be reasonably available to
assist SOUND TRANSIT in complying with the requirements of said
programs. SOUND TRANSIT shall include in all construction contracts
that the City LEAP and Youth Building Tacoma staff shall have access to

construction sites for the purpose of enforcement of said programs. The

7 foregoing requirements of this subsection shall be deemed waived in the
8 event that SOUND TRANSIT has in place, for construction projects
9 covered by this Agreement, a Project Labor Agreement ("PLA"), in
10 substantially the form as attached hereto as Exhibit "C," which PLA has
11 been fully executed and implemented by the SOUND TRANSIT Board;
12 provided that SOUND TRANSIT, as a condition of said waiver, shall
13 encourage its contractors for those construction projects covered by this
14 Agreement, to utilize Tacoma labor forces in apprenticeship positions
15 and to cooperate and coordinate local labor hiring with City staff charged
16 with enforcement of the LEAP program.

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

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

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

L. Transmission Wires. SOUND TRANSIT shall, on the request of any
23 Third Party holding a valid permit issued by a governmental authority,
24 temporarily raise or lower its wires to permit the moving of buildings or
25 other objects. SOUND TRANSIT may require that the expense of such
26 temporary removal or raising or lowering of wires be paid in advance by

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

2 M. Information Regarding Ongoing Work. In addition to providing notice to
3 the public of ongoing work as may be required under applicable law,
4 SOUND TRANSIT shall make available information regarding any

4 ongoing construction of its Passenger Rail System sufficient to show:

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

N. Inspection during Construction. The City shall have the right to verify, by
8 inspection, that the location of the work and the materials used in
9 construction or operation of the SOUND TRANSIT Facilities are in
10 compliance with the Final Construction Plans, as approved by the City.
11 The City shall further have the right to verify, by inspection, that City

10 Facilities relocated and/or constructed by SOUND TRANSIT are to a
11 standard acceptable to the City in accordance with the Final Construction
Plans. The City shall give SOUND TRANSIT reasonable notice of such
12 inspections, and SOUND TRANSIT may, at its option, designate a
representative to accompany the City's representative on such
13 inspections. The costs to the City shall be borne by SOUND TRANSIT in
14 accordance with the Memorandum of Agreement.

15 0. Restoration of Right-of-Way Area. SOUND TRANSIT shall promptly
16 repair any and all Public Rights-of-Way and public or private property
that is disturbed or damaged during the construction of its Passenger
17 Rail System. Upon completion of the initial construction of the Transit
Facilities, SOUND TRANSIT shall ensure that the unimproved
18 Right-of-Way Area and all other public and private property that is
disturbed or damaged during construction of the Passenger Rail System
19 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
20 the City or the private property owners. In the event SOUND TRANSIT
does not comply with the foregoing requirements, the City may, upon
21 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.

22 P. Use of Separate Facilities. To the extent available, the City may, at its
23 sole option, rent or license to SOUND TRANSIT space in any vacant or
partially vacant buildings or property, within or beyond the Right-of-Way
24 Area, for such use(s) as SOUND TRANSIT may require in conjunction
with the SOUND TRANSIT Facilities. For each such site, the parties
25 shall enter into a separate lease, permit, or license agreement. SOUND
TRANSIT shall pay to the City separate rental for any buildings used by
26

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

2 Q. Use of Right-of-Way Area. During, and in furtherance of, initial
3 construction of SOUND TRANSIT Facilities, the City agrees to allow
SOUND TRANSIT the reasonable use, at no charge, of available
4 portions of the Right-of-Way Area for the purpose of allowing SOUND
TRANSIT to erect, at SOUND TRANSIT's sole cost and expense,
5 temporary structures and fences to protect SOUND TRANSIT's material
or equipment necessary for the construction of SOUND TRANSIT
6 Facilities, provided that such structures and fences (1) do not interfere
with or disrupt in any way, other than in ways approved in advance by
7 the City, the ordinary use of the right-of-way; (2) do not interfere with or
disrupt in any way, other than in ways approved in advance by the City,
8 the ordinary access to property on either side of the Right-of-Way Area;
and (3) shall be as shown and described in the Final Construction Plans.

9 SOUND TRANSIT agrees to restore any land used for such structures
and fences in accordance with Subsection 0 herein. Except for SOUND
10 TRANSIT Facilities (to the extent, and only to the extent, constructed in
accordance with City-approved Final Construction Plans and the
11 provisions of this Agreement), SOUND TRANSIT shall not store or
temporarily place any goods, materials, or equipment (1) near a
12 roadway, private grade, intersection, or crossing in such a manner as to
interfere with the sight distance of persons approaching such crossing; or
13 (2) within such greater distance as required by public authority; provided,

- 14 however, that fuel and other hazardous substances shall not be stored
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
utilities or services necessary to construct and operate the SOUND
17 TRANSIT Facilities, and SOUND TRANSIT shall indemnify the City
against any liability to any utility or service company arising out of utilities
18 or services ordered or used by or on behalf of SOUND TRANSIT.
- 19 S. Crossing. Crossing by SOUND TRANSIT under public roadways shall
be at a location and depth as agreed by the City and SOUND TRANSIT,
20 as shown on the Final Construction Plans.
- 21 T. Artifacts. If, during construction or operation of SOUND TRANSIT
Facilities, SOUND TRANSIT, its agents, servants, employees,
22 contractors, or subcontractors discover scientific or historic artifacts,
SOUND TRANSIT shall immediately notify the City of said discovery and
23 shall protect such artifacts in a manner as specified by the City, pursuant
to the guidelines identified in Exhibit "B."
24
25
26

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Section 6. PERMITS

- 2 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
3 and licenses required for the construction, operation, and maintenance of
the Passenger Rail System, including, without limitation, crossing,
4 zoning, building, health, environmental, and communication permits and
licenses; and (2) indemnify the City against payment of the costs thereof
5 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
6 remedial costs incurred by the City in curing any such failures. The City
shall cooperate with and assist SOUND TRANSIT in securing and
7 maintaining any such permits or licenses.
- 8 B. Environmental Impact Statement. Environmental Impact Statements, if
any, required at any time during the planning, design, construction, or
9 operation of the SOUND TRANSIT Facilities shall be prepared by
SOUND TRANSIT at SOUND TRANSIT's sole cost and expense.
10
- 11 C. City Shall Not Hinder. The City shall not hinder SOUND TRANSIT's
attempts to secure, at SOUND TRANSIT's sole cost and expense,
12 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).
13

Section 7. ENTRY NOTICE

- 14
- 15 A. Access. SOUND TRANSIT, its servants, employees, agents,

16 contractors, and/or subcontractors shall have access to the Right-of-Way
17 Area in connection with SOUND TRANSIT's construction, operation, and
18 maintenance of the Passenger Rail System as is reasonably necessary
19 in accordance with this Agreement; provided, however, except to the
20 extent expressly provided in this Agreement, this right of access shall not
21 be deemed to require the City to take any actions or expend any funds to
22 enable such persons to exercise such rights of access, and, provided
23 further, that such access may not interfere with or disrupt in any way,
24 other than in ways approved in advance by the City, the use of the Public
25 Right-of-Way by the City or Third Parties in and along the Right-of-Way
26 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. EntrV 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.

SECTION 8. OPERATION, MAINTENANCE, AND REPAIR IN STREETS AND

RIGHTS-OF-WAY

- 21 A. Compliance with Laws, Rules, and Regulations. SOUND TRANSIT shall
22 operate, maintain, and repair its Passenger Rail System in compliance
23 with all federal, state, and local laws; ordinances; and departmental
24 rules, regulations, and practices affecting such system, which include, by
25 way of example and not limitation, the obligation to operate, maintain,
26 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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- 1 SOUND TRANSIT shall exercise reasonable care in the performance of
2 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.
- 3 B. Permits Required. Except in cases of emergency repairs, SOUND
4 TRANSIT's construction, operation, or repair of its Passenger Rail
5 System shall not commence until all required permits have been properly
6 filed for and obtained from the proper City officials and all required
permits and associated fees paid. In case of emergency repairs,
7 appropriate permits shall be obtained no later than the second business
day following repairs.
- 8 C. Level of Operation/Maintenance. All Facilities shall be operated and
9 maintained in such a manner as to minimize disruption to other users of
10 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.
- 11 D. Appointment of Operator. SOUND TRANSIT may appoint an operator
12 as SOUND TRANSIT's agent to exercise some or all of SOUND
13 TRANSIT's rights under this Agreement, subject to the terms and
conditions of this Agreement.
- 14 E. Staff. SOUND TRANSIT or the Operator shall maintain, or cause to be
15 maintained, an adequate, competent, trained, licensed, qualified, and
experienced staff to operate SOUND TRANSIT Trains that use the
16 Property.
- 17 F. Regulatory Approvals. SOUND TRANSIT and the Operator shall obtain
18 and maintain all federal, state, and/or local regulatory approvals as may
be required for the conduct of Passenger Rail Service on the Property.
- 19 G. Hazardous Materials. Hazardous Materials shall not be allowed within
20 the Right-of-Way Area, nor shall any hazardous materials be transported
within the Right-of-Way Area.
- 21 H. Responsibility for Facilities. The City shall have no responsibility for
22 inspecting, maintaining, servicing, or repairing any trains or other
23 equipment used by SOUND TRANSIT on the Property, but all such
equipment shall at all times comply with applicable federal, state, and

24 local governmental requirements. Further, the City shall not be
responsible for the clearing or removal of trees, shrubs, plants, ice,
25 snow, or debris therefrom.
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1. Prompt Repair. SOUND TRANSIT shall promptly repair any and all
1 Public Rights-of-Way and public or private property that is disturbed or
2 damaged during the operation, maintenance, or repair of its Passenger
Rail System. SOUND TRANSIT shall ensure that the unimproved
3 Right-of-Way Area and all other public and private property that is
4 disturbed or damaged during the operation, maintenance, or repair of the
Passenger Rail System is promptly returned to as good a condition as
5 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
6 event SOUND TRANSIT does not comply with the foregoing
requirements, the City may, upon reasonable advance notice to SOUND
7 TRANSIT, take action to restore the Public Rights-of-Way or public
property at SOUND TRANSIT's sole cost and expense.
8
- J. Tree Trimming. No tree trimming shall be performed, except in the event
9 of an Emergency, without the permission of the City and other affected
10 authorities, and any tree trimming must be performed in strict
accordance with the Tacoma Municipal Code. Even if tree trimming is
11 authorized by the City, SOUND TRANSIT is liable for any damage it
causes during the course of tree trimming.
12
- K. Dispute. In any dispute over the adequacy of a restoration, the Director
13 of the Department of Public Works shall, in his or her sole discretion,
14 make the final determination.
- 15 L. Imminent Danger. In the event of an Emergency, or where the
Passenger Rail System creates, or is contributing to, an imminent danger
16 to health, safety, or property, the City may protect, support, temporarily
disconnect, remove, or relocate any or all parts of the Passenger Rail
17 System without prior notice and charge SOUND TRANSIT for costs
incurred. The City shall provide notice of such danger as soon as
18 practicable.
- 19 M. Transmission Wires. SOUND TRANSIT shall, on the request of any
20 Third Party holding a valid permit issued by a governmental authority,
temporarily raise or lower its wires to permit the moving of buildings or
21 other objects. SOUND TRANSIT may require that the expense of such
temporary removal or raising or lowering of wires be paid in advance by
22 the Third Party requesting the same. In no case will the cost of
23 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.
- 24 N. Information Regarding Ongoing Work. In addition to providing notice to
25 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
the Right-of-Way sufficient to show:

2 1. The nature of the work being performed;

3 2. Where it is being performed;
3. Its estimated completion date; and

4 4. Progress towards completion.

5 Section 9. DISPATCHING AND LEVEL OF SERVICE

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

8
9 B. Level of Service. SOUND TRANSIT shall determine the quarterly
passenger rail transportation schedules for the Passenger Rail System
and shall provide such schedule, and any changes thereto, in a timely
10 manner to the City. SOUND TRANSIT agrees to maintain service at the

11 minimum and maximum levels for the life of this Agreement, as
described in Exhibit "D," unless otherwise mutually agreed to in writing
12 by the parties and authorized by the respective governing bodies.

13 C. Consultation. Upon written request by the City, SOUND TRANSIT
14 agrees to promptly make available appropriate representatives to meet
with representatives of the City to discuss, review, and consider revisions

15 to the passenger rail transportation schedules requested by the City.
SOUND TRANSIT agrees to make good faith efforts to accommodate
16 the City's request and will provide a written response detailing what
action SOUND TRANSIT will take as a result of the City's request and
17 the reasons therefor, supported by any facts that were considered.

18 Section IO. FACILITY LOCATION SIGNS

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

22 Section 11. THIRD PARTY RIGHT-OF-WAY OWNERSHIP

23 This Agreement is not intended to cover and does not cover any occupancies
24 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
25 cooperate with SOUND TRANSIT to assist in its efforts to acquire rights to use

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

2 Section 12. RELOCATIONS

3 A. Except as otherwise provided herein, if the City determines that as a
4 result of a public project, the location of any of SOUND TRANSIT
5 Facilities must be changed or relocated by reason of traffic conditions;
6 public safety; Public Rights-of-Way construction; Public Rights-of-Way
7 repair (including resurfacing or widening); change of Public
8 Rights-of-Way grade; construction, installation or repair of sewers,

9 drains, water pipes, power lines, signal lines, tracks, or any other type of
10 government-owned communications system, public work, public facility,
11 improvement, or any government-owned utility; Public Rights-of-Way
12 vacation; or for any other purpose where the work involved would be
13 aided by the removal or relocation of the Passenger Rail System, the

14 City shall notify SOUND TRANSIT of such plans and shall use the City's
15 best reasonable efforts to secure an alternate location for SOUND

16 TRANSIT Facilities. SOUND TRANSIT and the City agree that upon
17 notice as provided above, representatives of each party will promptly
18 meet and enter into good faith negotiations to determine and mutually
19 agree upon a plan for relocation and upon allocation of the costs of
20 relocation of SOUND TRANSIT Facilities. SOUND TRANSIT shall move

21 the affected SOUND TRANSIT Facilities to such mutually agreed-upon
22 alternative location as soon as practicable after the parties have

23 executed an agreement or agreements reflecting the allocated costs to
24 be borne by each of the parties as a result of the change to or relocation
25 of SOUND TRANSIT Facilities. Notwithstanding the foregoing, in the
26 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

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

- 3 connection with or resulting from, either directly or indirectly, the
4 construction, maintenance, operation, repair, removal, occupancy, and
5 use of the Passenger Rail System by SOUND TRANSIT.
- 6 B. SOUND TRANSIT hereby releases the City from, and agrees to
7 indemnify, defend, protect, and save the City harmless from and against
8 any and all claims, suits, judgments, liabilities, defense costs and
9 expenses (including, but not limited to, attorneys' fees) arising out of any
10 loss of and/or damage to the real or tangible personal property of the
11 City, and any loss of and/or damage to the property of Third Parties or
12 SOUND TRANSIT; any loss and/or damage on account of injury to or
13 death of any persons whomsoever (including employees and agents of
14 the parties hereto and all other persons) caused by or growing out of
15 SOUND TRANSIT's or its employees', agents', servants', contractors', or
16 subcontractors' presence in, upon, or along the Right-of-Way Area or the
17 plan, design, construction, and installation, or subsequent operations,
18 maintenance, repair, reinstallation, replacement, relocation, or removal of
19 Transit Facilities or any part thereof; service interruption, cessation, or
20 unreliability of the Transit Facilities; libel; slander; infringement of
21 copyright or unauthorized use of any trademark, trade name, or service
22 mark arising out of the material, data, information, or other content
23 transmitted or received over the Transit Facilities, unless such claims,
24 suits, judgments, or liabilities arise from the sole, actions, or inaction of
25 the City, their employees, servants, agents, contractors, subcontractors,
26 or persons using the Passenger Rail System with permission of the City.
- 17 C. The parties hereby agree that no damages shall be recoverable from one
18 another because of any dispossession that results from any failure of or
19 defect in the City's title or the rights granted herein by the City to SOUND
20 TRANSIT. The City will cooperate with SOUND TRANSIT's actions to
21 rectify any title defect and shall stipulate to judgment upon demand with
22 regard to SOUND TRANSIT's title.
- 23 D. The party in whose favor an indemnification runs, pursuant to any of
24 Sections 14A 14.13, and 14.C (the "Protected Party"), shall give the
25 other party (the "Indemnifying Party") prompt notice of any claims or
26 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.

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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
may, at its option, make any expenditures or incur any obligations for the
payment of money in connection with or arising out of the matters
referred to in Sections 14A 14.13, and 14.C, including, but not limited to,
attorney's fees. Such sums paid or obligations incurred shall be deemed
to be additional obligations of the Indemnifying Party under this
Agreement and shall be paid by the Indemnifying Party upon the

6 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 11 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'. 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

6 comparable passenger rail systems.

7 C. Operation of Passencier Rail System. SOUND TRANSIT agrees that it is
8 not authorized to operate the Passenger Rail System, until the parties
9 have first entered into and fully executed an agreement, as required
10 pursuant to Section 15.13 herein.

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

- 11 1. Provide coverage on an occurrence basis;
- 12 2. Cover any and all costs, including defense costs, losses and
damages resulting from any personal injury and/or death

- 13 (including coverage under the Federal Employers Liability Act),
and/or property damage;
- 14 3. Include blanket contractual coverage, including coverage for
written contracts and specific coverage for the indemnity
15 provisions set forth in this Agreement, and completed operations
and products liability coverage; provided that, there shall not be
an exclusion for liability not contracted for;
- 16 4. Have no exclusion for incidents occurring within 25 feet, or any
17 distance, from a railroad track, or on, over, or under a railroad
track;
- 18 5. Have an aggregate limit location endorsement for the Passenger
Rail System;
- 19 6. Commence and be in force and effect before any work is done
under this Agreement;
- 20 7. Be maintained in place until all of its Facilities have been removed
from the Public Rights-of-Way and for six years thereafter;
- 21 8. Have no non-standard exclusions unless approved of by the City
Risk Manager;
- 22 9. Name the City as an additional insured without limitation, pursuant
to an endorsement approved of by the City's Risk Manager;
- 23 10. Cover all liability of the City arising out of, or related to, City's
24 performance, or nonperformance, under this Agreement, or
arising out of the construction, maintenance, or operation of the
25
- 26 See, *Barendrecht v. Walla Walla School District No. 140*, 26 Wn. App. 246 (1980).

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- 1 Passenger Rail System, including, without limitation, any
negligence of City;
- 2 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
3 than an "A XII" in the latest edition of "Best's Key Rating Guide,"
published by A.M. Best Company;
- 4 12. Be endorsed to state that coverage under the policy shall not be
suspended, voided, canceled, or amended except after 60 days
5 prior written notice of such has been given to the City;
- 6 13. Include a waiver of subrogation rights to the extent that any
liability for costs, losses, and damages resulting from any
7 personal injury, death, and/or property damage may be covered
by the proceeds of such insurance policies; and
- 8 14. Include an endorsement that such policy is primary and
noncontributing.
- 9 E. SOUND TRANSIT shall, during construction of the Passenger Rail
System, maintain insurance or self-insured retention in no less than the
10 minimum amounts as specified in Sections F through K below.
- 11 F. Comprehensive general liability insurance shall cover liability, bodily
injury, and property damage. Exposures to be covered are: premises,
12 operations, products/completed operations, and certain contracts.
- 13 Coverage must be written on an occurrence basis, with the following
limits of liability:
- 14 1. Bodily In'urv
- 15 a. Each Occurrence \$ 1,000,000
b. Annual Aggregate \$ 3,000,000

- 16 2. Property Damage
- 17 a. Each Occurrence \$ 1,000,000
- 17 b. Annual Aggregate \$ 3,000,000
- 18 3. Personal Injury
- 18 a. Annual Aggregate \$ 3,000,000
- 19
- 20 G. Completed operations and product liability insurance shall be maintained
- 20 for two years after the termination of this Agreement (in the case of the
- 21 SOUND TRANSIT or Operator) or completion of the work for SOUND
- 21 TRANSIT or Operator (in the case of a contractor or subcontractor).
- 22 H. Property damage liability insurance shall include coverage for the
- 23 following hazards: X - explosion; C - collapse; U - underground.
- 24 1. Workers' compensation insurance shall be maintained during the life of
- 25 this Agreement to comply with statutory limits for all employees and, in
- 25 the case any work is sublet, SOUND TRANSIT shall require its
- 26 %6 contractors and subcontractors to similarly provide workers'

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- 1 compensation insurance for all the latter's employees unless such
- 2 employees are covered by the protection afforded by SOUND TRANSIT.
- 3 SOUND TRANSIT shall also maintain during the life of this Agreement
- 4 employer's liability insurance. The following minimum limits must be
- 5 maintained:
- 6
- 7 1. Workers' Compensation: Statutory
- 8 2. Employer's Liability: \$ 500,000 per occurrence
- 9
- 10 J. Comprehensive auto liability coverage shall include owned, hired, and
- 11 non-owned vehicles.
- 12
- 13 1. Bodily Injury
- 14 a. Each Occurrence \$ 1,000,000
- 14 b. Annual Aggregate \$ 3,000,000
- 15 2. Property Damage
- 16 a. Each Occurrence \$ 1,000,000
- 16 b. Annual Aggregate \$ 3,000,000
- 17
- 18 K. SOUND TRANSIT shall keep, or shall require its general contractor to
- 19 keep, all Project components insured for Builders All Risk
- 20 Comprehensive Coverage, including earthquake, fire, and flood and to
- 21 include amounts sufficient to prevent SOUND TRANSIT from becoming
- 22 a co-insurer under the terms of the applicable policies, but in any event
- 23 in an amount not less than 100 percent of the then full "Replacement
- 24 Cost," being the cost of replacing the Project components, and all
- 25 fixtures, equipment, improvements, and betterments thereto.
- 26
- 27 L. If SOUND TRANSIT, its contractors, or subcontractors do not have the
- 28 required insurance, the City may order such entities to stop operations

- 18 until the insurance is obtained and approved.
- 19 M. Certificates of insurance, reflecting evidence of the required insurance
20 and naming the City as an additional insured on the general liability and
21 automotive policies described above, shall be filed with the City's Risk
22 Manager. The certificate shall be filed with the acceptance of the
23 Agreement and annually thereafter, and as provided in Subsection N
24 below.
25
26 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

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- 1 obtained prior to any such lapse or termination during the balance of the
period of the Agreement.
- 2 Section 16. LIENS
- 3 A. The Right-of-Way Area is not subject to a claim of lien. In the event that
4 any City property becomes subject to any claims for mechanics',
artisans', or materialmen's liens, or other encumbrances chargeable to or
5 through SOUND TRANSIT which SOUND TRANSIT does not contest in
good faith, SOUND TRANSIT shall promptly, and in any event within
6 30 days, cause such lien claim or encumbrance to be discharged or
released of record (by payment, posting of bond, court deposit, or other
7 means), without cost to the City, and shall indemnify the City against all
costs and expenses (including attorneys'fees) incurred in discharging
8 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
9 secure the release or discharge thereof at the expense of SOUND
TRANSIT after first giving SOUND TRANSIT five business days'
10 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
11 may adversely affect the Passenger Rail System.
- 12 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
13 TRANSIT or the City, or of a contract or action upon which the same
14 arose.
- 15 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
16 of the SOUND TRANSIT Facilities, except as may be otherwise provided
herein.
- 17 Section 17. TERM; TERMINATION
- 18
19 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.

20
21 B. Upon termination of this Agreement, SOUND TRANSIT agrees to
22 prepare, execute, and deliver to the City all documentation necessary to
23 evidence termination of this Agreement or portion thereof so terminated.
24 No such termination, however, shall relieve the parties hereto of
25 obligations accrued and unsatisfied at such termination.

24 Section 18. REMEDIES AT LAW

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

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

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

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

18 D. Alternative Remedies. No provision of this Agreement shall be deemed
19 to bar the right of the City to seek or obtain judicial relief from a violation
20 of any provision of the ordinance or any rule, regulation, requirement, or
21 directive promulgated thereunder. Neither the existence of other
22 remedies identified in this Agreement nor the exercise thereof shall be
23 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.

19 Section 19. RIGHT TO PURCHASE

20 A. The City shall have an option to purchase the Passenger Rail System
21 upon termination of this Agreement, whether termination is, or is not, for
22 cause. This option requires SOUND TRANSIT to convey the Passenger
23 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

24 necessary for the Passenger Rail System's operation, free and clear of
25 any encumbrances; (2) all repair records, maps, and equipment and
26 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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1 (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
2 the operations of a seller with minimal disruption to Commuters;
provided, that nothing herein shall require the City to accept or pay for
3 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
4 System located outside the City which are essential to SOUND
TRANSIT's operations in other communities.
5
6 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
7 TRANSIT that it intends to exercise its right to purchase the
Passenger Rail System. Within 90 days of the date the City notifies
8 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
9 establish a purchase price. If the parties are unable to agree to a
10 purchase price within 180 days after the City notifies SOUND
TRANSIT that the City intends to exercise its purchase option, either
11 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.
12 Within 45 days of the date that notice is submitted, each party may
appoint one appraiser. When each party appoints an appraiser, the
13 two appraisers shall appoint a third appraiser ("Third Appraiser"); if
14 only a single appraiser is appointed (whether by mutual agreement or
because of the failure of a party to timely nominate an appraiser), that
15 appraiser shall be the sole appraiser. The appraiser, if only a single
appraiser is appointed, or the three appraisers, if each party appoints
16 an appraiser and they appoint a third, shall mutually establish a price
for the Passenger Rail System, or portion thereof, that the City
17 desires to purchase in accordance with this Section 19. In the event
18 that the three appraisers cannot mutually establish a price for the
Passenger Rail System, then the Third Appraiser shall submit a final
19 binding appraisal establishing the price for the Passenger Rail
System. The appraisal shall be of the fair market value of the
20 Passenger Rail System as a going concern (taking into account such
property used and useful in providing service within the City that is to
21 be conveyed) and with no value allocated to the Right-of-Use itself.
22 This appraisal determination shall be final and non-appealable. The
City shall have 120 days after the decision of the appraisers) to
23 notify SOUND TRANSIT that it wishes to conclude the transaction, if
it does not so notify SOUND TRANSIT, the option shall be deemed
24 terminated.
25 2. If the City gives the notice required by the preceding paragraph, the
26 parties will thereafter promptly sign all necessary documents required

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

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

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

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

19 Section 20. REVOCATION OF FRANCHISE

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

- 24 1. SOUND TRANSIT is in substantial non-compliance with the
25 Agreement;
- 26 2. SOUND TRANSIT is found to have engaged in any actual or
27 attempted fraud or deceit upon the City, persons, or customers;
- 28 3. SOUND TRANSIT fails to obtain and maintain any permit required by
29 any federal or state regulatory body or by the City, relating to the
30 construction, maintenance, and operation of the System; or
- 31 4. At any time during the term of the Agreement, SOUND TRANSIT fails
32 to provide and maintain the performance bond, if required; fails to
33 maintain the insurance required by this Agreement; or fails to satisfy
34 the indemnity set out in this Agreement.

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

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1 C. Where, after notice and providing SOUND TRANSIT an opportunity to
2 cure, the City finds that there has been an act or omission that would
3 justify revocation or suspension of the Agreement, the City may make an

appropriate reduction in the remaining term of the Agreement or revoke

3 or suspend the Agreement. However, the Agreement may only be
4 revoked if SOUND TRANSIT was given (1) written notice of the default;
5 (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

6 opportunity to cure is required for repeated violations, and fraud shall be
deemed incurable. Authority to operate the Passenger Transportation

7 System may be suspended immediately upon notice when continued
operation poses an imminent threat to public safety.

8
9 D. Notwithstanding the foregoing, the City may declare the Agreement
forfeited without opportunity to cure when SOUND TRANSIT stops

10 providing service it is required to provide pursuant to the Agreement;
11 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.

12
13 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

14 Charter. Included within the rights granted under the City's Charter is the
15 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:

16 To acquire by purchase or condemnation, for the use of
17 the city itself or its inhabitants, all of the property of the

18 grantee within the public streets, alleys, or places at a
19 fair and just value, which shall not include any valuation
of the franchise, right, or privilege, which shall
thereupon be terminated.

20
21 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

22 System through exercise of any right of eminent domain.

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

24
25 A. Upon termination of this Agreement, SOUND TRANSIT may be required
to remove its property from any Public Rights-of-Way and restore such

26 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
property in place. If SOUND TRANSIT fails to remove property that the

2 City requires it to remove, the City may perform the work and collect the
cost thereof from SOUND TRANSIT. The actual cost thereof, including

3 direct and indirect administrative costs, shall be a lien upon all plant and
4 property of SOUND TRANSIT within the Right of Use Area, effective
upon filing of the lien with the Pierce County Auditor.

5 B. To the extent any portion of the Passenger Rail System in the Public

6 Rights-of-Way or on any other public property is not removed by SOUND
TRANSIT within 12 months of the later of the end of the term of this

7 Agreement or any continuation period, the property will be deemed
8 abandoned and shall become the property of the City, if the City wishes
9 to own it. Provided, that in no case shall SOUND TRANSIT be provided
less than 12 months to remove its Facilities, measured from the date the
SOUND TRANSIT is ordered to remove its Facilities.

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

14 notification to remove the Facilities.

15 D. SOUND TRANSIT shall file a written removal plan with the City, not later
16 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
17 be performed, the manner it will be performed, and a schedule for
removal by location. The removal plan shall be subject to approval and

18 regulation by the City. The affected property must be restored to as
19 good or better condition than existed immediately prior to removal, and
those damaged by removal must be compensated for the damage.

20 E. The purchase option provided for in Section 19 does not affect the City's
21 authority to require SOUND TRANSIT to remove its Passenger Rail
System upon termination of this Agreement, as provided in this section,

22 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
23 request by the City, SOUND TRANSIT shall execute such documents as
24 may be required to convey such abandoned property to the City free and
clear of all encumbrances.

25

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Section 22. COVENANTS AND WARRANTIES

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

2

3 1. That the City has the full right and authority to enter into and perform
this Agreement and any permits which may be granted in accordance
4 with the terms hereof, and that by entering into or performing this
Agreement, the City is not in violation of its Charter or Bylaws, or any
5 law, regulation, or agreement by which it is bound or to which it is
bound or to which it is subject; it being understood, however, that the
6 covenant and warranty contained in this Section 22 does not
7 constitute a warranty, expressed or implied, by the City of the right or
rights granted by the City to SOUND TRANSIT hereunder; and

8

9 2. That the execution, delivery, and performance of this Agreement by
the City has been duly authorized by all requisite corporate action,
that the signatories for the City hereto are authorized to sign this
10 Agreement, and that, upon approval by City, 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

1 of this Agreement.

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

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

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

15 Section 23. RECORDINGS, TAXES, AND OTHER CHARGES

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

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1 TRANSIT shall pay the same, plus any penalty and/or interest thereon,
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).

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

19 Section 24. ASSIGNABILITY; BENEFICIARY

20 A. This Agreement shall be binding upon and inure to the benefit of the
21 parties hereto and their respective successors or assigns. No
22 assignment hereof or sublease shall be valid for any purpose without the
23 prior written consent of the other party, and any attempt by one party to
24 assign or license the rights or obligations hereunder without prior written
25 consent will give the other party the right, at its written election, to
26 immediately terminate this Agreement or take any other lesser action
27 with respect thereto. The above requirement for consent shall not apply
28 to (1) any disposition of all or substantially all of the assets of a party;
29 (2) any corporate merger, consolidation, or reorganization, whether

18 voluntary or involuntary; (3) a sublease or assignment of this Agreement
19 (in whole or in part) to a wholly-owned subsidiary, affiliate, or parent
20 company; or (4) a sale, lease, or other conveyance by City, subject to
21 those requirements set forth in Section 19 of this Agreement; provided,
22 however, that no sublease or assignment under (2) or (3) shall be
23 permitted to a company not under common control with SOUND
24 TRANSIT, and provided, further, that no unconsented assignment shall
25 relieve SOUND TRANSIT of its obligations and liabilities under this
26 Agreement.

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

25 C. SOUND TRANSIT acknowledges and agrees that the City may
26 designate, in writing, a designee to (1) receive information (including

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1 information designated or identified as confidential) and notices under
2 this Agreement; and (2) provide certain approvals or consents required
3 from the City under this Agreement. In the event of such designation,
4 SOUND TRANSIT may rely on approvals or consents by such designee
5 on behalf of the City as fully as if such actions were performed by the
6 designator itself.

4 Section 25. NOTICES

5 A. Unless otherwise provided herein, all notices and communications
6 concerning this Agreement shall be in writing and addressed to (one
7 copy each):
8 Regional Transit Authority
9 Attention:

10 And to:

11 CITY OF TACOMA	CITY OF TACOMA
12 Attention: City Clerk	Attention: City Manager
13 747 Market Street, Room 220	747 Market Street, 12th Floor
Tacoma, WA 98402	Tacoma, WA 98402

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

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

20 Section 26. MISCELLANEOUS

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

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

25 C. The parties shall not be deemed in default with provisions of this
Agreement where performance was rendered impossible by war or riots,
26 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
or materials; labor stoppages or slow downs, or power outages
2 exceeding back-up power supplies. This Agreement shall not be
revoked or the parties penalized for such noncompliance, provided that

3 the parties take immediate and diligent steps to bring themselves back
into compliance and to comply as soon as practicable under the
4 circumstances without unduly endangering the health, safety, and
integrity of the parties' employees or property, or the health, safety, and
5 integrity of the public, Public Rights-of-Way, public property, or private
6 property.

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

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

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

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

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

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

23 Section 27. LEGAL FORUM

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

26 Agreement shall be Pierce County, Washington.

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1 Section 28. INTERPRETATION

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

4 Section 29. BILLING PROCEDURES

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

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

16 Section 30. SEVERABILITY

17
18 A. In case any term of this Agreement shall be held invalid, illegal, or
19 unenforceable, in whole or in part, neither the validity of the remaining
20 part of such term nor the validity of the remaining terms of this
21 Agreement shall in any way be affected thereby.
22
23 B. Notwithstanding the foregoing, the material provisions of this Agreement
24 are not severable. In the event that a court, agency, or legislature of
25 competent jurisdiction acts or declares any nonmaterial provision of this
26 Agreement is unenforceable according to its terms, or otherwise void,
27 said provision shall be considered a separate, distinct, and independent
28 part of this Agreement, and such holding shall not affect the validity and
29 enforceability of all other provisions hereof. In the event that a court,
30 agency, or legislature of competent jurisdiction acts so that, or declares
31 that, any material provision of this Agreement is unenforceable according
32 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

5 City and SOUND TRANSIT must discharge their negotiation
responsibility notwithstanding the dispute as to materiality. If there is a
6 dispute as to materiality, the remedies provided for in the proceeding
paragraph shall be additive, not alternative. The remedies provided for
7 herein do not prevent the City or SOUND TRANSIT from contending that
8 a particular provision is enforceable, or foreclose any remedies if a
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
Agreement granted hereunder within 30 days after the date of passage of the
12 Agreement by the City Council. The acceptance shall be in a form acceptable
to the City Attorney, and in accepting this Agreement, SOUND TRANSIT
13 warrants that it has carefully read the terms and conditions of this Agreement
14 and unconditionally accepts all of the terms and conditions of this Agreement
and agrees to abide by the same and acknowledges that it has relied upon its
15 own investigation of all relevant facts, that it has had the assistance of counsel,
that it was not induced to accept this Agreement, that this Agreement
16 represents the entire agreement between SOUND TRANSIT and the City. The
countersigned Agreement and acceptance shall be returned to the City
17 accompanied by: (1) evidence of insurance; and (2) a payment for publication
18 costs. The rights granted herein shall not become effective until all of the
foregoing is received in acceptable form.

19 Passed AN 2 2001
20 rK
21 Mayor

22 Attest: City Clerk
23

24 Approved as to form and legality

25

26 Assistant City Attorney

ord8344.dm-CDB1tmh -37- \C;t

LEG W4 (11/89)

SOUND TRANSIT
ACCEPTANCE OF CITY RIGHT OF USE AGREEMENT

2
3 Ordinance No. effective 2000.
4 am the Of
5
6 SOUND TRANSIT and am the authorized representative to accept the
7 above-referenced City Right of Use Agreement on behalf of SOUND TRANSIT.
8 I certify that this Right of Use Agreement and all terms and conditions
9 thereof are accepted by SOUND TRANSIT, without qualification or reservation.

10
11 DATED this day of 2000.

12 SOUND TRANSIT
13
14 By:
15 Its:
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17 Witness:
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EXHIBIT A
Description of Right-of-Way Area

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EXHIBIT IS

2 Archeological Materials Procedure

3 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

4 order to minimize the losses to the City of Tacoma. When dealing with paving materials observe the following general guidelines:

- 5
1 . Disturb existing pavement as little as possible.
- 6 2. Leave brick and granite pavers and curbs in place, or re-use them near the same
place.
- 7 3. Salvage materials that must be removed using techniques that will keep them
intact. This may require hand removal to minimize fragmenting.
- 8 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.
- 9 6. Salvaged materials may be stored temporarily at the Cavanaugh building.
7. Advance notice of delivery to the Cavanaugh Building is required. Contact Hardy
10 Hanson at Public Works, Streets & Grounds (591-5261) a minimum of 24 hours in
11 advance and arrange for temporary or long-term storage.
- 12 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
13 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
14 sites and artifacts.
- 15 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
16 591-5191) is necessary. A qualified archaeologist can record inadvertent finds and
determine if other finds are probable.
17
- Supervisors and all workers should be particularly alert in the sensitive areas that have
18 been identified. The Tacoma Archaeological Resource Survey (1996) determined that
there may be remains of pre-contact house sites or burials in the route of the Link Light
19 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:
20
- 21 0 24th Street and Pacific Avenue - house sites
? Jefferson Avenue and Pacific Avenue - house site 20'x 40', also Puyallup
22 seasonal camp
? 15th Street intersections A Street through Commerce Street - Puyallup village site
23
- In these three areas, digging operations must be halted every two hours and a
24 thorough examination of a minimum of three cubic yards of excavated material
inspected for artifacts.

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EXHIBIT C
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Project Labor Agreement
for the Construction of
Souder Commuter
and
Link Light Rail Projects

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SOUNDER COMMUTER AND LINK LIGHT RAIL

PROJECT LABOR AGREEMENT

ARTICLE I

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" I 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.

Page 1

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 Addendurns.

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).

Page 2

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
- Mulkey

(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 45h 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 130th St. (new light rail alignment)
- S760-130th St. to 150th St. (new light rail alignment)
- S770-150th St. to South Sea-Tac (188' St.) (new light rail alignment)
- S780-188th St. to South of 200'h 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

Page 3

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.

Page 4

- 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 131

Page 5

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.
- (9) 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.

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Page 6

ARTICLE 4

COMMUNM 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 "FIC-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. F)C-A's are representatives of the FAST JOBS Coalition, hereinafter referred to as "FAST".
 - (a) All F)C-Reps and FIC-A's will be recruited and selected by FAST. F)C-Reps will be journey level workers in their respective trades.
 - (b) All FJC-Reps and F)C-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 FIC 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 FIC-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 FIC-Rep for each shift.

(d) F3C-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 F3C-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

Page 7

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) FIC 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 FIC-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 S.

(f) None of the above activities shall interfere with established jobsite safety or the normal productivity of the job.

4.5 All FIC-Reps and FJC-A's will submit a monthly report to FAST detailing their activities.

(a) FIC-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.

Pace 8

ARTICLE 5

JOINT ADMINMRATIVE 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.

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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 2 1 O/o

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,

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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

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 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.

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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.

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- 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.

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(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.

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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.

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- (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.

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- (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.

Dn@. ?d

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

For Sound Transit:

Laborers Local #242, Gary Hlx

Laborers Local #252, Tom Freudenstein

For the Union:

Laborers Local #292, Dan O'Connor

President, Building and Construction Trades Department

Laborers Local #440, Gary Clume

Washington State Building & Construction Trades Council, Allan B. Dam

Operating Engineers Local #302, Clyde Wilson

Seattl County Building & Construction Trades Council, Iack Gilchrist

Operating Engineers Local #612, Gordon Howins

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

Painters District Council #5, Bob Matson

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

Plasterers Local #77, Rick Anderson

Asbestos Workers Local #7, Ted Boskovch

Plumbers & Pipenirters Local #32, Jim Moss

Boilermakers Local #502, Ed Eb(enberger

Plumbers & Pipefitters Local #82, Larry Overly

Bricklayers & Allied Crafts Local # 1, Dave Sheppard

Plumbers & Plpefitters Local #265, Phillip Wells

Pacific Northwest Regional Council of Carpenters, John Steffens

Roofers Local *54, Paul Blasld

Cement Masons Local #528 Roger Betterman

Roofers Local #153, Mark Martinez

IBEW Local 446, Gwendolyn Lee

Sheet Metal Workers Local #66, Sean Mahoney

IBEW #76, Mike Grunwald

Sprinkler Fitters, Local #699, Bart Scherck

IBEW Local #191, Milt Foster

Teamsters Local #174, Bob Hasegawa

Elevator Constructors Local #19, Jim Bender

Teamsters Local # 313

Ironworkers Local #86, Doug Glockner

Teamsters Local #38, Rod Mendenhall

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SCHEDULE A-Prevailing Wage\Fringe RateS

Craft

BOILERMAKERS
Journey Level

Note: The Coordinator is
responsible for obtaining the current
prevailing wage rate, including the

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

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.

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

Pnnp ?F

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 Matedals)
Ditch Digger
Diver
Drill Operator (Hydraulic, Diamond)
Drill Operator, Airtrac

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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 Puffer (Power)
Re-Timberman
Riprap Man
Signalman
Sloper Sprayman
Spreader (Clary Power or Similar Types)
Spreader (Concrete)
Stake Hopper
Stockpiler
Tamper & Similar Electric, Air & Gas
Tamper (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 175FF 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 arid Stakernan
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)
Icreed Man
Shotcrete Gunite

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-NOWELECTRICAL

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 8t 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.

ne 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:

NUL By: (for Sound Transit)
NIX 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, LA Local 265

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ATTACHMENT Q

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: ffor 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' 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 .2

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 .3 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.

' Mechanical Contractors Association, National Constructors Association, National Electrical Contractors Association, National Erectors Association, and Sheet Metal and Air Conditioning Contractors National Association.

2An 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.

'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

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LINK LIGHT PAIL 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

Page 41

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@,
 - 0 adulterated if the nitrite concentration is equal to or greater than 500 mcg/mL.
 - fi) adulterated if the pH is less than or equal to 3, or if it is greater than or equal to 11.
 - lli) 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.

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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 APPLMANTS

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,
- S. 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. @15

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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.

W 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.

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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.

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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

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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:

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APPENDIX A

SUBST N
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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APPENDIXB
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

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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 "11 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.

ATTACHMENT H

STA-It OF WASFV)CTON
DEPARTMENT OF LABOR AND INDUSTRIES

ESAC DNUT1056" M0" _ M067"@ "94165'S@32,'o
20 BOX 44540, OLYMPIA, 10WHINGTON 98504-4540

September 9, 1992

Jennifer Balliec, Business representative
IB9W Local Union %10. 46
2700 First Avenue
Seattle, Washington 9912i

Dear Ms. Balliet;

Thank you tar your letter dated TanuarY 31, in which you asked for a determination of Whether or not the travel time you described is compenoilLble.

Section 2.03 of Cho Contract W/V34-90, Volume 2A of 19, appears to clearly state thac construction workers may not park their personal vehicles at the job sice. That section further appears to state chat contractors shall provide bus transportation from a staging area away from the job site.

If, and cnis appears to be the case, it goes to the benefit of che 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 got to the work area. For these reasons the time is compensable.

If yol.: leave any further questions, please do not hesitate to contact me at; (206) 956-53'10. Thank you for expressing your concerns and giving me the opportunity to respond.

Sincerely,

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Greg T. msrwat,
Employment Standards manager

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DEPARTMENT OF LABOR AND INDUSTRIES
EMPLOYMENT STANDARDS OtVISION (2061 956-1331 6
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Bill Mirand, IBFW 48
IUOIS 307.
State Council at Motors
Chihme Cook, metro

Page 55

1 EXHIBIT D
2 Sound Transit Link Light Rail
3 Levels of Service
4

5 Following are the minimum and maximum levels of service approved for the
6 Tacoma segment of the Link light rail system:
7 Minimum Level of Service:
8 Monday through Saturday - Trains shall operate a minimum of 14 hours per
9 day, with no greater than ten-minute headways between trains
10 Sunday - Trains shall operate a minimum of ten hours per day with no
11 greater than 20-minute headways between trains
12 Maximum Level of Service:
13 Trains shall never operate more frequently than five-minute headways between trains
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LEG 004 (11/89)

REQUEST FOR ORIGINANCE CITY CLERK USE
R@q.@@t#

bcom OR RESOLUTION Ord@ce#

R.sd.tjo@#

- 1. DATE: 11/14/00
- 2. REQUESTING DEPARTMENT/Division/PROGRAM CONTACT PERSON (for questions): PHONEXTENSIO
Public Works/Engineering 7. Alan M. Tebaldi @ 5272 71
- 4. PREPARATION OF)%" Cpp,jhW.E 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				

-7-1

If an expenditure, is it budgeted? D Yes 0 No C@ Where? Org t cct

10. ATTORNEY CONTACT: (Enter Name of Attorney that you've been working with) - r- 71
Chris Bacha C- r: M 7-3 -7;@ C/; @? @D

Approj'e@ mto @Avaflabilhy of Funds

Approval cc City Nianager/Director Utilities Approval
KIP," GSWbMg,1D@,..-,, offl's"t9
(01/99)

Ordinance No. 26749
First Reading of Ordinance: DEC 0 5 2000 (,1,j-
Final Reading of Ordinance: JAN 2 AtV,
Passed: JAN Z ZUU1

Roll Call Vote:

MEMBERS AYES NAYS ABSTAIN ABSENT
Mr--crowl--y
Mr. De Forrest
Mr. Evans
Mr. Kirby
Dr. McGavick
Mr. Miller
Ms. Moss
Mr. Phelps
Mayor Ebe;sele

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

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