

CONTAINS COLOR MAPS

235897

Before the
Surface Transportation Board

ENTERED
Office of Proceedings
April 15, 2014
Part of
Public Record

Finance Docket No. 35812

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF CITY OF TACOMA
IN PIERCE COUNTY, WASHINGTON

VERIFIED NOTICE OF EXEMPTION

Dated: April 15, 2014

Communications with respect to this document
should be addressed to:

FEE RECEIVED
April 15, 2014
SURFACE
TRANSPORTATION BOARD

Charles A. Spitulnik
Allison I. Fultz
Christian L. Alexander
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600
E-mail: csputulnik@kaplankirsch.com
afultz@kaplankirsch.com
calexander@kaplankirsch.com

Counsel for Central Puget Sound Regional
Transit Authority

FILED
April 15, 2014
SURFACE
TRANSPORTATION BOARD

**Before the
Surface Transportation Board**

Finance Docket No. 35812

**CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF CITY OF TACOMA
IN PIERCE COUNTY, WASHINGTON**

VERIFIED NOTICE OF EXEMPTION

The Central Puget Sound Regional Transit Authority (“Sound Transit”), a regional transit authority established under the laws of the State of Washington, hereby submits this Notice that it is acquiring from the City of Tacoma the physical assets and associated right-of-way comprising approximately one mile of the rail line commonly known as the Mountain Division located approximately between East D Street and the BNSF mainline near the Port of Tacoma in the City of Tacoma, Pierce County, Washington, Milepost 1.0 to Milepost 1.99 (the “Tacoma Dome Segment” or “Segment”), shown on the map attached hereto as **Exhibit 1**. The parties intend to consummate this transaction on or as soon as practicable after the effective date of this Notice.

The City of Tacoma, through its department of Public Utilities, d/b/a Tacoma Rail (hereinafter the “City” or “Tacoma Rail”), operates rail service over the Tacoma Dome Segment pursuant to an operating agreement with the General Government of the City of Tacoma, another subdivision of the City that owns the real property and physical assets comprising the Segment. Tacoma Rail acquired an operating exemption over the Mountain Division, including the

Segment, in 1998.¹ Sound Transit currently operates the Sounder passenger commuter rail services on the Tacoma Dome Segment pursuant to an agreement with the City. The City and Sound Transit have determined that acquisition of the Tacoma Dome Segment by Sound Transit instead of continued use under the current agreement provides greater advantages to both parties. In order to effect this transaction, the City and Sound Transit are in the final stage of negotiating a Purchase and Sale Agreement and Joint Use Agreement for the Tacoma Dome Segment, copies of which are attached in substantially final form, **Exhibit 2**, and **Exhibit 3**, respectively. Pursuant to these agreements, Tacoma Rail will retain the exclusive, permanent right to operate freight service on the Segment to all existing and new customers, even after Sound Transit acquires the Tacoma Dome Segment. Sound Transit will acquire no right or obligation to provide freight service on the Tacoma Dome Segment, and is acquiring the property for the purpose of providing wholly intrastate passenger commuter rail operations.

This Notice of Exemption is filed under 49 C.F.R. § 1150.41. Because Sound Transit will not acquire either rights or obligations that implicate in any way the existing freight common carrier operations that remain attached to the Tacoma Dome Segment, and thus will not become a rail carrier providing transportation subject to the jurisdiction of the Board, Sound Transit is simultaneously filing a Motion to Dismiss this Notice of Exemption.

In accordance with the requirements of 49 C.F.R. § 1150.43, Sound Transit submits the following information:

- (a) *The full name and address of the applicant, 49 C.F.R. § 1150.43(a)*

Central Puget Sound Transit Authority
401 S. Jackson St.
Seattle, WA 98104-2826

¹ *Belt Line Division of Tacoma Public Utilities – Operation Exemption – In Pierce, Thurston and Lewis Counties, WA, STB Finance Docket No. 33666 (Service Date Oct. 30, 1998).*

- (b) *The name, address and telephone number of the representative of the applicant who should receive correspondence, 49 C.F.R. § 1150.43(b)*

Charles A. Spitulnik
Allison I. Fultz
Christian L. Alexander
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600

- (c) *A statement that an agreement has been reached or detail about when an agreement will be reached, 49 C.F.R. § 1150.43(c)*

Sound Transit and the City are in the final stage of negotiating a Purchase and Sale Agreement and Joint Use Agreement for the Tacoma Dome Segment, copies of which are attached hereto in substantially final form. The Purchase and Sale Agreement, attached as **Exhibit 2**, conveys the Tacoma Dome Segment to Sound Transit and reserves a permanent freight easement to the City. The terms of the permanent freight easement and associated rights and responsibilities of each party are contained in the Joint Use Agreement, attached as **Exhibit 3**.

- (d) *The operator of the property, 49 C.F.R. § 1150.43(d)*

The City, d/b/a Tacoma Rail, is the existing operator of freight service on the Segment. Tacoma Rail will remain the operator of the property after the transaction is complete pursuant to the Joint Use Agreement, *see* **Exhibit 3**. Sound Transit will continue to provide wholly intrastate commuter rail service on the Segment.

- (e) *A brief summary of the proposed transaction, 49 C.F.R. § 1150.43(e)*

- (1) *The name and address of the railroad transferring the subject property, 49 C.F.R. § 1150.43(e)(1)*

The City of Tacoma is transferring its interest in the real property and physical assets comprising the Segment. The City's address is:

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

Tacoma Rail, a division of the City of Tacoma Department of Public Utilities, is retaining an operating easement to continue its existing operations over the Segment. Tacoma Rail's address is:

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

- (2) *The proposed time schedule for the consummation of the transaction, 49 C.F.R. § 1150.43(e)(2)*

The parties plan to consummate the transaction on or as soon as practicable after the effective date of this Notice.

- (3) *The mile-posts of the subject property, including any branch lines, 49 C.F.R. § 1150.43(e)(3)*

The Tacoma Dome Segment constitutes a portion of the Tacoma Rail Mountain Division between Milepost 1.0 and Milepost 1.99.

- (4) *The total route miles being acquired, 49 C.F.R. § 1150.43(e)(4)*

The total mileage of the Tacoma Dome Segment is approximately one mile.

- (f) *A map that clearly indicates the area to be served, including origins, terminals, stations, cities, counties and states, 49 C.F.R. § 1150.43(f)*

See **Exhibit 1**. No new service is proposed. Tacoma Rail's existing operations will continue and Tacoma Rail will retain the exclusive right to provide freight service on the Tacoma Dome Segment.

- (g) *A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier, 49 C.F.R. § 1150.43(g)*

See Verification and Certification, attached.

- (h) *Interchange agreements, 49 C.F.R. § 1150.43(h)*

No interchange agreements and no limitation on any future interchange agreements are being imposed in connection with the subject transaction.

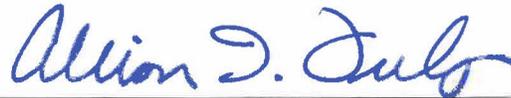
Under § 1105.6(c)(2), Sound Transit's proposed acquisition of the Tacoma Dome Segment is exempt from environmental reporting requirements because the railroad operations

that are subject to the Board's jurisdiction will not be affected by Sound Transit's acquisition.
See 49 C.F.R. § 1105.6(c)(2).

Similarly, under 49 C.F.R. § 1105.8(b)(1), Sound Transit's proposed acquisition of the Tacoma Dome Segment is exempt from historic preservation reporting requirements. The proposed acquisition is intended to preserve the status quo with respect to freight rail operations. Further Board approval would be required for Tacoma Rail to discontinue or abandon any freight service that Tacoma Rail currently offers on the Tacoma Dome Segment.

A proposed caption summary for publication in the Federal Register is attached as **Exhibit 4**.

Respectfully submitted,



Charles A. Spitulnik
Allison I. Fultz
Christian L. Alexander
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
Tel: (202) 955-5600
Emails: cspitulnik@kaplankirsch.com
afultz@kaplankirsch.com
calexander@kaplankirsch.com

Counsel for the Central Puget Sound Regional
Transit Authority

Dated: April 15, 2014

VERIFICATION AND CERTIFICATION

I, Michael Harbour, Deputy Chief Executive Officer of the Central Puget Sound Regional Transit Authority, verify under penalty of perjury that the facts recited in the foregoing Notice of Exemption are true and correct. Further, I certify that I have personal knowledge of the facts stated therein and that I am authorized to verify these facts stated in this Verified Notice of Exemption.

In addition, this is to certify, as required by 49 C.F.R. § 1150.43(g) that, because the Central Puget Sound Regional Transit Authority will conduct no freight operations on the line segment being acquired, its revenues from freight operations will not result in the creation of a Class I or Class II carrier.


Michael Harbour

Subscribed and sworn to
before me this 14 day of
April, 2014


Notary Public

My commission expires: 5-20-2017

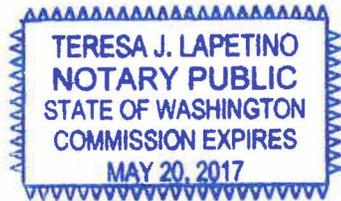
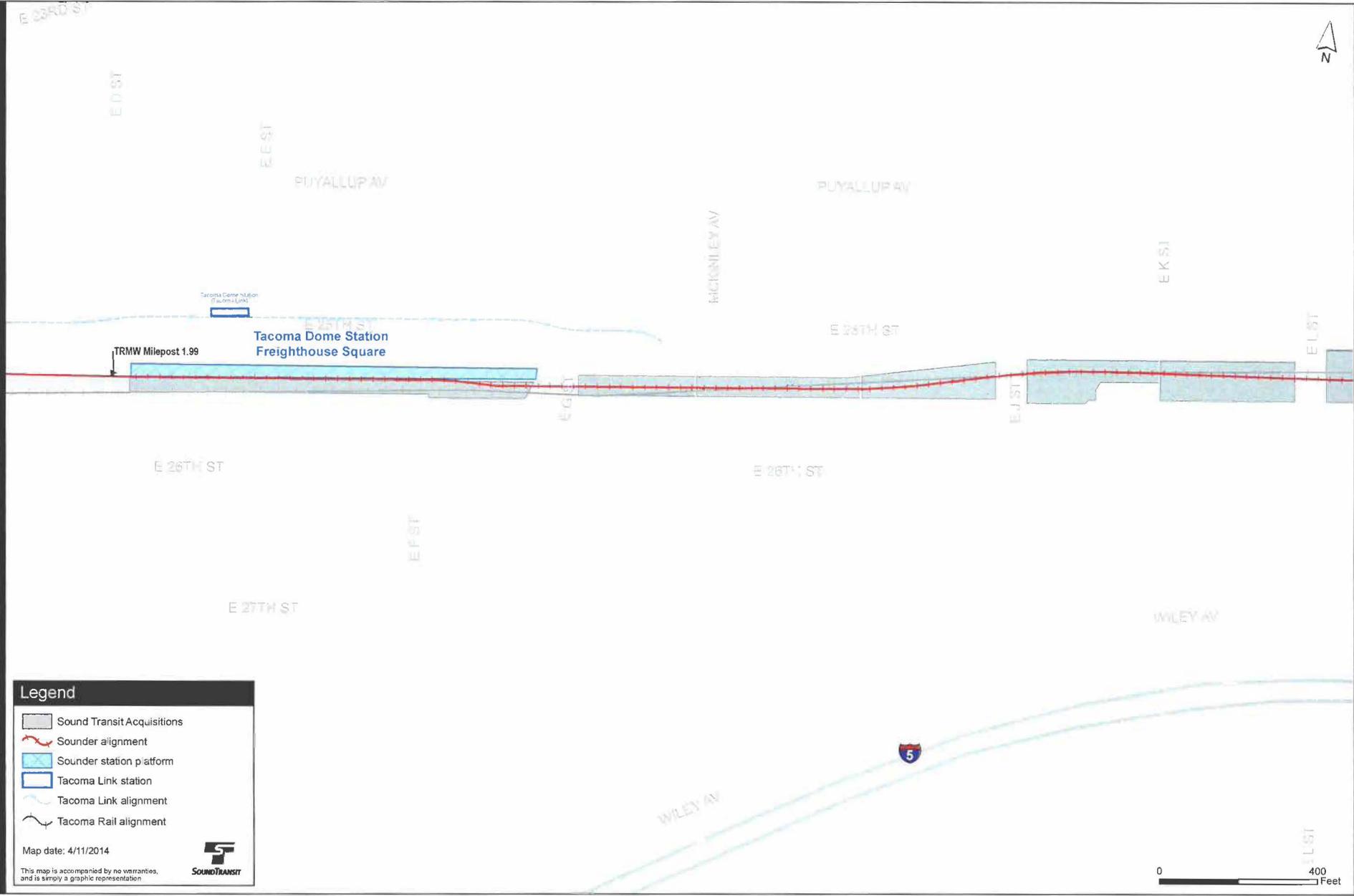


Exhibit 1

Map of the Tacoma Dome Segment

[attached hereto]



Legend

-  Sound Transit Acquisitions
-  Sounder alignment
-  Sounder station platform
-  Tacoma Link station
-  Tacoma Link alignment
-  Tacoma Rail alignment

Map date: 4/11/2014

This map is accompanied by no warranties, and is simply a graphic representation.



www.soundtransit.com/development/land-use/development-standards



Legend

- Sound Transit Acquisitions
- Sounder alignment
- Sounder station platform
- Tacoma Link station
- Tacoma Link alignment
- Tacoma Rail alignment

Map date: 4/11/2014

This map is accompanied by no warranties, and is simply a graphic representation.



167

Exhibit 2

**Purchase and Sale Agreement (Tacoma Rail Mountain Division) Between City of Tacoma
and Central Puget Sound Regional Transit Authority**

[attached hereto]

PURCHASE AND SALE AGREEMENT
Tacoma Rail Mountain Division

This Purchase and Sale Agreement (this "Agreement") is made and entered into by and between the **CITY OF TACOMA**, a Washington municipal corporation ("Seller" or "City") and **CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY** ("Buyer" or "Sound Transit"), with reference to the following facts:

- A. The City owns certain real property in Pierce County and operates on such property a railroad line commonly known as the Tacoma Rail Mountain Division. The Mountain Division extends southeast from the BNSF mainline near the Port of Tacoma in the City to Frederickson, Washington before splitting with a west line terminating in Chehalis, Washington and an east line terminating in Morton, Washington.
- B. Sound Transit operates its Sounder commuter rail service on a portion of the property consisting of approximately 1.21 miles from East D Street to the BNSF mainline in the City of Tacoma, legally described on the attached **Exhibit A** (the "Property"). The Property consists of 15 separate tax parcels and contains approximately 471,425 square feet (10.82 acres).
- C. Sound Transit operates its Sounder commuter rail line on the Property under a Commuter Rail Agreement with the City dated January 4, 2001, as amended in the First Amended Commuter Rail Agreement dated June 6, 2002 (and as subsequently amended, the "Commuter Rail Agreement"). The City and Sound Transit have determined that acquisition of the Property by Sound Transit in lieu of continued use under the Commuter Rail Agreement provides greater advantages to both parties, including greater possibility for future investment in the Property.
- D. The City desires to sell and Sound Transit desires to buy the Property and the railroad improvements located thereon, subject to the City's retention of a permanent freight easement. The Parties intend to enter into a joint use agreement (the "Joint Use Agreement") in connection with the purchase and sale of the Property to determine the respective rights and responsibilities of the Parties relating to the City's continued use of the Property for rail purposes and to extinguish the Commuter Rail Agreement.
- E. Sound Transit approved entering into this Agreement and the Joint Use Agreement pursuant to Motion No. M2013-76 (September 26, 2013). The City declared the Property to be surplus and approved entering into this Agreement pursuant to Resolution No. 38821(January 14, 2014).
- F. Sound Transit is acquiring the Property for its Sounder Commuter Rail Project. The Sounder Commuter Rail Project is intended to alleviate major congestion and safety concerns and thereby promotes public health and safety in a manner consistent with federal rail transportation policy, 40 U.S.C. § 10101.

- G. Sound Transit owns certain real property near Pacific Avenue, Tacoma, legally described on the attached **Exhibit B** (the “Remnant Parcels”). Sound Transit acquired the Remnant Parcels in connection with its construction and operation of the Sounder Commuter Rail Project.
- H. Sound Transit declared the Remnant Parcels to be surplus property pursuant to Resolution No. R2013-20 (September 26, 2013).
- I. Sound Transit desires to convey the Remnant Parcels to the City as part of the consideration for this transaction.
- J. The Parties have agreed that the purchase and sale transaction hereunder is an intergovernmental disposition of property pursuant to RCW 39.33.010.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and other good and valuable consideration, the Parties agree as follow:

- 1. Property. The “Property” subject to this Agreement consists of all of the following:
 - 1.1 That certain real property legally described on **Exhibit A** (the “Land”).
 - 1.2 All rights, privileges and easements appurtenant to the Land, including all minerals, oil, gas and other hydrocarbon substances on the Land, all development rights, air rights, water, water rights and water stock relating to the Land, and any and all easements, rights-of-way and other appurtenances used in connection with the beneficial use and enjoyment of the Land (collectively, the “Appurtenances”).
 - 1.3 All improvements and fixtures used for railroad operations and owned by the City located on the Land, including the existing rail infrastructure including but not limited to the existing double tracking, cross ties, lighting, trestle, pull out tracks, switches and other improvements (the “Improvements”). The Land, Appurtenances and Improvements are referred to herein as the Property.
 - 1.4 No tangible personal property included in the sale and the City will remove all such tangible personal property before the Closing Date. Any tangible personal property remaining on the Property after Closing will be considered abandoned by the City and may be removed by Sound Transit.
- 2. Purchase and Sale. The City agrees to sell to Sound Transit and Sound Transit agrees to buy from the City the Property. Sound Transit will pay to the City the purchase price of \$4,000,000 (Four Million Dollars) (the “Purchase Price”) and convey to the City the Remnant Parcels and the City will waive and deem satisfied any and all use fees potentially owing by Sound Transit to the City under the Commuter Rail Agreement. The Purchase Price will be paid in United States dollars by wire transfer or other immediately available funds at Closing. The Purchase Price will be subject to proration and adjustments as set forth in this Agreement.

Sound Transit will not pay earnest money in connection with this transaction. The Parties agree that the Purchase Price represents the fair market value of the Property as determined by an independent appraiser.

3. Escrow and Closing Costs. The Parties hereby appoint as escrow holder and Buyer will open an escrow account with Chicago Title Insurance Company, 4717 SOUTH 19TH, STE 201, TACOMA, WA 98405 (“Escrow Agent”). The City and Sound Transit will each pay one-half of any Escrow Agent fees in connection with the closing of this transaction. The Parties intend that the transaction contemplated in this Agreement is exempt from real estate excise tax under WAC 458-61A-205. Sound Transit will pay the cost of the following:

- (a) recording the Deed for the Property;
- (b) recording the deed for the Remnant Parcels;
- (c) any title insurance Sound Transit wishes to obtain in connection with the acquisition of the Property;
- (d) any surveys, reports or other due diligence Sound Transit obtains or undertakes in connection with the acquisition of the Property; and
- (e) any costs or filings required by the Surface Transportation Board

4. Physical/Environmental Inspection.

(4.1) Sound Transit has until March 31, 2014 (the “Environmental Condition Review Date”) to determine if there are any physical conditions, including but not limited to environmental conditions affecting the Property, that would make the Property unsuitable for Sound Transit’s intended use of the Property. If Sound Transit identifies an existing condition affecting the Property that would make the Property unsuitable for Sound Transit’s intended use of the Property and the City is not willing to confirm in writing that it will remediate or repair such condition, then Sound Transit may terminate this Agreement by written notice to the City no later than ten (10) business days before Closing. If Sound Transit does terminate this Agreement, neither party will have any further obligation hereunder except those that expressly survive termination. If Sound Transit does not terminate this Agreement, the parties will proceed to Closing according to the remaining terms and conditions of this Agreement.

(4.2) The City has until March 31, 2014 to determine if there are any physical conditions, including but not limited to environmental conditions affecting the Remnant Parcels, that would make the Remnant Parcels unsuitable for the City’s intended use. If the City identifies an existing condition affecting the Remnant Parcels that would make the Remnant Parcels unsuitable for the City’s intended use and Sound Transit is not willing to confirm in writing that it will remediate or repair such condition, then the City may elect to decline the acquisition of the Remnant parcels by submitting written notice to Sound Transit no later than ten (10) business days before Closing. If the City does not acquire the Remnant Parcels as provided for herein, neither party will have any further obligation related to the Remnant Parcels except those that expressly survive termination. If the City elects not to acquire the Remnant Parcels under this Section 4.2, Sound Transit may at its option elect to terminate this Agreement by written notice to City.

5. Title and Survey.

(5.1) Sound Transit will have until March 31, 2014 [date] (the "Title Review Date") to obtain and examine any title reports, commitments or surveys of the Property and give City a written "Title Defect Notice" describing any objections to title or matters disclosed by survey that Sound Transit may have. If Sound Transit fails to give City a Title Defect Notice by the Title Review Date, Sound Transit will be deemed to have waived its right to object to title exceptions or defects, other than those first appearing on title after the date of the Title Review Date. Any matters not referenced in a timely Title Defect Notice will be deemed approved by Sound Transit and are referred to herein as "Permitted Exceptions." The City has ten (10) business days from the date of the Title Defect Notice to notify Sound Transit that it will either cure such title or survey defect or that it declines to cure. If City elects to cure a title or survey defect to the reasonable satisfaction of Sound Transit, then this Agreement will continue in full force and effect. If City does not so elect to cure a title or survey defect, Sound Transit may elect to (a) terminate this Agreement by written notice to City delivered no later than ten (10) business days from the date Sound Transit received notice that the City would not cure a defect, in which case neither party will have any further rights or obligations hereunder except those that expressly survive termination, or (b) waive its objections and proceed with the transaction according to the remaining terms and conditions of this Agreement.

(5.2) The City will have until March 31, 2014 to obtain and examine any title reports, commitments or surveys of the Remnant Parcels and give Sound Transit a written "Title Defect Notice" describing any objections to title or matters disclosed by survey that the City may have. If the City fails to give Sound Transit a timely Title Defect Notice, the City will be deemed to have waived its right to object to title exceptions or defects, other than those first appearing on title after the date above. Any matters not referenced in a timely Title Defect Notice will be deemed approved by the City and are referred to herein as "Remnant Parcel Permitted Exceptions." Sound Transit has ten (10) business days from the date of the Title Defect Notice to notify the City that it will either cure such title or survey defect or that it declines to cure. If Sound Transit elects to cure a title or survey defect to the reasonable satisfaction of the City, then this Agreement will continue in full force and effect. If Sound Transit does not so elect to cure a title or survey defect, the City may elect to (a) terminate this Agreement by written notice to Sound Transit delivered no later than ten (10) business days from the date the City received notice that Sound Transit would not cure a defect, in which case neither party will have any further rights or obligations hereunder except those that expressly survive termination, or (b) waive its objections and proceed with the transaction according to the remaining terms and conditions of this Agreement.

6. Right of Entry.

(6.1) The City grants to Sound Transit and its consultants a temporary non-exclusive license to enter upon the Property for the purpose of investigating the condition of the Property for the purchase contemplated in this Agreement, including but not limited to surveys and environmental testing and monitoring. The license will continue from the Effective Date (defined below) until the earlier of (i) the Closing under this Agreement, or (ii) the earlier termination of this Agreement for any reason. Buyer's entry onto the Property in accordance with this license is at its own risk and at its own expense. Buyer waives any claims against City and releases City from any liability for any loss, damage, or injury to Buyer, its consultants, or

the Property arising from its activities hereunder, except to the extent those claims arise out of the negligence or willful misconduct of City, its employees, agents, or contractors. While on the Property pursuant to this Agreement, Sound Transit will comply and will cause its consultants to comply with all applicable government laws and regulations concerning investigation activities on the Property. Sound Transit will not suffer or permit to be enforced against the Property any mechanics, materialmen's or contractors liens or any claim for damage arising from the work performed by Sound Transit or its consultants under this Agreement. Buyer will indemnify, protect, defend and hold City harmless from any loss, damage, injury, or other casualty, claim, cost or expense of any kind arising from Sound Transit or its consultants' entry onto the Property pursuant to this Agreement, except to the extent those claims arise out of the negligence or willful misconduct of City, its employees, agents or contractors. IN CONNECTION WITH THIS INDEMNITY, SOUND TRANSIT WAIVES ANY IMMUNITY IT MAY HAVE UNDER INDUSTRIAL INSURANCE LAW, RCW TITLE 51. THIS WAIVER WAS MUTUALLY NEGOTIATED.

(6.2) Sound Transit grants to the City and its consultants a temporary non-exclusive license to enter upon the Remnant Parcels for the purpose of investigating the condition of the Remnant Parcels for the purchase contemplated in this Agreement, including but not limited to surveys and environmental testing and monitoring. The license will continue from the Effective Date (defined below) until the earlier of (i) the Closing under this Agreement, or (ii) the earlier termination of this Agreement for any reason. The City's entry onto the Remnant Parcels in accordance with this license is at its own risk and at its own expense. The City waives any claims against Sound Transit and releases Sound Transit from any liability for any loss, damage, or injury to the City, its consultants, or the Remnant Parcels arising from its activities hereunder, except to the extent those claims arise out of the negligence or willful misconduct of Sound Transit, its employees, agents, or contractors. While on the Remnant Parcels pursuant to this Agreement, the City will comply and will cause its consultants to comply with all applicable government laws and regulations concerning investigation activities on the Remnant Parcels. The City will not suffer or permit to be enforced against the Remnant Parcels any mechanics, materialmen's or contractors liens or any claim for damage arising from the work performed by the City or its consultants under this Agreement. The City will indemnify, protect, defend and hold Sound Transit harmless from any loss, damage, injury, or other casualty, claim, cost or expense of any kind arising from City or its consultants' entry onto the Property pursuant to this Agreement, except to the extent those claims arise out of the negligence or willful misconduct of Sound Transit, its employees, agents or contractors. IN CONNECTION WITH THIS INDEMNITY, THE CITY WAIVES ANY IMMUNITY IT MAY HAVE UNDER INDUSTRIAL INSURANCE LAW, RCW TITLE 51. THIS WAIVER WAS MUTUALLY NEGOTIATED.

7. Representations and Warranties.

7.1 Seller. The City makes the following representations and warranties, which representations and warranties are deemed made to Sound Transit on the date of this Agreement and to have been repeated as of the Closing Date:

- (a) The City is a municipal corporation validly existing in the State of Washington. The City has all the requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. The Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the City and constitute the City's legal, valid and binding obligation enforceable against the City in accordance with its terms. The consummation of the sale of the Property is not in violation or conflict with nor does it constitute a default under any term or provision of any agreement or instrument to which the City is or may be bound, or any provision of any applicable law, ordinance, rule or regulation of any governmental authority or any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.
- (b) The City has not received any written notice of any actual or pending litigation or proceeding by any organization, person, individual or governmental agency against the City asserting that the City does not have sufficient ownership interest in the Property for conducting railroad operations.
- (c) The City is not a "foreign person" as that term is defined in the Internal Revenue Code of 1986, as amended, and the Regulations promulgated pursuant thereto.
- (d) The City has no knowledge of any written notice from any governmental authority alleging any uncured existing violation of any applicable governmental laws, statutes, ordinances, rules, codes, regulations or orders affecting the Property.
- (e) Sound Transit will not, as a result of the execution of this Agreement or conveyance of the Property, be bound by any labor contracts entered into by the City.
- (f) The City has no knowledge of any written notice of any alleged violation of any Environmental Laws (as defined below) concerning the Property that remains uncured.
- (g) The Property is not subject to any leases, tenancies or rights of persons or parties in possession other than as described on the attached **Exhibit C** (the "Third Party Agreements"). To the City's actual knowledge, the Third Party Agreements are in full force and effect in accordance with their terms. The City has not delivered or received a written notice of default that remains uncured under any Third Party Agreement, or any other existing lease, franchise, easement, occupancy agreement, license or other agreement demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to, or affecting the Property, and no tenant, franchisee, grantee or licensee thereunder has asserted in writing any claim that remains outstanding for offsets or credits to rent thereunder.

7.2 Buyer. Sound Transit hereby makes the following representations and warranties, which representations and warranties are deemed made to the City on the date of this Agreement and to have been repeated as of the Closing Date:

- (a) Sound Transit is a regional transit authority validly existing in the State of Washington. Sound Transit has all the requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. The Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Sound Transit and constitute Sound Transit's legal, valid and binding obligation enforceable against Sound Transit in accordance with its terms. The consummation of the sale of the Property is not in violation or conflict with nor does it constitute a default under any term or provision of any agreement or instrument to which Sound Transit is or may be bound, or any provision of any applicable law, ordinance, rule or regulation of any governmental authority or any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.
- (b) Sound Transit has received no written notice of any actual or pending litigation or proceeding by any organization, person, individual or governmental agency against Sound Transit concerning the Property.
- (c) The Remnant Parcels are not subject to any leases, tenancies or rights of persons or parties in possession.

8. Condition of the Property. **SOUND TRANSIT IS PURCHASING THE PROPERTY IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS. OTHER THAN THE REPRESENTATIONS AND WARRANTIES MADE BY THE CITY IN SECTION 7 ABOVE, SOUND TRANSIT IS NOT RELYING ON, AND HEREBY WAIVES ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE CITY WITH RESPECT TO ANY MATTERS CONCERNING THE PROPERTY** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property (collectively, the "Condition of the Property"). Sound Transit represents and warrants to the City that except for the express representations and warranties of the City in this Agreement, Sound Transit has not relied and will not rely on, and the City is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by the City, the manager of the Property, or any real estate broker or agent representing or purporting to represent the City, to whomever made or given, directly or indirectly, orally or in writing. The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order,

judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law. The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

THE CITY IS PURCHASING THE REMNANT PARCELS IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS AND IS NOT RELYING ON, AND HEREBY WAIVES ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM SOUND TRANSIT WITH RESPECT TO ANY MATTERS CONCERNING THE REMNANT PARCELS including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Remnant Parcels with Environmental Laws (defined above) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Remnant Parcels; the presence of any Hazardous Substances (defined above), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Remnant Parcels; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Remnant Parcels (collectively, the "Condition of the Remnant Parcels"). The City represents and warrants to Sound Transit that except for the express representations and warranties of Sound Transit in this Agreement, the City has not relied and will not rely on, and Sound Transit is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Remnant Parcels or relating thereto made or furnished by Sound Transit or any real estate broker or agent representing or purporting to represent Sound Transit, to whomever made or given, directly or indirectly, orally or in writing.

9. Joint Use Agreement. At Closing, the City will retain an easement for freight railroad purposes. The terms of such easement will be pursuant to a separate Joint Use Agreement executed by the Parties at or prior to Closing and substantially in the form attached hereto as **Exhibit D**.

10. Master Utilities License Agreement. The City and Sound Transit are parties to a Master Utilities License Agreement dated as of October 20, 2009 (the "MULA") that provides license terms to allow the City to construct, operate, maintain, repair, replace and remove various utilities and related facilities over, under, along, and across certain portions of Sound Transit's rail corridor or property within the City. Prior to the end of the Title Review Period, the City shall notify Sound Transit in writing of any existing utilities the City has constructed over, under, along, or across the Property without a recorded easement or other written instrument. Each such utility shall be considered an "Undocumented License" as that term is defined in the MULA. Prior to Closing, the City and Sound Transit will execute a "Confirmation of License" for each utility, as set forth and subject to Sound Transit's right of approval in the MULA. Upon execution of each Confirmation of License, the utility use shall be by License governed by the terms and conditions of the MULA and any previous licenses, permits, or easements will be extinguished.

11. Conditions to Closing. Each party's obligation to proceed to Closing under this Agreement is subject to the following conditions precedent:

- (a) The other party to this Agreement has performed and satisfied each and all such other party's obligations under this Agreement; and
- (b) Each and all of such party's representations and warranties set forth in this Agreement are true and correct as of the Effective Date and the Date of Closing.

12. Closing.

12.1 Date of Closing. Provided that all of the conditions set forth in this Agreement have been satisfied or performed, Closing will occur on or before April 15, 2014, unless otherwise agreed by the parties.

12.2 Documents to be Delivered by Seller. For and in consideration of, and as a condition precedent to, the payment to the City of any of the Purchase Price, the City will obtain and deliver to Sound Transit or Escrow (at Sound Transit's direction) at or before Closing the following documents (all of which must be duly executed and acknowledged where required):

- (a) Conveyance Deed. A quitclaim deed (the "Deed") in the form attached hereto as **Exhibit E**, duly executed by the City, acknowledged and delivered to Sound Transit in recordable form. The Deed will convey to Sound Transit free and clear of all liens, encumbrances, conditions, easements, assignments, and restrictions, except for the Permitted Exceptions and the City's reservation of an easement for freight railroad purposes.
- (b) Real Estate Excise Tax Affidavit. A real estate excise tax affidavit signed by the City.
- (c) Title Documents. Such other documents, including, without limitation, owner's affidavits, lien waivers, indemnity bonds, indemnification agreements, and certificates of good standing as may be required by the Title Company as a condition to insuring Sound Transit's good and marketable fee simple title to the Property free of any exceptions other than the Permitted Exceptions.
- (d) Authority. Such evidence as the Title Company may require as to the authority of the City to convey the Property to Sound Transit.
- (e) Surveys and Drawings. All surveys, site plans and plans and specifications relating to the Property as are in the possession or control of the City.
- (f) FIRPTA Affidavit for the Property, duly executed by the City.
- (g) A counterpart original of the Joint Use Agreement, duly executed by the City.
- (h) A counterpart original of any and all Confirmation of License agreements, duly executed by the City, as agreed to by the Parties pursuant to Section 10 above.

12.3 Documents to be Delivered by Buyer

- (a) Deed for the Remnant Parcels. A quitclaim deed in the form attached hereto as **Exhibit F**, duly executed by Sound Transit as seller of the Remnant Parcels, acknowledged and delivered to the City in recordable form.
- (b) Real Estate Excise Tax Affidavit for the Remnant Parcels signed by Sound Transit as seller of the Remnant Parcels.
- (c) FIRPTA Affidavit for the Remnant Parcels, duly executed by Sound Transit.
- (d) Real Estate Excise Tax Affidavit for the Property, countersigned by Sound Transit as buyer.
- (e) A counterpart original of the Joint Use Agreement, duly executed by Sound Transit.
- (f) A counterpart original of any and all Confirmation of License agreements, duly executed by Sound Transit, as agreed to by the Parties pursuant to Section 10 above.

13. Default and Remedies.

13.1 Default by Seller. This Agreement pertains to the conveyance of real property, the unique nature of which is hereby acknowledged by the Parties. Consequently, if Seller fails without legal excuse to convey the Property to Buyer as required by this Agreement, Buyer may elect one of the following remedies: (a) specific performance of this Agreement; or, alternatively, (b) termination of this Agreement upon written notice to Seller and receive reimbursement for actual and reasonable out of pocket expenses for costs incurred pursuant to this Agreement, in which case neither Party has any further obligations to the other hereunder except for those that expressly survive termination. In no event will Seller be liable to Buyer for any damages, including consequential damages, beyond Buyer's actual and reasonable out of pocket expenses incurred for costs if Buyer elects to proceed under (b) above.

13.2 Default by Buyer. If Buyer fails without legal excuse to complete the purchase of the Property as required by this Agreement, Seller may terminate this Agreement upon written notice to Buyer and receive reimbursement for actual and reasonable out of pocket costs incurred pursuant to this Agreement, in which case neither Party has any further obligations to the other except for those that expressly survive termination. In no event will Seller be entitled to specific performance against Buyer for such failure. If the Closing fails to occur by reason of Buyer's default, the Parties agree that the damages that Seller may suffer are difficult or impossible to determine and that in no event will Buyer be liable to Seller for any damages, including consequential damages, beyond Buyer's actual and reasonable out of pocket expenses for costs incurred.

14. Assignment. Neither Party may assign its rights under this Agreement without the prior written consent of the other.

15. No Use of Brokers. The City and Sound Transit each warrant and represent to the other that neither Party has employed a real estate broker or agent in connection with the transaction contemplated herein. Each Party agrees to indemnify and hold the other harmless from any loss

or cost suffered or incurred as a result of the other's representation herein being untrue. The indemnities contained in this section survive the Closing or termination of this Agreement.

16. Notices. Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement must be in writing and either be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered via facsimile, with confirmation of receipt by telephone, with an original deposited postage prepaid in the first class mails of the United States,

addressed to the City at:

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

with a copy to:

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

to Sound Transit at:

Sound Transit
401 S. Jackson Street
Seattle, WA 98104-2826
Attn: Eric Beckman

with a copy to:

Sound Transit Legal Department
401 S. Jackson Street
Seattle, WA 98104-2826
Attn: Jordan Wagner

17. Miscellaneous.

17.1 Headings; Rules of Construction. The titles of sections and subsections in the Agreement have been inserted as a matter of convenience of reference only and do not control or affect the meaning or construction of any of the terms or provisions. All references to the singular include the plural, and vice versa. The Parties agree that this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement is not to be construed against the maker thereof.

17.2 No Waiver. Neither the failure of either Party to exercise any power given such Party or to insist upon strict compliance by the other Party with its obligations, nor any custom or practice of the Parties at variance with the terms of this Agreement will constitute a waiver of either Party's right to demand exact compliance with the terms of this Agreement.

17.3 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the conveyance of the Property and any other prior understandings or agreements are merged herein and no representations, inducements, promises or agreements, oral or otherwise, between the Parties not embodied in this agreement or incorporated herein by reference shall be of any force or effect.

17.4 Binding Effect. This Agreement is binding upon and will inure to the benefit of the Parties and their respective successors and assigns.

17.5 Amendments. No amendment to this Agreement is binding on the Parties unless such amendment is in a writing duly executed by both Parties to this Agreement.

17.6 Date For Performance. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period will automatically extend through the close of business on the next regularly scheduled business day.

17.7 Recording. This Agreement will not be recorded.

17.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which, when taken together, will constitute but one and the same instrument.

17.9 Attorneys' Fees. In the event that either Party brings an action or legal proceeding for an alleged breach of any provision of this Agreement or any representation, warranty, covenant; or to enforce, protect, determine or establish any term, covenant or provision of this Agreement or the rights hereunder of either Party, the prevailing Party is entitled to recover from the non-prevailing Party, as a part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and costs, expert witness fees and court costs, including those incurred on appeal, as may be fixed by the court or jury.

17.10 Relationship. Nothing in this Agreement may be deemed or construed by the Parties hereto, nor by any other party, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties hereto.

17.11 Publicity. The City and Sound Transit will discuss and coordinate with respect to any public filing or announcement concerning the purchase and sale contemplated hereunder.

The Parties have caused this Agreement to be executed by their duly authorized signatories, effective as of the later date written below (the "Effective Date").

SELLER:

THE CITY OF TACOMA,
a Washington municipal corporation

By: _____
Name: _____
Title: _____
Date: _____

Approved as to form:

City attorney

BUYER:

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY,
a regional transit authority

By: _____
Name: _____
Title: _____
Date: _____

Approved as to form:

Sound Transit legal counsel

EXHIBIT A

Legal Description of the Land

IN PIERCE COUNTY, WASHINGTON:

That portion of the right of way, extra width property, track and appurtenances located thereon of the Chehalis Western Railroad conveyed to the City of Tacoma on August 11, 1995 and recorded under recording number 9508180647, county of Pierce, State of Washington, described as follows:

PARCEL A:

BLOCKS 7522, 7524, and 7526, TACOMA LAND COMPANY'S FIRST ADDITION TO THE CITY OF TACOMA, W.T., ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1884, RECORDS OF PIERCE COUNTY AUDITOR.

EXCEPT THE NORTH 97 FEET THEREOF.

ALSO EXCEPT THAT PORTION THEREOF AFFECTING BLOCK 7526 OF SAID PLAT CONDEMNED IN PIERCE COUNTY SUPERIOR COURT CAUSE NUMBER 61287 AND RECORDED UNDER RECORDING NUMBER 934858.

TOGETHER WITH THAT PORTION OF VACATED EAST "E" STREET AND EAST "F" STREET, ABUTTING THEREON AND ATTACHED THERETO BY OPERATION OF LAW, AS VACATED BY CITY OF TACOMA ORDINANCE NOS. 3127, 3128, AND 23949, WHICH WAS RECORDED UNDER RECORDING NUMBER 8710260132.

ALSO TOGETHER WITH THAT PORTION OF THE VACATED ALLEY ABUTTING THEREON AND ATTACHED THERETO BY OPERATION OF LAW, AS VACATED BY CITY OF TACOMA ORDINANCE NO.11399 AND RECORDED UNDER RECORDING NUMBER 1216812.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL B:

THE SOUTHERLY 53 FEET OF BLOCK 7528, THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1884, RECORDS OF PIERCE COUNTY AUDITOR.

TOGETHER WITH THAT PORTION OF VACATED MCKINLEY AVENUE, ABUTTING THEREON AND ATTACHED THERETO BY OPERATION OF LAW, AS VACATED BY CITY OF TACOMA ORDINANCE NO. 3152.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL C:

THE SOUTHERLY 53 FEET OF BLOCK 7530, TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1884, RECORDS OF PIERCE COUNTY AUDITOR.

TOGETHER WITH THAT PORTION OF VACATED EAST "I" STREET, ABUTTING THEREON AND ATTACHED THERETO BY OPERATION OF LAW, AS VACATED BY CITY OF TACOMA ORDINANCE NO. 3129.

ALSO TOGETHER WITH THAT PORTION OF VACATED MCKINLEY AVENUE, ABUTTING THEREON AND ATTACHED THERETO BY OPERATION OF LAW, AS VACATED BY CITY OF TACOMA ORDINANCE NO. 3152.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL D:

BLOCK 7532, TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1884, RECORDS OF PIERCE COUNTY AUDITOR.

EXCEPT THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID BLOCK 7532; THENCE SOUTHERLY ALONG THE EASTERLY SIDE OF SAID BLOCK 45.5 FEET; THENCE WESTERLY ALONG A STRAIGHT LINE TO A POINT ON THE EAST LINE OF BLOCK 7530 OF SAID ADDITION, WHICH IS 77 FEET SOUTH OF THE NORTHEAST CORNER THEREOF; THENCE NORTHERLY ALONG SAID EAST LINE 77 FEET TO THE SOUTHERLY LINE OF 25TH STREET; THENCE EASTERLY ALONG SAID SOUTHERLY LINE AND THE NORTH LINE OF SAID BLOCK 7532 TO THE POINT OF BEGINNING.

TOGETHER WITH THAT PORTION OF VACATED EAST "I" STREET, ABUTTING THEREON AND ATTACHED THERETO BY OPERATION OF LAW, AS VACATED BY CITY OF TACOMA ORDINANCE NO. 3129.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL E:

PORTION OF THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., ACCORDING TO PLAT FILED FOR RECORD JULY 7, 1884, IN THE OFFICE OF THE COUNTY AUDITOR, DESCRIBED AS FOLLOWS:

BLOCKS 7534 AND 7536 TOGETHER WITH THAT PORTION OF EAST "K" STREET, LYING BETWEEN BLOCKS 7534 AND 7536, AND BETWEEN THE SOUTH LINE OF SOUTH 25TH STREET AND THE NORTH LINE OF THE ALLEY RUNNING EAST AND WEST ALONG THE SOUTH SIDE OF SAID BLOCKS, PRODUCED ACROSS SAID EAST "K" STREET, AS VACATED BY ORDINANCE NO. 3153, OF THE CITY OF TACOMA. EXCEPT FROM SAID VACATED PORTION OF EAST "K" STREET THAT PORTION OF THE WESTERLY HALF THEREOF ABUTTING THAT PORTION OF SAID BLOCK 7534 WHICH LIES SOUTH OF A LINE DRAWN PARALLEL WITH AND 85 FEET SOUTH OF THE NORTHERLY LINE OF SAID BLOCK.

TOGETHER WITH THAT PORTION OF THE NORTHERLY HALF OF VACATED ALLEY BETWEEN SAID BLOCK 7534 AND BLOCK 7633, SAID TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., LYING WESTERLY OF THE MOST EASTERLY RIGHT OF WAY LINE OF THE NORTHERN PACIFIC RAILWAY, AS VACATED BY ORDINANCE NO. 271 OF THE CITY OF TACOMA.

EXCEPT FROM SAID BLOCK 7534, THAT PORTION OF WHICH LIES SOUTH OF A LINE DRAWN PARALLEL WITH AND 85 FEET SOUTH OF THE NORTHERLY LINE OF SAID BLOCK AND EASTERLY OF THE MOST EASTERLY RIGHT OF WAY LINE OF THE NORTHERN PACIFIC RAILWAY, AS EXCEPTED IN DEED RECORDED NOVEMBER 20, 1906 UNDER AUDITOR'S FEE NO. 226957.

ALSO EXCEPT FROM SAID BLOCK 7534, THAT PORTION RELEASED AND QUIT CLAIMED TO NORTHERN PACIFIC RAILWAY COMPANY BY INSTRUMENT RECORDED JANUARY 26, 1909, UNDER AUDITOR'S FEE NO. 284257.

EXCEPT THE NORTH 30 FEET OF SAID BLOCKS 7534 AND 7536 AND SAID VACATED EAST "K" STREET.

TOGETHER WITH PORTIONS OF THE TACOMA LAND COMPANY'S SEVENTH ADDITION TO THE CITY OF TACOMA, WASHINGTON, ACCORDING TO PLAT RECORDED IN BOOK 6 OF PLATS AT PAGE 79, DESCRIBED AS FOLLOWS:

LOTS 8 TO 12, INCLUSIVE, BLOCK 7536;
EXCEPT THE NORTH 30 FEET THEROF.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL F:

BLOCK 7538, TACOMA LAND COMPANY'S SEVENTH ADDITION TO TACOMA, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 6 OF PLATS, PAGE 79, RECORDS OF PIERCE COUNTY AUDITOR.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL G:

BLOCK 7538, THE INDIAN ADDITION TO THE CITY OF TACOMA, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGES 30 AND 31, RECORDS OF PIERCE COUNTY AUDITOR.

TOGETHER WITH THE WEST HALF OF EAST "M" STREET ADJOINING, LYING BETWEEN BLOCKS 7538 AND 7540 OF SAID PLAT AND BETWEEN THE SOUTH LINE OF SOUTH 25TH STREET AND THE NORTH LINE OF THE ALLEY RUNNING EAST AND WEST ALONG THE SOUTH SIDE OF SAID BLOCKS, PRODUCED ACROSS SAID "M" STREET, AS VACATED BY ORDER OF THE BOARD OF PIERCE COUNTY COMMISSIONERS, RECORDED UNDER RECORDING NUMBER 286957A.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL H:

LOTS 1 TO 12, INCLUSIVE, BLOCK 7540, THE INDIAN ADDITION TO THE CITY OF TACOMA, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGES 30 AND 31, RECORDS OF PIERCE COUNTY AUDITOR.

TOGETHER WITH THE EAST HALF OF THE EAST "M" STREET ADJOINING, LYING BETWEEN BLOCKS 7538 AND 7540 OF SAID PLAT AND BETWEEN THE SOUTH LINE OF SOUTH 25TH STREET AND THE NORTH LINE OF THE ALLEY RUNNING EAST AND WEST ALONG THE SOUTH SIDE OF SAID BLOCKS, PRODUCED ACROSS SAID "M" STREET, AS VACATED BY ORDER OF THE BOARD OF PIERCE COUNTY COMMISSIONERS, RECORDED UNDER RECORDING NUMBER 286947A.

ALSO TOGETHER WITH THE WEST HALF OF EAST "N" STREET ADJOINING, LYING BETWEEN BLOCKS 7540 AND 7542 OF SAID PLAT AND BETWEEN THE SOUTH LINE OF SOUTH 25TH STREET AND THE NORTH LINE OF THE ALLEY RUNNING EAST AND WEST ALONG THE SOUTH SIDE OF SAID BLOCKS, PRODUCED ACROSS SAID "N" STREET, AS VACATED BY ORDER OF THE BOARD OF PIERCE COUNTY COMMISSIONERS, RECORDED UNDER RECORDING NUMBER 286957A.

ALSO TOGETHER WITH THE NORTH HALF OF ALLEY ABUTTING LOTS 11 AND 12, BETWEEN BLOCK 7540 AND 7639 OF SAID PLAT, AND THE NORTH HALF OF ALLEY ABUTTING THE WEST HALF OF VACATED EAST "N" STREET (VACATED BY ORDER OF PIERCE COUNTY COMMISSIONERS, RECORDED UNDER RECORDING NUMBER 286957A), AS VACATED BY ORDINANCE NO. 26688, RECORDED UNDER RECORDING NUMBER 200012180082.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL I:

LOTS 1 TO 27, INCLUSIVE, BLOCK 7542, THE INDIAN ADDITION TO THE CITY OF TACOMA, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGES 30 AND 31, RECORDS OF PIERCE COUNTY AUDITOR.

EXCEPT THAT PORTION THEREOF CONVEYED TO THE CITY OF TACOMA BY QUIT CLAIM DEED RECORDED NOVEMBER 27, 1972 UNDER RECORDING NUMBER 2475097.

TOGETHER WITH THE EAST HALF OF EAST "N" STREET ADJOINING, LYING BETWEEN BLOCKS 7540 AND 7542 OF SAID PLAT AND BETWEEN THE SOUTH LINE OF SOUTH 25TH STREET AND THE NORTH LINE OF THE ALLEY RUNNING EAST AND WEST ALONG THE SOUTH SIDE OF SAID BLOCKS, PRODUCED ACROSS SAID "N" STREET, AS VACATED BY ORDER OF THE BOARD OF PIERCE COUNTY COMMISSIONERS, RECORDED UNDER RECORDING NUMBER 286957A.

ALSO TOGETHER WITH THAT PORTION OF THE VACATED ALLEY, ABUTTING THEREON AND ATTACHED THERETO BY OPERATION OF LAW, AS VACATED BY CITY OF TACOMA ORDINANCE NO. 26688 AND RECORDED UNDER RECORDING NUMBER 200012180082.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL J:

THAT PORTION OF LOTS 2, 3, 4, AND 5, BLOCK 7546, INDIAN ADDITION TO THE CITY OF TACOMA, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGES 30 AND 31, RECORDS OF PIERCE COUNTY AUDITOR, LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE;

BEGINNING AT A POINT ON THE NORTHEAST CORNER OF SAID LOT 3; THENCE SOUTHWEESTERLY TO A POINT ON A LINE PARALLEL TO AND 30 FEET EASTERLY FROM THE WESTERLY LINE OF SAID BLOCK, SAID POINT BEING 60 FEET NORTHERLY FROM THE SOUTHERLY LINE OF SAID BLOCK; THENCE SOUTHERLY PARALLEL TO SAID WESTERLY LINE OF THE SOUTHERLY LINE OF SAID BLOCK.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL K:

LOTS 1 THROUGH 10, INCLUSIVE, AND LOT 13, BLOCK 7645, THE INDIAN ADDITION TO THE CITY OF TACOMA, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGES 30 AND 31, RECORDS OF PIERCE COUNTY AUDITOR.

EXCEPT THAT PORTION THEREOF CONVEYED TO THE CITY OF TACOMA BY QUIT CLAIM DEED RECORDED NOVEMBER 27, 1972 UNDER RECORDING NUMBER 2475097.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL L:

THAT PORTION OF LOTS 8 THROUGH 29, INCLUSIVE, BLOCK 7548, THE INDIAN ADDITION TO THE CITY OF TACOMA, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGES 30 AND 31, RECORDS OF PIERCE COUNTY AUDITOR, LYING SOUTHERLY OF A LINE 50 FEET NORTHERLY AS MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF THE MAIN TRACK OF THE CHEHALIS WESTERN RAILROAD RUNNING ACROSS SAID BLOCK.

TOGETHER WITH THAT PORTION OF LOTS 13 THROUGH 33 OF SAID BLOCK LYING SOUTHERLY OF THE CENTERLINE OF THE MAIN TRACK OF THE CHEHALIS WESTERN RAILROAD AND NORTHERLY OF THE INTERSTATE 5 RIGHT OF WAY.

TOGETHER WITH THAT PORTION OF VACATED PUYALLUP AVENUE, ABUTTING THEREON AND ATTACHED THERETO BY OPERATION OF LAW, AS VACATED BY THE CITY OF TACOMA ORDINANCE NO. 23114 AND RECORDED UNDER RECORDING NUMBER 8504290222.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON

PARCEL M:

THOSE PORTIONS OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 20 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OPPOSITE HIGHWAY ENGINEER'S STATION (HEREINAFTER REFERRED TO AS HES) 5W 386+92.16 ON THE 5W LINE SURVEY OF SR 5, TACOMA AVENUE TO PUYALLUP RIVER BRIDGE VICINITY AND 53 FEET NORTHERLY THEREFROM; THENCE NORTHWESTERLY TO A POINT OPPOSITE HES 5W 387+02.40 ON SAID LINE SURVEY AND 58.05 FEET NORTHERLY THEREFROM; THENCE NORTHEASTERLY TO A POINT OPPOSITE HES 5W 368+65.26 ON SAID LINE SURVEY AND 76.40 FEET NORTHERLY THEREFROM; THENCE NORTHEASTERLY TO A POINT OPPOSITE 5W 384+96.64 ON SAID LINE SURVEY AND 102.66 FEET NORTHERLY THEREFROM; THENCE SOUTHERLY TO A POINT OPPOSITE HES 5W 384+86.47 ON SAID LINE SURVEY AND 53 FEET NORTHERLY THEREFROM; THENCE WESTERLY TO THE POINT OF BEGINNING.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL N:

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 20 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OPPOSITE HIGHWAY ENGINEER'S STATION (HEREINAFTER REFERRED TO AS HES) 5W 384+25.15 ON THE 5W LINE SURVEY OF SR 5, TACOMA AVENUE TO PUYALLUP RIVER BRIDGE VICINITY AND 53 FEET NORTHERLY THEREFROM; THENCE NORTHERLY TO A POINT OPPOSITE HES 5W 384+38.68 ON SAID LINE SURVEY AND 120.57 FEET NORTHERLY THEREFROM; THENCE SOUTH 60°20'11" EAST A DISTANCE OF 46.64 FEET TO A POINT OPPOSITE HES 5W 383+98.76 ON SAID LINE SURVEY AND 100.75 FEET NORTHERLY THEREFROM; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2924.18 AN ARC DISTANCE OF 138.17 FEET TO A POINT OPPOSITE HES 5W 382+75.66 ON SAID LINE SURVEY AND 53 FEET NORTHERLY THEREFROM; THENCE WESTERLY TO THE POINT OF BEGINNING.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

EXHIBIT B

Legal Description of the Remnant Parcels

PARCEL A

THAT PORTION OF LOTS 7 TO 19, INCLUSIVE, IN BLOCK 2505 OF THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., AS PER MAP THEREOF FILED FOR RECORD JULY 7, 1884, IN PIERCE COUNTY, WASHINGTON;

EXCEPT THAT PORTION APPROPRIATED BY THE CITY OF TACOMA UNDER SUPERIOR COURT CAUSE NO. 61287;

ALSO EXCEPT THAT PORTION CONVEYED TO THE CITY OF TACOMA BY DEED RECORDED UNDER AUDITOR'S FEE NO. _____,

LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 7; THENCE SOUTH 07°21'29" EAST ALONG THE EAST LINE OF SAID BLOCK 2505 A DISTANCE OF 132.01 FEET TO THE **TRUE POINT OF BEGINNING** AND THE BEGINNING OF A NON-TANGENT CURVE FROM WHICH THE RADIUS POINT BEARS SOUTH 29°58'33" EAST A DISTANCE OF 1091.28 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 6°22'22" A DISTANCE OF 121.38 FEET TO THE BEGINNING OF A NON-TANGENT CURVE FROM WHICH THE RADIUS POINT BEARS NORTH 62°31'55" WEST A DISTANCE OF 43.00 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 20°06'59" A DISTANCE OF 14.61 FEET TO THE WEST LINE OF SAID BLOCK 2505 AND THE END OF THIS LINE DESCRIPTION.

CONTAINING 15,813 SQUARE FEET, MORE OR LESS.

PARCEL B

THAT PORTION OF LOTS 9 TO 14, INCLUSIVE, IN BLOCK 2504 OF THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., AS PER MAP THEREOF FILED FOR RECORD JULY 7, 1884, IN PIERCE COUNTY, WASHINGTON,

LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 9; THENCE SOUTH 07°21'35" EAST ALONG THE EAST LINE OF SAID BLOCK 2504 A DISTANCE OF 29.08 FEET TO THE **TRUE POINT OF BEGINNING** AND THE BEGINNING OF A NON-TANGENT CURVE FROM WHICH THE RADIUS POINT BEARS SOUTH 21°28'16"

EAST A DISTANCE OF 1192.54 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 6°01'37" A DISTANCE OF 125.44 FEET TO THE WEST LINE OF SAID BLOCK 2504 AND THE END OF THIS LINE DESCRIPTION.

EXCEPT THAT PORTION APPROPRIATED BY THE CITY OF TACOMA UNDER SUPERIOR COURT CAUSE NO. 61287.

ALSO EXCEPT THAT PORTION CONVEYED TO THE CITY OF TACOMA BY DEED RECORDED UNDER AUDITOR'S FEE NO. _____

CONTAINING 4,425 SQUARE FEET, MORE OR LESS.

PARCEL C

THAT PORTION OF LOTS 5 TO 10, BLOCK 7513, AND THE WEST 10 FEET OF LOTS 5 TO 10, BLOCK 7514, OF THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., AS PER MAP THEREOF FILED FOR RECORD JULY 7, 1884, IN PIERCE COUNTY, WASHINGTON;

EXCEPT THE NORTH 5 FEET OF SAID LOTS 5 IN SAID BLOCKS;

TOGETHER WITH THAT PORTION OF VACATED ALLEY ADJOINING SAID LOTS VACATED BY CITY OF TACOMA ORDINANCE NOS. 3172 AND 4223;

ALSO TOGETHER WITH LOTS 7 THROUGH 10, EXCEPT THE WEST 10 FEET THEREOF, BLOCK 7514 IN SAID PLAT;

LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 10, BLOCK 7514; THENCE NORTH 07°22'50" EAST ALONG THE EAST LINE OF SAID BLOCK 7514 A DISTANCE OF 92.05 FEET TO THE **TRUE POINT OF BEGINNING** AND THE BEGINNING OF A NON-TANGENT CURVE FROM WHICH THE RADIUS POINT BEARS SOUTH 15°43'14" EAST A DISTANCE OF 3764.83 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 4°16'19" A DISTANCE OF 284.83 FEET TO THE WEST LINE OF SAID BLOCK 7513 AND THE END OF THIS LINE DESCRIPTION.

EXCEPT THOSE PORTIONS CONVEYED TO THE CITY OF TACOMA BY DEED RECORDED UNDER AUDITOR'S FEE NO. _____.

CONTAINING 17,711 SQUARE FEET, MORE OR LESS.

PARCEL D

THAT PORTION OF LOTS 7 TO 19, INCLUSIVE, IN BLOCK 2505 OF THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., AS PER MAP THEREOF FILED FOR RECORD JULY 7, 1884, IN PIERCE COUNTY, WASHINGTON, LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 7; THENCE SOUTH 07°21'29" EAST ALONG THE EAST LINE OF SAID BLOCK 2505 A DISTANCE OF 45.85 FEET TO THE TRUE POINT OF BEGINNING AND THE BEGINNING OF A NON-TANGENT CURVE FROM WHICH THE RADIUS POINT BEARS SOUTH 28°21'17" EAST A DISTANCE OF 1171.28 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 6°25'46" A DISTANCE OF 131.44 FEET TO THE WEST LINE OF SAID BLOCK 2505 AND THE END OF THIS LINE DESCRIPTION.

CONTAINING 8,565 SQUARE FEET, MORE OR LESS.

PARCEL E

THAT PORTION OF LOTS 5, 6, 7 AND 8, BLOCK 2504 OF THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., AS PER MAP THEREOF FILED FOR RECORD JULY 7, 1884, IN PIERCE COUNTY, WASHINGTON,

EXCEPT THE NORTHERLY 3 INCHES OF SAID LOT 5;

LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHERLY 3 INCHES OF SAID LOT 5; THENCE SOUTH 07°21'29" EAST ALONG THE WEST LINE OF SAID BLOCK 2504 A DISTANCE OF 81.07 FEET TO THE **TRUE POINT OF BEGINNING** AND THE BEGINNING OF A NON-TANGENT CURVE FROM WHICH THE RADIUS POINT BEARS SOUTH 26°10'58" EAST A DISTANCE OF 1272.54 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5°36'55" A DISTANCE OF 124.71 FEET TO THE EAST LINE OF SAID BLOCK 2504 AND THE END OF THIS LINE DESCRIPTION.

EXCEPT THAT PORTION CONVEYED TO THE CITY OF TACOMA BY DEED RECORDED UNDER AUDITOR'S FEE NO. _____

CONTAINING 6,997 SQUARE FEET, MORE OR LESS.

PARCEL F

THAT PORTION OF LOTS 5 TO 10, BLOCK 7513, AND THE WEST 10 FEET OF LOTS 5 TO 10, BLOCK 7514, OF THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., AS PER MAP THEREOF FILED FOR RECORD JULY 7, 1884, IN PIERCE COUNTY, WASHINGTON;

EXCEPT THE NORTH 5 FEET OF SAID LOTS 5 IN SAID BLOCKS;

ALSO EXCEPT THAT PORTION CONVEYED TO THE CITY OF TACOMA BY DEED RECORDED UNDER AUDITOR'S FEE NO. _____

TOGETHER WITH THAT PORTION OF VACATED ALLEY ADJOINING SAID LOTS VACATED BY CITY OF TACOMA ORDINANCE NOS. 3172 AND 4223;

ALSO TOGETHER WITH THE SOUTH 20 FEET OF LOT 5 AND ALL OF LOT 6, EXCEPT THE WEST 10 FEET THEREOF, BLOCK 7514 IN SAID PLAT;

LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTH 5 FEET OF SAID LOT 5, BLOCK 7513; THENCE SOUTH 07°21'35" EAST ALONG THE WEST LINE OF SAID BLOCK 7513 A DISTANCE OF 5.36 FEET; THENCE LEAVING SAID LINE SOUTH 48°34'35" EAST A DISTANCE OF 13.02 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 20.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 41°11'09" A DISTANCE OF 14.38 FEET; THENCE SOUTH 07°23'25" EAST A DISTANCE OF 6.83 FEET TO THE **TRUE POINT OF BEGINNING** AND THE BEGINNING OF A NON-TANGENT CURVE FROM WHICH THE RADIUS POINT BEARS SOUTH 19°34'49" EAST A DISTANCE OF 3844.83 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF r48'21" A DISTANCE OF 188.29 FEET TO THE NORTH LINE OF THE SOUTH 20 FEET OF LOT 5 OF SAID BLOCK 7514 AND THE END OF THIS LINE DESCRIPTION.

CONTAINING 3,291 SQUARE FEET, MORE OR LESS.

EXHIBIT C
Third Party Agreements

ID#	Name	Occupancy Type
ROW 233	QWEST	License for communication facilities
ROW 241	Comcast	License for Communication Facilities in Street ROW
ROW 425	Qwest	Letter regarding installation of Underground cable in East "D" street
2005-014	Sound Transit	Permit for Fiber Optic Cable from Reservation Junction to East "D" Street
2009-024	Electric Lightwave	Permit for Fiber Overhead Optic Cable
E42	Sprint	Easement for Fiber Optic Cable in RR ROW From East "B" Street to Puyallup Avenue
P2079	Qwest	Permit for Underground Fiber Optic Cable in East "J" Street
ROW 247	PSE	License for Gas Line in presumed Vacated Street ROW
ROW 248	PSE	License for Gas Line in Street ROW
2003-PO-02-SAV	Savage Wholesale	Permit for Parking Lot
2005-ST-S1	Sound Transit	Permit for Storage Shed
2006-015	Raceway Technology Building LLC	Permit for Storage Yard
2007-015	Andrew's Fixtures Co.	Permit for Storage Yard
na	Seattle Box Company	Unpermitted fenced encroachment by abutting property owner
na	AA Wright LLC	Unpermitted parking lot encroachment by abutting property owner
*Note: Occupancies within street right of ways that were not permitted by the railroad are not included on this list. Aerial photographs reflect that many such occupancies exist.		

EXHIBIT D

**JOINT USE AGREEMENT
(RESERVATION JUNCTION TO FREIGHTHOUSE SQUARE)**

This agreement dated March ____ 2014 is between the Central Puget Sound Regional Transit Authority, a regional transit authority under the laws of the State of Washington (“Sound Transit”) and the City of Tacoma, a first class city under the laws of the State of Washington (“City”), together sometimes referred to as the “Parties.”

Sound Transit and the City are concurrently entering into a Purchase and Sale Agreement for the purchase and sale of the City’s Department of Public Works, Tacoma Rail Mountain Division railroad right of way approximately between STA 924+ 74.88 (TR) and D Street (Sound Transit MP1.99) including the “L” Street Yard, Tacoma, Washington along with certain land parcels in Tacoma by the City to Sound Transit with the City retaining an exclusive freight easement (the “Tacoma Dome Segment”); and

Sound Transit and the City wish to provide the terms of joint use of the Tacoma Dome Segment by the City and Sound Transit, whether the City’s freight operations and common carrier obligations are conducted by the City or a third party freight operator.

The Parties therefore agree as follows:

ARTICLE 1 - DEFINITIONS

Each definition in this Joint Use Agreement includes the singular and the plural. As used in this Joint Use Agreement, the following terms, when capitalized as in this Section, have the following meanings:

- 1.1 "Amtrak" means the National Railroad Passenger Corporation
- 1.2 “BNSF” means The BNSF Railway Company.
- 1.3 “Car Miles” means the sum of the number of miles traveled on the Tacoma Dome Segment per car, whether or not revenue-generating, including all locomotives or self-propelled rail units and freight, commuter, or passenger cars, but not locomotive-only moves, and yard moves that incidentally occupy the Tacoma Dome Segment.
- 1.4 “Commuter Rail Service” means the operation of commuter Trains by, or for, Sound Transit (including, but not limited to, the service currently provided by BNSF for Sound Transit) and Sound Transit’s activities and operations over any portion or all of the Tacoma Dome Segment.
- 1.5 “Purchase and Sale Agreement” means the agreement, each entered into concurrently with this Joint Use Agreement for the sale of certain parcels comprising the Tacoma Dome Segment by the City to Sound Transit.

- 1.6 “Rolling Stock” means the locomotives, cars, and cabooses.
- 1.7 “TPO” means third party freight operator.
- 1.8 “Train” means one or more locomotive or other self-propelled rail units with or without freight, commuter or passenger cars; however, for purposes of calculating Train Miles, work trains, when they perform work on the Tacoma Dome Segment, and hi-rail vehicles, are not included in the definition of Train.
- 1.9 “Train Miles” means the sum of the number of miles traveled on the Tacoma Dome Segment by a Train, whether or not revenue-generating, including all locomotives or self-propelled rail units and attached freight, commuter, or passenger cars, but not locomotive-only moves, and yard moves that incidentally occupy the Tacoma Dome Segment.

ARTICLE 2 - NATURE OF JOINT USE BY SOUND TRANSIT AND THE CITY

2.1 USE OF TACOMA DOME SEGMENT

A. General Delineation of Use.

- (1) The City has retained an exclusive right and obligation to provide freight service over the Tacoma Dome Segment under its retained freight easement. The City may subcontract, or otherwise assign or sell that right and obligation, to provide freight service to all existing and new customers.
- (2) Sound Transit Trains and Amtrak Trains have priority over freight operations to preserve and protect passenger Train schedules and Sound Transit obligations under any agreements with Amtrak and WSDOT. However, dispatch protocols will be prepared and implemented to allow the City to move its freight Trains through the Tacoma Dome Segment without undue delay when it is safe and does not interfere with passenger Trains.
- (3) Sound Transit, or its contractor (BNSF at the time this agreement was signed), will dispatch the Tacoma Dome Segment.
- (4) The City may use that portion of the Tacoma Dome Segment more commonly known as the “L” Street Yard occasionally for doubling the hill to the Tacoma Rail Mountain Division and for possible future interchange activity to the extent that such use does not interfere with passenger service on the Tacoma Dome Segment including storage of Sound Transit Trains in the “L” Street Yard. The terms here do not limit the parties from entering into a separate agreement regarding greater access to the Yard by the City, such as for long term storage or for other more exclusive uses.

- (5) The City may use the Tacoma Dome Segment and the Tacoma Dome Station platform for its occasional excursion passenger Trains while it retains its freight easement so long as such use does not interfere with Sound Transit or Amtrak passenger rail service on the Tacoma Dome Segment. However, the right to use the Tacoma Dome Segment and the Tacoma Dome Station platform is personal to the City and cannot be assigned, leased, or contracted out. Further, if the City sells, transfers, leases, or otherwise conveys its freight easement or rights under the freight easement (such as a trackage rights), then its right to operate an excursion passenger Trains on the Tacoma Dome Segment and the Tacoma Dome Station platform terminates. The City acknowledges that Sound Transit does not own Freighthouse Square and that the City must deal directly with the owners for rights to the use Freighthouse Square and the property adjacent to the platform.

2.2 SERVICE PLAN FOR COMMUTER RAIL AND FREIGHT SERVICE

- A. Sound Transit will provide the City with passenger schedules and will advise the City or its third party operator by giving 30 days written notice of any changes to that schedule.
- B. The City will provide Sound Transit with freight schedules for the Tacoma Dome Segment and will advise Sound Transit by giving 30 days written notice of any changes to that schedule.

2.3 OPERATING RULES AND STANDARDS

- A. The Parties will operate safely and efficiently, in accordance with applicable federal, state, and local laws, rules, regulations, and requirements, and the operating guidelines and standards embodied in the following:
 - (1) Sound Transit's General Code of Operating Rules, including any future written amendments. Sound Transit will provide written notice of amendments 30 days before the effective date of the amendment or other rules that Sound Transit may adopt;
 - (2) Emergency Preparedness Plan;
 - (3) System Safety Program Plan;
 - (4) Applicable industry rules and standards, such as those of the FRA and Association of American Railroads for Rolling Stock;
 - (5) Any additional standards, procedures, or protocols that Sound Transit may implement from time to time; and

- B. If an employee of the City neglects, refuses, or fails to abide by Sound Transit's rules, instructions, and restrictions governing the operation on or along the Tacoma Dome Segment, the City, upon request by Sound Transit, will prohibit that employee from working on the Tacoma Dome Segment. If either Party believes it is necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of the City employee, then upon written notice to the other Party, Sound Transit and the City will promptly hold a joint investigation with the parties bearing its own expenses, including the expenses of its officers, counsel, witnesses, and employees. The City will give notice of the investigations to its employees. The investigations must be conducted in accordance with the terms and conditions of the collective bargaining agreements between the City and its employees.

The City will withdraw the City employee from service over the Tacoma Dome Segment, if, in the judgment of Sound Transit, the result of the investigation warrants that employee's withdrawal. The City will release and indemnify Sound Transit from and against any and all claims and expenses resulting from such a withdrawal.

If the disciplinary action is appealed by the City employee to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of the board or tribunal sustains the employee's position, then the employee will not be barred from service on the Tacoma Dome Segment by reason of the alleged neglect refusal, or failure.

2.4 MAINTENANCE OF WAY

Sound Transit is responsible for maintenance of way on the Tacoma Dome Segment. Maintenance encompasses ordinary maintenance, capital, and catastrophic replacement; maintenance also encompasses the full width of the corridor and includes tracks; bridges, and other structures; signals; grade crossing protection devices; and general right-of-way maintenance such as mowing, grubbing, and debris removal.

2.5 CLEARING DISABLED EQUIPMENT AND WRECKS

The Parties will be responsible for re-railing or clearing derailed, wrecked, or otherwise disabled Train or Rolling Stock that it owns or is responsible for. For example, Tacoma will be responsible for all freight Trains, while Sound Transit will be responsible for Amtrak Trains. Sound Transit will be responsible for performing the maintenance where the incident occurred, however the City will be responsible for the cost of such maintenance if its equipment caused the damage. The costs and expenses of clearing such derailments and wrecks are as provided for in the allocation of liability in Article VII of this Agreement.

2.6 SAFETY

The Parties will comply with all applicable federal, state, local, and industry safety laws, standards, codes, rules and regulations and agree to coordinate on the required System Safety Program Plan. The City will provide a written report to Sound Transit within three days of a collision or derailment incident involving any of the City's equipment on the Tacoma Dome Segment.

2.7 HAZARDOUS MATERIALS

- A. Each party is responsible for any report required by federal, state or local authorities in connection with a release of hazardous materials, hazardous substances, or hazardous wastes, as defined under federal or state law ("Hazardous Materials"), from their respective Trains on any segment of the Tacoma Dome Segment. The City will immediately notify Sound Transit in the event of such a release from a City Train.
- B. The costs for the activities described in this Section 2.7 will be borne in accordance with Article VII, Liability and Indemnification.

ARTICLE 3 - REIMBURSEMENT FOR JOINT USE EXPENSES

3.1 REIMBURSEMENT

- A. The City will reimburse Sound Transit at the rate of \$0248 per car mile (on January 1, 2005) and adjusted annually from 2005 to the year of the invoice in accordance with the Annual Rate Adjustment Formula provided Appendix A. The purpose of starting the calculation in 2005 is to provide a rate that is identical to the rate paid by Tacoma Rail to Sound Transit under the Lakeview Joint Use Agreement dated December 17, 2003 between Sound Transit and BNSF, the City's predecessor in interest under that agreement. That rate is intended to cover ordinary and capital maintenance of the line including the costs contemplated in Section 3.4.
- B. The car mile rate in Section 3.1.A. will be adjusted effective annually starting on January 1st following the effective date of this agreement, based on the weighted average of the percentage change in the Labor Component of the Rail Cost Adjusted Factor (80%) and the percentage change in the Consumer Price Index for Seattle-Tacoma-Bremerton WA (20%) in accordance with the methodology in Appendix A.
- C. Catastrophic replacement costs, i.e., replacement cost in excess of \$100,000 for each occurrence, such as but not limited to floods, earthquakes, mudslides or acts of God, will be billed in addition to the car-mile rate and will be apportioned between the parties on the basis of the parties' Train Miles operated over that section of the Tacoma Dome Segment for the year ending immediately prior to the first day of the month of the occurrence. Sound Transit will notify the City as soon as possible what its share of the estimated design and construction costs. The City may avoid its share of these costs by (1) notifying Sound Transit that it will

no longer operate Trains over the Tacoma Dome Segment, and (2) terminating this Agreement.

- D. Notwithstanding, 3.1.A., B., C., and 3.4, Sound Transit agrees to waive all joint use expenses under these sections of Article 3 for a period of ten years following the effective date of this agreement. In the event the City sells or otherwise conveys its rights under this agreement during the ten years following the effective date, Sound Transit will continue to waive the joint use expenses for the remainder of the ten year period. Following the ten year period, the City or its successor will pay joint use expenses according to Article 3.

3.2 OTHER REIMBURSEMENTS

- A. In addition to the reimbursement base compensation provided for in Section 3.1, the City will reimburse Sound Transit for the costs resulting from Section 7.5.
- B. Sound Transit will pay all direct costs associated with the one-time purchase of equipment and installation of on-board positive train control equipment/devices on four of the City's locomotives. Sound Transit will be responsible for all way side and capital costs associated with positive train control or other legally mandated forms of safety features requiring separation of passenger and freight service on the Tacoma Dome Segment for a period of ten years following the effective date of this agreement.

3.3 CAPACITY IMPROVEMENTS

- A. Sound Transit has constructed a number of capacity improvements on the Tacoma Dome Segment in accordance with Sound Move and will construct additional improvements under Sound Move 2 that it determines are necessary to implement Sound Transit Commuter Rail Service and maintain the City's freight operations on the Tacoma Dome Segment. These capacity improvements and any necessary Permits and Approvals are at Sound Transit's expense unless changes are specifically requested by the City to improve freight service and those requested changes increase the cost of the capacity improvements.
- B. The capacity improvements will be designed to provide freight access to existing City freight customers that is no worse than the existing freight access from a safety and operational efficiency standpoint before Sound Transit started construction on capacity improvements as part of its Sound Move project in 2002. The parties acknowledge that freight access will have some hours of service constraints, based on Sound Transit's commuter rail schedules. During design, Sound Transit will give the City the opportunity to review these capacity improvements plans, and prior to the start of construction submit the plans for formal review by the City. The City will have 30 days to respond to Sound Transit's plans. If the City does not respond within 30 days, the plans will be deemed to be satisfactory to the City. If the City believes that the improvements

will not allow freight access to existing City customers that is no worse than the existing freight access from a safety and operational efficiency standpoint as provided above, the parties will discuss and use their best efforts to resolve the issue. If the parties cannot resolve the issue, the City may invoke the dispute resolution provisions of Article IX of the Agreement.

- C. Except as provided in section 3.4, the parties will work together to attempt to minimize the impact of construction of a capacity improvement on freight service. To the extent that Sound Transit disrupts freight service, or otherwise increases the costs to the City of providing freight service during construction of the capacity improvements, Sound Transit will reimburse the City for any incremental increase in actual documented costs or otherwise negotiated rate. If Sound Transit disagrees with the City's mitigation plan or the calculation of costs, Sound Transit may invoke the dispute resolution provisions of Article 9.
- D. The City may request improvements to the rail infrastructure for freight service, including but not limited to sidings, connecting and access tracks and switches for new shipper facilities. The City will be responsible for the entire cost and expense of these improvements, including any necessary Permits and Approvals. The City will submit plans for such improvements to Sound Transit and Sound Transit will have 30 days to review and approve or reject such plans. If Sound Transit does not respond within 30 days, the plans will be deemed to be approved. If the plans are rejected, the parties will work together to find a mutually agreeable solution. If the parties cannot arrive at a mutually agreeable solution, the City may invoke the dispute resolution provisions of Article 9, provided however, Sound Transit can prevent the City from making rail infrastructure improvements that materially affect passenger Train operations.

Unless otherwise agreed by the parties, any construction on the Tacoma Dome Segment will be performed by Sound Transit.

3.4 TRESTLE REPLACEMENT PROJECT

The City acknowledges that Sound Transit, in part because of the City's needs, will be constructing a double track trestle in the Tacoma Dome Segment. The City is not entitled to remuneration for the inconvenience or losses caused by capital projects (such as the replacement project discussed above), including demurrage fees and labor costs. The City will indemnify Sound Transit for claims by its customers that are a result of a Sound Transit capital replacement project on the Tacoma Dome Segment.

3.5 REIMBURSEMENT FOR UNFORESEEN EVENTS

In the event of an occurrence not reasonably foreseeable when this Joint Use Agreement was executed that has a material impact on the compensation for joint use of the Tacoma Dome Segment, the Parties will negotiate in good faith and use their best efforts to agree upon an appropriate amendment to the applicable contract provision. The Parties will use

the dispute resolution process in Section 9 if they cannot readily agree upon an appropriate amendment. Pending a final decision, both Parties will continue to perform under and be bound by the terms of this Agreement as it exists without any proposed amendment.

3.6 METHOD OF INVOICING AND PAYMENT

- A. Sound Transit will invoice the City monthly. The City will pay Sound Transit within 30 days after Sound Transit has submitted an invoice in a format mutually agreed upon.
- B. Late payments by the City are subject to interest at the rate of 8 percent per annum.

3.7 INSPECTION AND AUDIT

- A. The City may, at its own cost (i) inspect the Tacoma Dome Segment; provided the inspection does not hinder or delay Sound Transit's commuter operations or Amtrak's passenger rail service, and (ii) audit any aspect of Sound Transit's performance of its duties and obligations under this Agreement, both financial and operational, and may include an examination of Sound Transit's controls, practices, and procedures and their effect upon the efficiency and quality of freight service provided by the City. Any audit conducted by the City (or its designee) must be conducted in accordance with Generally Accepted Auditing Standards.
- B. The City has three years from the end of each calendar year to initiate and complete an audit of a given year's books, records, accounts, and documents.
- C. Upon reasonable notice, Sound Transit will permit the City, its auditors, or any other duly authorized agent of the City to inspect and examine all books, records, accounts, and documents relating to Sound Transit's activities under this Agreement. Sound Transit will maintain such books, records, accounts, and documents and keep them accessible to the City for the specified period for retention of official records of the type in question in accordance with Sound Transit's Records Retention Schedule then in effect. All such books, records, accounts, and documents will be made available at the location at which they are maintained. Sound Transit will credit the City for any amounts billed by Sound Transit, and reimburse the City for any amounts paid by the City that are not supported by the records maintained by Sound Transit or by the services actually performed by Sound Transit. Upon completion of the audit, any adjustment required to make any reconciliation required will be made, paid, or credited, as the case may be, in the next monthly billing cycle.

ARTICLE 4 EMPLOYEES

4.1 SOUND TRANSIT IS AN INDEPENDENT CONTRACTOR

Sound Transit and any subcontractors retained by Sound Transit, when performing maintenance activities under the terms of this Agreement are independent contractors. Nothing in this Agreement may be construed as inconsistent with that status.

4.2 PERSONNEL TO BE EMPLOYEES OF SOUND TRANSIT OR ITS SUBCONTRACTORS

The personnel performing maintenance activities provided by Sound Transit under this Agreement must at all times be employees of Sound Transit, or its contractors as determined by Sound Transit, under Sound Transit's or its contractor's exclusive direction and control. Sound Transit or its subcontractors have sole authority to hire, fire, discipline, promote, demote, direct the work of, and manage the personnel performing the maintenance activities.

4.3 NOTICE OF CLAIMS

- A. In the event that the City or Sound Transit receive a complaint or allegation from any of its employees or subcontractors related to the conduct of the other Party's employee or subcontractor, the party receiving the complaint or allegation will promptly notify the other party of such allegation and cooperate with the other party with respect to any investigation of any such complaint.
- B. In the event that either party is named in any lawsuit or administrative charge or allegation by any employee who is or has performed services under this Agreement, the named party will provide the other party with notice and a copy of a lawsuit, action, or charge.

ARTICLE 5 CITY RIGHTS AND OBLIGATIONS

5.1 ROLLING STOCK SAFETY

The City will only use Rolling Stock that comply with all applicable federal (and applicable state and local) laws, regulations, and enactments and will allow Sound Transit inspection of such upon providing reasonable notice. If any failure of the Rolling Stock to comply with such laws, regulations, or enactments results in the imposition of any fine, penalty, cost, or charge against Sound Transit, then the City will reimburse, indemnify, and hold harmless Sound Transit for any such fine, penalty, cost, or charge. The City will promptly notify Sound Transit of any notice it receives seeking to impose any such fine, penalty, cost, or charge. The City will, upon receiving notice of any action seeking to impose any such fine, penalty, cost, or charge against Sound Transit, defend such action at the City's own expense.

5.2 REGULATORY APPROVALS

In the event that the Parties determine that any state, federal, or local regulatory prior approval or exemption is required with respect to the operation of freight service in accordance with this Agreement, securing such approval or exemption is the responsibility of the City.

5.3 EFFICIENCY TESTING

Sound Transit and/or its operating contractor, in coordination with the City, may perform efficiency tests of City crewmembers in service on the Tacoma Dome Segment.

ARTICLE 6 INSURANCE

6.1 DEFINITIONS FOR ARTICLES VI AND VII

Each definition in Articles 6 and 7 includes the singular and the plural. For purposes of Articles 6 and 7, the following terms, when capitalized as in this Section 6.1, have the following meanings:

- A. "City Party" means one or more of (1) the City's elected officials, officers, directors, employees, agents, or contractors while using or on the Tacoma Dome Segment, in connection with performing duties of any kind for the City, including, among others, performing duties related to the Tacoma Dome Segment under this Agreement and excluding any such person who is a fare paying passenger on board a passenger train operating in Commuter Rail Service, or (2) persons (other than a Sound Transit Party) receiving services of the City involving use of the Tacoma Dome Segment.
 - i. "Environmental Loss or Damage" means all fines, penalties, liability, cost, damages, injuries, deaths, losses, expenses, fees, charges, cleanups, removals, remediation, or any other cost, requirement, or liability whatsoever and all expenses and attorneys' fees, arising from, resulting from, related to, or incurred in connection with actions, judgments, suits, claims, (formal or informal), or contentions of any kind or nature whatsoever, raised by any person or entity of any kind at any time with respect to contamination, waste (hazardous and non-hazardous), pollution, garbage, trash, Hazardous Materials, or environmental hazards or conditions of any kind or nature whatsoever, and including without limitation damages or injuries to a person or private or public property (real or personal, and including without limitation natural resources) but does not include damages related to diminution in value of either parties' interest in the Tacoma Dome Segment.
 - ii. "Loss or Damage" means all fines, penalties, claims, liability, cost, and expense of every character (including amounts paid under any State or Federal compensation law, and including costs and attorney's fees

incurred in the investigation, defense or settlement of any actual or threatened legal proceeding), incident or related to loss or destruction of or damage to property (including real property and improvements and personal property of Parties and third parties) and injury to and death of persons (including officers, directors, agents, employees, contractors, invitees, customers, or patrons of the Parties, and third parties); provided, however, that it does not include damages related to diminution in value in either parties' interest in the Tacoma Dome Segment Environmental Loss or Damage as defined in Section 6.1(B), except that this definition does include Environmental Loss or Damage for purposes of Subsections 7.1.A., 7.1.B., 7.1.E, 7.1.G., 7.1.H., and Sections 7.3 and 7.5,

- iii. "Sound Transit Party" means one or more of (1) Sound Transit's officers, directors, employees, agents or contractors including any operator of Commuter Rail Service while on or using the Tacoma Dome Segment or performing duties related to the Tacoma Dome Segment, or performing duties related to the provision of Commuter Rail Service, (2) any passenger of a Sound Transit train while such passenger is on the Tacoma Dome Segment, (3) persons (other than a City Party) using the Tacoma Dome Segment under authority of or by agreement with Sound Transit, such as Amtrak or the State of Washington, or (4) any other person at or proximate to a commuter rail station used by Sound Transit who is there for the purpose of (a) boarding or detraining from a Sound Transit train, meeting or accompanying a ticketed passenger or a person intending to become a ticketed passenger on a Sound Transit train, purchasing a Sound Transit commuter rail ticket, making a reservation for a Sound Transit train, attending a special event sponsored by or held on behalf of Sound Transit, or obtaining information about Sound Transit Commuter Rail Service or conducting business with Sound Transit, or (b) for the purpose of providing local transportation to or accompanying a person described in Subsection 6.1(D)(4)(a), above.
- iv. "Third Party" means a person or entity that is not a City Party or a Sound Transit Party.

6.2 INSURANCE

6.2.1 SOUND TRANSIT INSURANCE

- A. Sound Transit will maintain General Liability insurance in an amount at least equal to \$200 million, an appropriate program of self-insurance, or a combination of insurance and self-insurance sufficient to satisfy its liabilities.

- B. In the event the \$200 million per occurrence limitation under the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. § 28103) (or a successor provision) is increased, decreased, eliminated, or held by a court of competent jurisdiction, to be inapplicable to commuter rail service of the nature to be provided under this Agreement, then the Parties will reopen and renegotiate a new level of Sound Transit insurance intended to reflect any resulting change in either party's exposure to uninsured liability, giving due consideration to the additional costs or savings of such a change.
- C. Insurance purchased by Sound Transit in accordance with this section will be primary with respect to any coverage maintained by the City. Any other coverage maintained by the City will be excess to Sound Transit's coverage.
- D. Each insurance policy required by this section must be endorsed to state that coverage may not be suspended, voided, canceled, or amended except after 30 days prior written notice has been given to the City.
- E. Each insurance policy must be issued by financially sound insurers properly licensed to do business in the State of Washington.
- F. Sound Transit will provide certificates of insurance evidencing its coverage annually starting before the execution of this Agreement. Sound Transit will permit the City to inspect and copy the policies upon advanced written notification.

6.2.2 TACOMA RAIL INSURANCE

- A. The City will maintain General Liability insurance in an amount at least equal to \$20 million, an appropriate program of self-insurance, or a combination of insurance and self-insurance sufficient to satisfy its liabilities.
- B. Each insurance policy required by this section must be endorsed to state that coverage may not be suspended, voided, canceled, or amended except after 30 days prior written notice has been given to the Sound Transit.
- C. Each insurance policy must be issued by financially sound insurers properly licensed to do business in the State of Washington.
- D. The City will provide certificates of insurance evidencing its coverage annually starting before the execution of this Agreement. Sound Transit will permit the City to inspect and copy the policies upon advanced written notification.

6.3 MAINTENANCE OF LIABILITY PROTECTION

If Sound Transit cannot or does not obtain the insurance coverage it is required to secure above, then Sound Transit will either make other arrangements to provide equivalent liability protection for the City, or the City may, but is not required to, purchase the insurance coverage, subject to Sound Transit's reimbursement. If the City does not purchase the insurance in such a situation, then Sound Transit will indemnify the City to the same extent as if such insurance were purchased.

6.4 SUBROGATION RIGHTS

The Parties waive subrogation rights against each other, and will require their respective insurers to waive subrogation rights against the other party and such other party's insurers, to the extent any liability for property damage, bodily injury (including death), or other loss may be covered by the proceeds of insurance.

ARTICLE 7 LIABILITY, REIMBURSEMENT, AND INDEMNIFICATION

7.1 - ALLOCATION OF LIABILITIES

- B. Subject to Subsection 7.1.E. and section 2.5, Sound Transit will, as between the Parties, bear all Loss or Damage to a Sound Transit Party.
 - v. Subject to Subsection 7.1.E., the City will, as between the Parties, bear all Loss or Damage to a City Party.
 - vi. (1) Subject to Subsection 7.1.E., when Loss or Damage to a Third Party involves a Sound Transit commuter rail Train, and does not result from and is not contributed to by an accident, collision, or derailment of a Train on the Tacoma Dome Segment other than a Sound Transit commuter rail Train, such Loss or Damage will, as between the Parties, be borne exclusively by Sound Transit.
 - (2) Subject to Subsection 7.1.E, when Loss or Damage to a Third Party involves a the City rail Train, and does not result from and is not contributed to by an accident, collision, or derailment of a Train on the Tacoma Dome Segment other than a the City rail Train, such Loss or Damage will, as between the Parties, be borne exclusively by the City.
 - vii. Subject to Subsection 7.1.E., when Loss or Damage to a Third Party involves a Sound Transit Train and a City Train on the Tacoma Dome Segment, then such Loss or Damage will be allocated, as between the parties, in proportion to the Train Miles operated over the Tacoma Dome Segment during the calendar month before the Loss or Damage (or when the lost or damage was first discovered), with Sound Transit bearing the Loss or Damage in the proportion to its and Amtrak's

Train Miles and the City bearing the Loss or Damage in proportion to its and other freight carriers (there by City right) Train Miles.

- viii. Provisions of this Agreement other than Section 6.2 notwithstanding, as between the Parties, to the extent Loss or Damage is caused by or arises from the gross negligence or willful or wanton misconduct of a party to this Agreement (including that party's officers, directors, agents, employees, and contractors), such Loss or Damage will be borne exclusively by that party.
- ix. Loss or Damage occurring on the Tacoma Dome Segment and not involving any rail Train on the Tacoma Dome Segment will, as between the Parties, be borne by Sound Transit.
- x. Except as may be provided by applicable rules of collateral estoppel or res judicata, the allocation of Loss or Damage provided in this Article is not affected by any allocation of Loss or Damage between Sound Transit or the City and a Third Party.
- xi. The Parties will not introduce Subsections 7.1.A., B., C., D., E., F., G., or H., or Subsection 7.2 into evidence in any litigation between the Parties, or between a party or the Parties and any Third Party in which Loss or Damage is sought to be imposed under applicable law without regard to the provisions of this Agreement.
- xii. For purposes of this Article, the City and its employees, agents, contractors, licensees, lessees, invitees, customers, and patrons are not considered to be employees, agents, or contractors of Sound Transit.

7.2 ENVIRONMENTAL LOSS OR DAMAGE

- C. Subject to Subsections 7.1.E. and 7.2.C., as between the Parties, Sound Transit will bear all Environmental Loss or Damage, other than to a City Party, caused by the operation of Commuter Rail Service.
 - xiii. Subject to Subsections 7.1.E. and 7.2.C., as between the Parties, the City will bear all Environmental Loss or Damage, other than to a Sound Transit Party, caused by or arising or resulting from a City's predecessor in interest's or the City's or a City Party's past, present, or future use of the Tacoma Dome Segment.
 - xiv. Subject to Subsection 7.1.E., if any Environmental Loss or Damage is caused by or arises or results from both the operation of Commuter Rail Service and the City's or a the City Party's past, present, or future use of the Tacoma Dome Segment, then, as between the Parties, Sound Transit will bear so much of such Environmental Loss or Damage as

was contributed by the operation of Commuter Rail Service and Amtrak service, and the City will bear so much of such Environmental Loss or Damage as was contributed by the City's predecessor in interest's, the City's or a City Party's past, present, or future use of the Tacoma Dome Segment.

7.3 RELEASES AND INDEMNIFICATION

- A. Sound Transit will release the City (including for all purposes of this paragraph, the City's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) from any claims it could otherwise assert against the City for Loss or Damage for which Sound Transit is liable under the provisions of this Article, whether or not such Loss or Damage is the result of the negligence of the City (other than gross negligence or willful or wanton misconduct or negligence), including without limitation any Loss or Damage awarded in any court action.
- B. The City will release Sound Transit (including Sound Transit's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns, as well as persons under Section 6.1.D.3 from any claims it could otherwise assert against Sound Transit (or any claims it could otherwise assert against Sound Transit's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns, arising from or related to the actions or inaction of Sound Transit) for Loss or Damage for which the City is liable under the provisions of this Article, whether or not such Loss or Damage is the result of the negligence of Sound Transit (other than gross negligence or willful or wanton misconduct or negligence), including without limitation any Loss or Damage awarded in any court action.
- C. To the extent permitted by law, each party will pay all Loss or Damage for which it is liable under the provisions of this Article, and will defend, indemnify, and hold harmless the other party (including without limitation the other party's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns, and including in the case of Loss or Damage for which the City is liable.
- D. The indemnification obligations assumed by the Parties here include without limitation any liability, suits, claims, damages, judgments, lawsuits, demands, causes of action, losses and expenses under the Federal Employer's Liability Act, the Safety Appliance Act, or the Boiler Inspection Act, including claims for strict liability.
- E. For purposes of this section, the City and Sound Transit, by mutual negotiation, waive, with respect to the other only, any immunity against claims for which they have assumed an indemnification obligation that would otherwise be available

under the industrial insurance provisions of Title 51 Revised Code of Washington or other applicable disability benefits or employee benefits acts.

- F. Nothing in this Agreement is intended to be construed to require either party to indemnify the other party against the other party's own gross negligence or willful or wanton misconduct or negligence.
- G. If any provision of this Agreement purports to indemnify a party against Loss or Damage and such indemnification is prohibited by or unenforceable under the laws of the State of Washington (including a determination that indemnification under the circumstances involved is against public policy of the State of Washington), the indemnity provided by such provision will be deemed to be limited to and operative only to the maximum extent permitted by law.

7.4 SURVIVAL

The allocations of liability, releases, and indemnifications under this Agreement will survive termination of this Agreement.

7.5 CLAIMS

- A. The City or Sound Transit may settle, or cause to be settled for it, all claims for Loss or Damage for which that party is liable under the provisions of this Article, and to defend, or cause to be defended, all suits for the recovery of any such Loss or Damage.
- B. If a suit is commenced against either party, or a claim is asserted for or on account of a Loss or Damage for which the other party may be solely or jointly liable under the provisions of this Article, the party sued or against whom the claim is asserted will promptly notify the other party in writing of the pendency of the suit or claim. The other party will assume or join in the defense of such suit or claim.
- C. In the event that both of the Parties may be liable for any Loss or Damage and the Loss or Damage claim is settled by a voluntary payment of money or other valuable consideration by one of the Parties who may be jointly liable for the Loss or Damage, the settling party will secure a release from liability for and in the name of the other party (including employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns of Sound Transit or the City, and the State of Washington, Amtrak, and King, Pierce, and Snohomish counties) who may also be liable. Before settling any claim or suit for an amount in excess of one hundred thousand dollars (\$100,000), the settling party must obtain the written consent of the other party, which consent may not be unreasonably withheld. The party being requested to give consent will provide the same within 30 days of the request being made. In the event that a response is not received within 30 days it will be conclusively presumed that such consent has

been given. Giving of such consent, impliedly or expressly, may not be deemed an admission that such claim involves joint liability.

- D. Neither party will be conclusively bound by any judgment against the other party, unless the party has reasonable notice requiring it to defend and reasonable opportunity to make such defense. As between the Parties only, when such notice and opportunity is given, the notified party will be conclusively bound by the judgment as to all matters that could have been litigated in such suit.
- E. If Sound Transit provides claim services under the circumstances under Section 7.5.A., then the City will reimburse Sound Transit's costs as direct expenses as more fully set out in Section 3.2. Such expenses include, but are not limited to: 1) a reasonable hourly rate for the claim agent assigned to handle such investigation (including associated supervisory and payroll associated expenses); and, 2) reasonable costs of defense counsel, experts and related litigation costs. In the event that attorneys fees are expected to exceed \$50,000, counsel will be required to submit to Sound Transit and the City a written litigation management report including expected fees and expenses for the particular matter. Said management report will be due to Sound Transit and the City within 60 days of it becoming clear that said expenses will exceed \$50,000.

ARTICLE 8 EFFECTIVE DATE, TERM, AND TERMINATION

8.1 EFFECTIVE DATE AND TERM

This Agreement is effective on the date in the introductory paragraph and will remain in effect so long as the City does not abandon its freight rights and responsibilities.

8.2 RIGHTS UPON TERMINATION

Termination or cancellation of this Agreement does not release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of such termination or cancellation.

ARTICLE 9 DISPUTE RESOLUTION

9.1 PREVENTING CONFLICTS

Preventing Conflicts. The Parties will use their best efforts to prevent and resolve potential sources of conflict before they escalate into disputes, claims, or legal actions.

9.2 RESOLVING DISPUTES THROUGH NEGOTIATION

The Parties will use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute escalation process should any such disputes arise:

- A. Level One – Sound Transit’s Commuter Rail Operations Manager, or equivalent designee at the time of dispute, and the City’s Chief Mechanical Officer (Tacoma Rail) will meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within 15 business days after referral of that dispute to Level One, either party may refer the dispute to Level Two.
- B. Level Two – Sound Transit’s Executive Director of Operations, or equivalent designee at the time of the dispute, and the City’s Rail Superintendent will meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within 15 business days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.
- C. Level Three – Sound Transit’s Chief Executive Officer or equivalent designee at the time of the dispute, and the City Manager will meet to discuss and attempt to resolve the dispute, in a timely manner.

9.3 FAILURE TO RESOLVE A DISPUTE THROUGH BEST EFFORTS

Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within 15 business days after referral of that dispute to Level Three, either party may commence a civil action in a federal court of competent jurisdiction. Until the dispute is resolved, the Parties will continue to perform and make any required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

ARTICLE 10 MISCELLANEOUS

10.1 FORCE MAJEURE

A party will be excused from performance of any of its obligations under this Agreement, where such non-performance is caused by any event beyond the non-performing party's reasonable control, which may include, without limitation, an order, rule, or regulation of any federal, state, or local government body, agency, or instrumentality, work stoppage by the Sound Transit employees or contractors or a labor dispute resulting in a strike by the Sound Transit employees or contractors, extraordinary unavailability of essential materials from third-party suppliers, accident, natural disaster, or civil disorder (“Force Majeure Event”); provided that the party excused under this section will use all reasonable efforts to minimize its non-performance and to overcome, remedy, or remove such Force Majeure Event in the shortest practical time.

10.2 ENTIRE AGREEMENT

This Agreement, the attached Appendices, and the deed in the transfer of certain property interests to Sound Transit embody the entire agreement and understanding between Sound Transit and the City relating to the joint operation of the Tacoma Dome Segment following the sale of rights in the Tacoma Dome Segment under the Purchase and Sale Agreement dated March ___, 2014. There are no restrictions, promises, representations, warranties, covenants or undertakings, oral or otherwise than those expressly set forth or referred to here.

10.3 AMENDMENTS

Except as otherwise expressly provided in this Agreement, no waiver, modification, addition, or amendment to this Agreement is enforceable unless reduced to writing executed by the authorized officers of each party.

10.4 SEVERABILITY

In the event that any term of this Agreement, or the application of that term is found to be invalid or unenforceable in any respect, the remainder of this Agreement, and the application of such term or provision to other persons or circumstances nevertheless will be binding with the same effect as if the invalid or unenforceable provision were originally deleted. The parties will bargain in good faith to reform this Agreement or replace any invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision.

10.5 NOTICES

Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement must be in writing and either be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered via facsimile, with confirmation of receipt by telephone, with an original deposited postage prepaid in the first class mails of the United States, addressed to Sound Transit at:

Sound Transit
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: Commuter Rail Operations

Or to the City at:

Superintendent
Tacoma Rail

2601 SR 509 N Frontage Road
Tacoma, WA 98421

With a copy to:
City of Tacoma dba Tacoma Rail
c/o Real Property Services
3628 South 35th Street
Tacoma, WA 98409

or to such person and at such other addresses as either party may at any time or from time to time designate for itself by notice in accordance herewith. Each such request, notice, demand, authorization, direction, consent, waiver or other document will be deemed to be delivered to a party when received at its address set forth or designated as above provided.

10.6 RIGHTS AND REMEDIES

The duties, obligations, rights, and remedies available under this Agreement are in addition to and not a limitation of or waiver regarding any duties, obligations, rights and remedies otherwise available by law except as otherwise provided in Section 9. No waiver by either party of any default affects or impairs any right arising from any subsequent default. The failure of either party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy provided for in this Agreement does not impair any such right or remedy nor be construed as a waiver or relinquishment of that right or remedy.

10.7 APPLICABLE LAW; CHOICE OF FORUM

The laws of the State of Washington govern the interpretation of this Agreement, the relationship of the Parties, and all disputes relating to the matters stated in this Agreement, without regard to the choice of law principles of that State. Litigation arising out of or in connection with this Agreement may be instituted and maintained only in the courts located in the Seattle or Tacoma, Washington, and the Parties consent to the exercise by those courts of jurisdiction and consent to service of process issued by such courts. The venue for any action relating to this Agreement is the State of Washington.

10.8 SUCCESSORS

This Agreement is binding and inures to the benefit of the successors of the City and Sound Transit. Any successor is required to accede, in writing, to all of the terms, conditions, and requirements of this Agreement.

10.9 TRANSFER OR ASSIGNMENT

- A. The City may transfer or assign its freight easement, and the right conferred by the easement to conduct freight operations on the Tacoma Dome Segment, to a

TPO subject to the provisions of this Section. A transfer of the freight easement must include an assignment of the City's interest in this Agreement.

- B. The City will provide Sound Transit 1 years' notice of its intent to transfer or assign its freight rights to a TPO. The notice must contain the intended transfer date and the name of the proposed TPO and a contact person with the TPO who will be responsive to Sound Transit's investigation.
- C. Sound Transit may research the TPO, including interviewing the TPO and others, to help determine the safety record of the TPO, the financial viability of the TPO, and the suitability of the TPO for conducting freight operations on the Lakeview subdivision. If Sound Transit believes, in its reasonable judgment, that the proposed TPO does not have an acceptable safety performance history, or, in the case of a TPO that has not previously conducted rail operations, does not demonstrate a commitment and capability of performing safe rail operations in the future on the Tacoma Dome Segment, Sound Transit may notify the City within 2 months of receipt of the notice of Sound Transit's safety concerns. If Sound Transit believes, in its reasonable judgment, that the proposed TPO does not have the financial resources to fulfill all the obligations of the City transferred to the TPO, Sound Transit may notify the City of Sound Transit's financial concerns. If Sound Transit provides the City notice of any safety or financial concerns, the City and Sound Transit will meet to address such concerns. If, after such meetings, Sound Transit still believes, in its reasonable judgment, that the proposed TPO does not have an adequate safety record or the financial resources to conduct freight operations on the Tacoma Dome Segment, Sound Transit may notify the City in writing of its rejection of the proposed TPO. To the extent that the City is not in agreement with Sound Transit's rejection, the City may invoke the dispute resolution provisions of Article 9. If Sound Transit does not provide written notification of its rejection of the TPO within 6 months from the initial City notice, the City may proceed with the transfer or assignment of freight rights.

10.10 BENEFITS

This Agreement is intended for the sole benefit of the Parties. Nothing in this Agreement is intended or may be construed to give any person or entity, other than the Parties hereto, their permitted successors, and permitted assigns, any legal or equitable right, remedy, or claim under this Agreement.

10.11 PREPARATION

The Parties and their legal counsel have cooperated in the drafting of this Agreement. Accordingly, this Agreement is deemed to be the joint work product of the Parties and not be construed against either party by reason of such preparation.

10.12 HEADINGS

The section headings of this Agreement are for convenience and reference only and not to define, limit or describe the scope or intent of the section or this Agreement.

10.13 - COUNTERPARTS

This Agreement will be simultaneously executed in duplicate counterparts, each of which will be deemed an original copy of the Agreement.

This Agreement is signed by authorized representatives of the Parties on the dates shown below.

**Central Puget Sound Regional
Transit Authority**

City of Tacoma

By: _____

By: _____

Title:

Title:

Date: _____

Date: _____

Approved as to form.

Approved as to form.

Legal Counsel

Legal Counsel

Appendix A

Adjustment of Car Mile Rate

Commencing effective January 1, 2005, the Car Mile Rate set forth in this Agreement shall be adjusted annually, upward or downward by the amounts specified above.

For example, the \$0.248 per Car Mile Rate will be adjusted annually with the first adjustment in February, 2005, retroactive to January 1, 2005. The adjustment will be based on 80% of the annual percentage change in the Labor Component of the Rail Cost Adjusted Factor and 20% of the annual percentage change in the Consumer Price Index for Seattle-Tacoma-Bremerton WA.

The Labor Component of the RCAF (LRCAF) is available from Table D, Line 1 of the Quarterly publication of the Association of American Railroads titled "AAR Railroad Cost Indexes." The Consumer Price Index for Seattle-Tacoma-Bremerton WA is available from the Bureau of Labor Statistics, U.S. Department of Labor. (See link to web site below).

To calculate the Labor Component, the average of the labor index for the four quarters of the most recent year will be compared to the average of the labor index for the four quarters of the previous year and the result is multiplied by 80.0%. To calculate the Consumer Price Index, the annual price index of the most recent year is compared to the annual price index of the previous year and the result is multiplied by 20.0%. The rate of change (i.e., escalator) for the contract is the sum of the Labor and CPI results described above.

-
For example, the February, 2003 rate adjustment would have been as follows:

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
2001 LRCAF	254.4	254.5	256.3	253.0
2002 LRCAF	260.3	257.3	257.1	267.6

$$\text{CLRCAF} = (260.3 + 257.3 + 257.1 + 267.6) / 4 = 260.575$$

$$\text{PLRCAF} = (254.4 + 254.5 + 256.3 + 253.0) / 4 = 254.55$$

$$\text{CCPI} = \text{Then current CPI-Seattle for 2002} = 189.3$$

$$\text{PCPI} = \text{Then prior CPI-Seattle for 2001} = 185.7$$

$$\begin{aligned} \text{AER} &= [I + (((((260.575 - 254.550) / 254.550) * .80) + (((189.3 - 185.7) / 185.7) * .20)))] * \\ \text{BR} &= (1 + 0.022813) * \text{BR} \end{aligned}$$

In other words, the escalation from the prior rate is 2.2813 %.

Thus, the adjusted rate effective January 1, 2005 for an original rate established and effective January 1, 2004 shall be determined as follows:

Annual Rate Adjustment Formula:

$$\text{AER} = [((((\text{CLRCAF} - \text{PLRCAF}) / \text{PLRCAF}) \times 0.80) + ((((\text{CCPI} - \text{PCPI}) / \text{PCPI}) * 0.20) + 1) * \text{BR})$$

Where:

AER = the Annual Effective Rate as of March 1, 2005
CLRCAF = (LRCAF 1st Qtr 2004 + LRCAF 2nd Qtr 2004 + LRCAF 3rd Qtr 2004 + LRCAF 4th Qtr 2004) / 4

PLRCAF = (LRCAF 1st Qtr 2003 + LRCAF 2nd Qtr 2003 + LRCAF 3rd Qtr 2003 + LRCAF 4th Qtr 2003) / 4

CCPI = the Current CPI--Seattle published for the full year, 2004

PCPI = the Previous CPI--Seattle published for the full year, 2003

BR = the Base Rate; where, for example, the Base Rate equals \$0.248 per car mile through 2004 and escalated according to the cumulative impact of the 80/20 adjustment for subsequent years.

The adjustment process described above shall be repeated by the end of February, 2006 and by the end of February thereafter during the Term of this Agreement, with the new Annual Effective Rates for the twelve (12) month period retroactive to January 1 prior to each such adjustment being determined by application of the formula described above for that Adjustment Date to the Annual Effective Rates and charges in effect during the preceding twelve (12) month period, provided in no event shall any of the

Appendix A

Adjustment billings shall be made to reflect the adjustment retroactive to January 1. If the AAR or a successor ceases to publish the Labor Component of the RCAF, or materially alters the methodology by which the RCAF is derived, the parties shall meet to determine the most appropriate substitute index to be used for adjustments for the remainder of the Term of this Agreement. If, within sixty (60) days after the discontinuance or material alteration of the RCAF, the parties are unable to reach agreement on a suitable substitute index either Sound Transit or BNSF may submit the matter for resolution by arbitration in accordance with Article IX of this Agreement. If the AAR or the STB, or Department of Commerce (or successor) rebases the LRCAF or CPI respectively during the Term of this Agreement, a linking factor shall be developed and applied in order to calculate the first adjustment to the Effective Rates occurring on or after the date the rebasing takes effect. The linking factor shall be equal to the ratio of the respective index for the year prior to rebasing divided by the index for the same year as rebased. The current year's index value as adjusted by the linking factor will then be on a similar basis as used for the year prior to rebasing. The linking factor shall only be used to rebase the index as described herein for the annual adjustment immediately following the rebasing. Commencing with the next ensuing Adjustment Date, the rebased index value as published for the prior and current years shall be used for purposes of adjustments hereunder. In computing the

annual adjustment described herein, all published indices shall be rounded to the nearest thousandth of an index point, all calculated indices shall be rounded to the nearest tenth of an index point, and all rates and charges shall be rounded to the nearest half cent. If there is no nearest thousandth of an index point, tenth of an index point, or half cent, as the case may be, the indices, rates, and charges shall be rounded to the nearest even thousandth of an index point, tenth of an index point, or half cent. For example, \$0.2835 and \$0.2845 would be rounded to \$0.284.

EXHIBIT E

Deed for the Property

After Recording Return To:

Quit Claim Deed

(Tacoma Rail Mountain Division)

GRANTOR: The City of Tacoma, a Washington municipal corporation

GRANTEE: Central Puget Sound Regional Transit Authority, a regional transit authority organized under the laws of the State of Washington

ABBR. LEGAL DESCRIPTION: Blocks 7522, 7524, 7526, 7528, 7530, 7532, 7534, and 7536, Tacoma Land Company's First Addition; Blocks 7536 and 7538, Tacoma Land Company's Seventh Addition; Blocks 7538, 7540, 7542, 7546, 7548, 7645, Tract 6 and Tract 20, the Indian Addition.

Complete Legal Description on Exhibit A, attached hereto.

ASSESSOR'S PROPERTY TAX PARCELS/ACCOUNT NUMBERS:

WHEREAS, Grantor owns certain real property in Pierce County described on the attached Exhibit A (the "Property") and operates on such Property a railroad line commonly known as the Tacoma Rail Mountain Division; and

WHEREAS, Grantee operates its Sounder commuter rail service on the Property; and

WHEREAS, Grantor desires to sell and Grantee desires to buy the Property and the railroad improvements located thereon, subject to the City's retention of a permanent freight easement, on the terms and conditions set forth herein.

NOW, THEREFORE, GRANTOR, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor conveys and quit claims to Grantee all interest in the following described real estate, situated in the county of Pierce, state of Washington, together with all after acquired title of the Grantor therein:

See attached Exhibit A

EXCEPTING AND RESERVING THEREFROM, the following easements, covenants, conditions and restrictions, which Grantor and Grantee acknowledge and agree shall run with the land and be binding upon the successors and assigns of Grantor and Grantee:

- (1) Grantor reserves for itself and its successors and assigns an exclusive easement for freight railroad purposes, including but not limited to, the construction, maintenance, repair, replacement and operation of freight rail and associated facilities, subject to the provisions of the Tacoma Joint Use Agreement (defined below).
- (2) Grantor and Grantee have entered into that certain Joint Use Agreement dated of even date herewith (the "Tacoma Joint Use Agreement") concerning the operation and use of the Property. The terms and conditions of the Tacoma Joint Use Agreement are incorporated herein as restrictions encumbering the Property as if fully set forth in this instrument and such terms shall be in full force and effect for purposes of this instrument even if the Tacoma Joint Use Agreement is, for whatever reason, no longer in effect, unless otherwise agreed by the parties in a document signed by both parties and recorded in the real estate records for the County of Pierce.
- (3) Grantee must operate any commuter passenger train and related equipment on the Property in a manner that (a) complies with the requirements of 49 C.F.R. Part 238, as such requirements may be amended or waived by the Federal Railroad Administration or any successor agencies (collectively, the "FRA"), and (b) uses only trains and other equipment that do not qualify as light rail operations (as determined by the FRA) if such light rail operations would inhibit freight rail operations.

[Signatures on following page]

Grantee:

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY,

a regional transit authority

By: _____

Name: _____

Title: _____

Date: _____

Approved as to form:

Sound Transit legal counsel

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of Central Puget Sound Regional Transit Authority to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, _____.

Print Name _____

Notary Public in and for the State of Washington,
residing at _____

My appointment expires _____

EXHIBIT F

Deed for the Remnant Parcels

Exhibit 3

**Joint Use Agreement (Reservation Junction to Freighthouse Square) Between City of
Tacoma and Central Puget Sound Regional Transit Authority**

[attached hereto]

**JOINT USE AGREEMENT
(RESERVATION JUNCTION TO FREIGHTHOUSE SQUARE)**

This agreement dated March ____ 2014 is between the Central Puget Sound Regional Transit Authority, a regional transit authority under the laws of the State of Washington (“Sound Transit”) and the City of Tacoma, a first class city under the laws of the State of Washington (“City”), together sometimes referred to as the “Parties.”

Sound Transit and the City are concurrently entering into a Purchase and Sale Agreement for the purchase and sale of the City’s Department of Public Works, Tacoma Rail Mountain Division railroad right of way approximately between STA 924+ 74.88 (TR) and D Street (Sound Transit MP1.99) including the “L” Street Yard, Tacoma, Washington along with certain land parcels in Tacoma by the City to Sound Transit with the City retaining an exclusive freight easement (the “Tacoma Dome Segment”); and

Sound Transit and the City wish to provide the terms of joint use of the Tacoma Dome Segment by the City and Sound Transit, whether the City’s freight operations and common carrier obligations are conducted by the City or a third party freight operator.

The Parties therefore agree as follows:

ARTICLE 1 - DEFINITIONS

Each definition in this Joint Use Agreement includes the singular and the plural. As used in this Joint Use Agreement, the following terms, when capitalized as in this Section, have the following meanings:

- 1.1 “Amtrak” means the National Railroad Passenger Corporation
- 1.2 “BNSF” means The BNSF Railway Company.
- 1.3 “Car Miles” means the sum of the number of miles traveled on the Tacoma Dome Segment per car, whether or not revenue-generating, including all locomotives or self-propelled rail units and freight, commuter, or passenger cars, but not locomotive-only moves, and yard moves that incidentally occupy the Tacoma Dome Segment.
- 1.4 “Commuter Rail Service” means the operation of commuter Trains by, or for, Sound Transit (including, but not limited to, the service currently provided by BNSF for Sound Transit) and Sound Transit’s activities and operations over any portion or all of the Tacoma Dome Segment.
- 1.5 “Purchase and Sale Agreement” means the agreement, each entered into concurrently with this Joint Use Agreement for the sale of certain parcels comprising the Tacoma Dome Segment by the City to Sound Transit.
- 1.6 “Rolling Stock” means the locomotives, cars, and cabooses.
- 1.7 “TPO” means third party freight operator.
- 1.8 “Train” means one or more locomotive or other self-propelled rail units with or without freight, commuter or passenger cars; however, for purposes of calculating Train Miles, work

trains, when they perform work on the Tacoma Dome Segment, and hi-rail vehicles, are not included in the definition of Train.

- 1.9 “Train Miles” means the sum of the number of miles traveled on the Tacoma Dome Segment by a Train, whether or not revenue-generating, including all locomotives or self-propelled rail units and attached freight, commuter, or passenger cars, but not locomotive-only moves, and yard moves that incidentally occupy the Tacoma Dome Segment.

ARTICLE 2 - NATURE OF JOINT USE BY SOUND TRANSIT AND THE CITY

2.1 USE OF TACOMA DOME SEGMENT

A. General Delineation of Use.

- (1) The City has retained an exclusive right and obligation to provide freight service over the Tacoma Dome Segment under its retained freight easement. The City may subcontract, or otherwise assign or sell that right and obligation, to provide freight service to all existing and new customers.
- (2) Sound Transit Trains and Amtrak Trains have priority over freight operations to preserve and protect passenger Train schedules and Sound Transit obligations under any agreements with Amtrak and WSDOT. However, dispatch protocols will be prepared and implemented to allow the City to move its freight Trains through the Tacoma Dome Segment without undue delay when it is safe and does not interfere with passenger Trains.
- (3) Sound Transit, or its contractor (BNSF at the time this agreement was signed), will dispatch the Tacoma Dome Segment.
- (4) The City may use that portion of the Tacoma Dome Segment more commonly known as the “L” Street Yard occasionally for doubling the hill to the Tacoma Rail Mountain Division and for possible future interchange activity to the extent that such use does not interfere with passenger service on the Tacoma Dome Segment including storage of Sound Transit Trains in the “L” Street Yard. The terms here do not limit the parties from entering into a separate agreement regarding greater access to the Yard by the City, such as for long term storage or for other more exclusive uses.
- (5) The City may use the Tacoma Dome Segment and the Tacoma Dome Station platform for its occasional excursion passenger Trains while it retains its freight easement so long as such use does not interfere with Sound Transit or Amtrak passenger rail service on the Tacoma Dome Segment. However, the right to use the Tacoma Dome Segment and the Tacoma Dome Station platform is personal to the City and cannot be assigned, leased, or contracted out. Further, if the City sells, transfers, leases, or otherwise conveys its freight easement or rights under the freight easement (such as a trackage rights), then its right to operate an excursion passenger Trains on the Tacoma Dome Segment and the Tacoma Dome Station platform terminates. The City acknowledges that Sound Transit does not own Freighthouse Square and that

the City must deal directly with the owners for rights to the use Freighthouse Square and the property adjacent to the platform.

2.2 SERVICE PLAN FOR COMMUTER RAIL AND FREIGHT SERVICE

- A. Sound Transit will provide the City with passenger schedules and will advise the City or its third party operator by giving 30 days written notice of any changes to that schedule.
- B. The City will provide Sound Transit with freight schedules for the Tacoma Dome Segment and will advise Sound Transit by giving 30 days written notice of any changes to that schedule.

2.3 OPERATING RULES AND STANDARDS

- A. The Parties will operate safely and efficiently, in accordance with applicable federal, state, and local laws, rules, regulations, and requirements, and the operating guidelines and standards embodied in the following:
 - (1) Sound Transit's General Code of Operating Rules, including any future written amendments. Sound Transit will provide written notice of amendments 30 days before the effective date of the amendment or other rules that Sound Transit may adopt;
 - (2) Emergency Preparedness Plan;
 - (3) System Safety Program Plan;
 - (4) Applicable industry rules and standards, such as those of the FRA and Association of American Railroads for Rolling Stock;
 - (5) Any additional standards, procedures, or protocols that Sound Transit may implement from time to time; and
- B. If an employee of the City neglects, refuses, or fails to abide by Sound Transit's rules, instructions, and restrictions governing the operation on or along the Tacoma Dome Segment, the City, upon request by Sound Transit, will prohibit that employee from working on the Tacoma Dome Segment. If either Party believes it is necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of the City employee, then upon written notice to the other Party, Sound Transit and the City will promptly hold a joint investigation with the parties bearing its own expenses, including the expenses of its officers, counsel, witnesses, and employees. The City will give notice of the investigations to its employees. The investigations must be conducted in accordance with the terms and conditions of the collective bargaining agreements between the City and its employees.

The City will withdraw the City employee from service over the Tacoma Dome Segment, if, in the judgment of Sound Transit, the result of the investigation warrants that employee's withdrawal. The City will release and indemnify Sound Transit from and against any and all claims and expenses resulting from such a withdrawal.

If the disciplinary action is appealed by the City employee to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of the board or tribunal sustains the employee's position, then the employee will not be barred from service on the Tacoma Dome Segment by reason of the alleged neglect refusal, or failure.

2.4 MAINTENANCE OF WAY

Sound Transit is responsible for maintenance of way on the Tacoma Dome Segment. Maintenance encompasses ordinary maintenance, capital, and catastrophic replacement; maintenance also encompasses the full width of the corridor and includes tracks; bridges, and other structures; signals; grade crossing protection devices; and general right-of-way maintenance such as mowing, grubbing, and debris removal.

2.5 CLEARING DISABLED EQUIPMENT AND WRECKS

The Parties will be responsible for re-railing or clearing derailed, wrecked, or otherwise disabled Train or Rolling Stock that it owns or is responsible for. For example, Tacoma will be responsible for all freight Trains, while Sound Transit will be responsible for Amtrak Trains. Sound Transit will be responsible for performing the maintenance where the incident occurred, however the City will be responsible for the cost of such maintenance if its equipment caused the damage. The costs and expenses of clearing such derailments and wrecks are as provided for in the allocation of liability in Article VII of this Agreement.

2.6 SAFETY

The Parties will comply with all applicable federal, state, local, and industry safety laws, standards, codes, rules and regulations and agree to coordinate on the required System Safety Program Plan. The City will provide a written report to Sound Transit within three days of a collision or derailment incident involving any of the City's equipment on the Tacoma Dome Segment.

2.7 HAZARDOUS MATERIALS

- A. Each party is responsible for any report required by federal, state or local authorities in connection with a release of hazardous materials, hazardous substances, or hazardous wastes, as defined under federal or state law ("Hazardous Materials"), from their respective Trains on any segment of the Tacoma Dome Segment. The City will immediately notify Sound Transit in the event of such a release from a City Train.
- B. The costs for the activities described in this Section 2.7 will be borne in accordance with Article VII, Liability and Indemnification.

ARTICLE 3 - REIMBURSEMENT FOR JOINT USE EXPENSES

3.1 REIMBURSEMENT

- A. The City will reimburse Sound Transit at the rate of \$0248 per car mile (on January 1, 2005) and adjusted annually from 2005 to the year of the invoice in accordance with the Annual Rate Adjustment Formula provided Appendix A. The purpose of

starting the calculation in 2005 is to provide a rate that is identical to the rate paid by Tacoma Rail to Sound Transit under the Lakeview Joint Use Agreement dated December 17, 2003 between Sound Transit and BNSF, the City's predecessor in interest under that agreement. That rate is intended to cover ordinary and capital maintenance of the line including the costs contemplated in Section 3.4.

- B. The car mile rate in Section 3.1.A. will be adjusted effective annually starting on January 1st following the effective date of this agreement, based on the weighted average of the percentage change in the Labor Component of the Rail Cost Adjusted Factor (80%) and the percentage change in the Consumer Price Index for Seattle-Tacoma-Bremerton WA (20%) in accordance with the methodology in Appendix A.
- C. Catastrophic replacement costs, i.e., replacement cost in excess of \$100,000 for each occurrence, such as but not limited to floods, earthquakes, mudslides or acts of God, will be billed in addition to the car-mile rate and will be apportioned between the parties on the basis of the parties' Train Miles operated over that section of the Tacoma Dome Segment for the year ending immediately prior to the first day of the month of the occurrence. Sound Transit will notify the City as soon as possible what its share of the estimated design and construction costs. The City may avoid its share of these costs by (1) notifying Sound Transit that it will no longer operate Trains over the Tacoma Dome Segment, and (2) terminating this Agreement.
- D. Notwithstanding, 3.1.A., B., C., and 3.4, Sound Transit agrees to waive all joint use expenses under these sections of Article 3 for a period of ten years following the effective date of this agreement. In the event the City sells or otherwise conveys its rights under this agreement during the ten years following the effective date, Sound Transit will continue to waive the joint use expenses for the remainder of the ten year period. Following the ten year period, the City or its successor will pay joint use expenses according to Article 3.

3.2 OTHER REIMBURSEMENTS

- A. In addition to the reimbursement base compensation provided for in Section 3.1, the City will reimburse Sound Transit for the costs resulting from Section 7.5.
- B. Sound Transit will pay all direct costs associated with the one-time purchase of equipment and installation of on-board positive train control equipment/devices on four of the City's locomotives. Sound Transit will be responsible for all way side and capital costs associated with positive train control or other legally mandated forms of safety features requiring separation of passenger and freight service on the Tacoma Dome Segment for a period of ten years following the effective date of this agreement.

3.3 CAPACITY IMPROVEMENTS

- A. Sound Transit has constructed a number of capacity improvements on the Tacoma Dome Segment in accordance with Sound Move and will construct additional improvements under Sound Move 2 that it determines are necessary to implement Sound Transit Commuter Rail Service and maintain the City's freight operations on the Tacoma Dome Segment. These capacity improvements and any necessary Permits and Approvals are at Sound Transit's expense unless changes are specifically

requested by the City to improve freight service and those requested changes increase the cost of the capacity improvements.

- B. The capacity improvements will be designed to provide freight access to existing City freight customers that is no worse than the existing freight access from a safety and operational efficiency standpoint before Sound Transit started construction on capacity improvements as part of its Sound Move project in 2002. The parties acknowledge that freight access will have some hours of service constraints, based on Sound Transit's commuter rail schedules. During design, Sound Transit will give the City the opportunity to review these capacity improvements plans, and prior to the start of construction submit the plans for formal review by the City. The City will have 30 days to respond to Sound Transit's plans. If the City does not respond within 30 days, the plans will be deemed to be satisfactory to the City. If the City believes that the improvements will not allow freight access to existing City customers that is no worse than the existing freight access from a safety and operational efficiency standpoint as provided above, the parties will discuss and use their best efforts to resolve the issue. If the parties cannot resolve the issue, the City may invoke the dispute resolution provisions of Article IX of the Agreement.
- C. Except as provided in section 3.4, the parties will work together to attempt to minimize the impact of construction of a capacity improvement on freight service. To the extent that Sound Transit disrupts freight service, or otherwise increases the costs to the City of providing freight service during construction of the capacity improvements, Sound Transit will reimburse the City for any incremental increase in actual documented costs or otherwise negotiated rate. If Sound Transit disagrees with the City's mitigation plan or the calculation of costs, Sound Transit may invoke the dispute resolution provisions of Article 9.
- D. The City may request improvements to the rail infrastructure for freight service, including but not limited to sidings, connecting and access tracks and switches for new shipper facilities. The City will be responsible for the entire cost and expense of these improvements, including any necessary Permits and Approvals. The City will submit plans for such improvements to Sound Transit and Sound Transit will have 30 days to review and approve or reject such plans. If Sound Transit does not respond within 30 days, the plans will be deemed to be approved. If the plans are rejected, the parties will work together to find a mutually agreeable solution. If the parties cannot arrive at a mutually agreeable solution, the City may invoke the dispute resolution provisions of Article 9, provided however, Sound Transit can prevent the City from making rail infrastructure improvements that materially affect passenger Train operations.

Unless otherwise agreed by the parties, any construction on the Tacoma Dome Segment will be performed by Sound Transit.

3.4 TRESTLE REPLACEMENT PROJECT

The City acknowledges that Sound Transit, in part because of the City's needs, will be constructing a double track trestle in the Tacoma Dome Segment. The City is not entitled to remuneration for the inconvenience or losses caused by capital projects (such as the replacement project discussed above), including demurrage fees and labor costs. The City

will indemnify Sound Transit for claims by its customers that are a result of a Sound Transit capital replacement project on the Tacoma Dome Segment.

3.5 REIMBURSEMENT FOR UNFORESEEN EVENTS

In the event of an occurrence not reasonably foreseeable when this Joint Use Agreement was executed that has a material impact on the compensation for joint use of the Tacoma Dome Segment, the Parties will negotiate in good faith and use their best efforts to agree upon an appropriate amendment to the applicable contract provision. The Parties will use the dispute resolution process in Section 9 if they cannot readily agree upon an appropriate amendment. Pending a final decision, both Parties will continue to perform under and be bound by the terms of this Agreement as it exists without any proposed amendment.

3.6 METHOD OF INVOICING AND PAYMENT

- A. Sound Transit will invoice the City monthly. The City will pay Sound Transit within 30 days after Sound Transit has submitted an invoice in a format mutually agreed upon.
- B. Late payments by the City are subject to interest at the rate of 8 percent per annum.

3.7 INSPECTION AND AUDIT

- A. The City may, at its own cost (i) inspect the Tacoma Dome Segment; provided the inspection does not hinder or delay Sound Transit's commuter operations or Amtrak's passenger rail service, and (ii) audit any aspect of Sound Transit's performance of its duties and obligations under this Agreement, both financial and operational, and may include an examination of Sound Transit's controls, practices, and procedures and their effect upon the efficiency and quality of freight service provided by the City. Any audit conducted by the City (or its designee) must be conducted in accordance with Generally Accepted Auditing Standards.
- B. The City has three years from the end of each calendar year to initiate and complete an audit of a given year's books, records, accounts, and documents.
- C. Upon reasonable notice, Sound Transit will permit the City, its auditors, or any other duly authorized agent of the City to inspect and examine all books, records, accounts, and documents relating to Sound Transit's activities under this Agreement. Sound Transit will maintain such books, records, accounts, and documents and keep them accessible to the City for the specified period for retention of official records of the type in question in accordance with Sound Transit's Records Retention Schedule then in effect. All such books, records, accounts, and documents will be made available at the location at which they are maintained. Sound Transit will credit the City for any amounts billed by Sound Transit, and reimburse the City for any amounts paid by the City that are not supported by the records maintained by Sound Transit or by the services actually performed by Sound Transit. Upon completion of the audit, any adjustment required to make any reconciliation required will be made, paid, or credited, as the case may be, in the next monthly billing cycle.

ARTICLE 4 EMPLOYEES

4.1 SOUND TRANSIT IS AN INDEPENDENT CONTRACTOR

Sound Transit and any subcontractors retained by Sound Transit, when performing maintenance activities under the terms of this Agreement are independent contractors. Nothing in this Agreement may be construed as inconsistent with that status.

4.2 PERSONNEL TO BE EMPLOYEES OF SOUND TRANSIT OR ITS SUBCONTRACTORS

The personnel performing maintenance activities provided by Sound Transit under this Agreement must at all times be employees of Sound Transit, or its contractors as determined by Sound Transit, under Sound Transit's or its contractor's exclusive direction and control. Sound Transit or its subcontractors have sole authority to hire, fire, discipline, promote, demote, direct the work of, and manage the personnel performing the maintenance activities.

4.3 NOTICE OF CLAIMS

- A. In the event that the City or Sound Transit receive a complaint or allegation from any of its employees or subcontractors related to the conduct of the other Party's employee or subcontractor, the party receiving the complaint or allegation will promptly notify the other party of such allegation and cooperate with the other party with respect to any investigation of any such complaint.
- B. In the event that either party is named in any lawsuit or administrative charge or allegation by any employee who is or has performed services under this Agreement, the named party will provide the other party with notice and a copy of a lawsuit, action, or charge.

ARTICLE 5 CITY RIGHTS AND OBLIGATIONS

5.1 ROLLING STOCK SAFETY

The City will only use Rolling Stock that comply with all applicable federal (and applicable state and local) laws, regulations, and enactments and will allow Sound Transit inspection of such upon providing reasonable notice. If any failure of the Rolling Stock to comply with such laws, regulations, or enactments results in the imposition of any fine, penalty, cost, or charge against Sound Transit, then the City will reimburse, indemnify, and hold harmless Sound Transit for any such fine, penalty, cost, or charge. The City will promptly notify Sound Transit of any notice it receives seeking to impose any such fine, penalty, cost, or charge. The City will, upon receiving notice of any action seeking to impose any such fine, penalty, cost, or charge against Sound Transit, defend such action at the City's own expense.

5.2 REGULATORY APPROVALS

In the event that the Parties determine that any state, federal, or local regulatory prior approval or exemption is required with respect to the operation of freight service in accordance with this Agreement, securing such approval or exemption is the responsibility of the City.

5.3 EFFICIENCY TESTING

Sound Transit and/or its operating contractor, in coordination with the City, may perform efficiency tests of City crewmembers in service on the Tacoma Dome Segment.

ARTICLE 6 INSURANCE

6.1 DEFINITIONS FOR ARTICLES VI AND VII

Each definition in Articles 6 and 7 includes the singular and the plural. For purposes of Articles 6 and 7, the following terms, when capitalized as in this Section 6.1, have the following meanings:

- A. "City Party" means one or more of (1) the City's elected officials, officers, directors, employees, agents, or contractors while using or on the Tacoma Dome Segment, in connection with performing duties of any kind for the City, including, among others, performing duties related to the Tacoma Dome Segment under this Agreement and excluding any such person who is a fare paying passenger on board a passenger train operating in Commuter Rail Service, or (2) persons (other than a Sound Transit Party) receiving services of the City involving use of the Tacoma Dome Segment.
- B. "Environmental Loss or Damage" means all fines, penalties, liability, cost, damages, injuries, deaths, losses, expenses, fees, charges, cleanups, removals, remediation, or any other cost, requirement, or liability whatsoever and all expenses and attorneys' fees, arising from, resulting from, related to, or incurred in connection with actions, judgments, suits, claims, (formal or informal), or contentions of any kind or nature whatsoever, raised by any person or entity of any kind at any time with respect to contamination, waste (hazardous and non-hazardous), pollution, garbage, trash, Hazardous Materials, or environmental hazards or conditions of any kind or nature whatsoever, and including without limitation damages or injuries to a person or private or public property (real or personal, and including without limitation natural resources) but does not include damages related to diminution in value of either parties' interest in the Tacoma Dome Segment.
- C. "Loss or Damage" means all fines, penalties, claims, liability, cost, and expense of every character (including amounts paid under any State or Federal compensation law, and including costs and attorney's fees incurred in the investigation, defense or settlement of any actual or threatened legal proceeding), incident or related to loss or destruction of or damage to property (including real property and improvements and personal property of Parties and third parties) and injury to and death of persons (including officers, directors, agents, employees, contractors, invitees, customers, or patrons of the Parties, and third parties); provided, however, that it does not include damages related to diminution in value in either parties' interest in the Tacoma Dome Segment Environmental Loss or Damage as defined in Section 6.1(B), except that this definition does include Environmental Loss or Damage for purposes of Subsections 7.1.A., 7.1.B., 7.1.E, 7.1.G., 7.1.H., and Sections 7.3 and 7.5,
- D. "Sound Transit Party" means one or more of (1) Sound Transit's officers, directors, employees, agents or contractors including any operator of Commuter Rail Service while on or using the Tacoma Dome Segment or performing duties related to the

Tacoma Dome Segment, or performing duties related to the provision of Commuter Rail Service, (2) any passenger of a Sound Transit train while such passenger is on the Tacoma Dome Segment, (3) persons (other than a City Party) using the Tacoma Dome Segment under authority of or by agreement with Sound Transit, such as Amtrak or the State of Washington, or (4) any other person at or proximate to a commuter rail station used by Sound Transit who is there for the purpose of (a) boarding or detraining from a Sound Transit train, meeting or accompanying a ticketed passenger or a person intending to become a ticketed passenger on a Sound Transit train, purchasing a Sound Transit commuter rail ticket, making a reservation for a Sound Transit train, attending a special event sponsored by or held on behalf of Sound Transit, or obtaining information about Sound Transit Commuter Rail Service or conducting business with Sound Transit, or (b) for the purpose of providing local transportation to or accompanying a person described in Subsection 6.1(D)(4)(a), above.

- E. “Third Party” means a person or entity that is not a City Party or a Sound Transit Party.

6.2 INSURANCE

6.2.1 SOUND TRANSIT INSURANCE

- A. Sound Transit will maintain General Liability insurance in an amount at least equal to \$200 million, an appropriate program of self-insurance, or a combination of insurance and self-insurance sufficient to satisfy its liabilities.
- B. In the event the \$200 million per occurrence limitation under the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. § 28103) (or a successor provision) is increased, decreased, eliminated, or held by a court of competent jurisdiction, to be inapplicable to commuter rail service of the nature to be provided under this Agreement, then the Parties will reopen and renegotiate a new level of Sound Transit insurance intended to reflect any resulting change in either party’s exposure to uninsured liability, giving due consideration to the additional costs or savings of such a change.
- C. Insurance purchased by Sound Transit in accordance with this section will be primary with respect to any coverage maintained by the City. Any other coverage maintained by the City will be excess to Sound Transit’s coverage.
- D. Each insurance policy required by this section must be endorsed to state that coverage may not be suspended, voided, canceled, or amended except after 30 days prior written notice has been given to the City.
- E. Each insurance policy must be issued by financially sound insurers properly licensed to do business in the State of Washington.
- F. Sound Transit will provide certificates of insurance evidencing its coverage annually starting before the execution of this Agreement. Sound Transit will permit the City to inspect and copy the policies upon advanced written notification.

6.2.2 TACOMA RAIL INSURANCE

- A. The City will maintain General Liability insurance in an amount at least equal to \$20 million, an appropriate program of self-insurance, or a combination of insurance and self-insurance sufficient to satisfy its liabilities.
- B. Each insurance policy required by this section must be endorsed to state that coverage may not be suspended, voided, canceled, or amended except after 30 days prior written notice has been given to the Sound Transit.
- C. Each insurance policy must be issued by financially sound insurers properly licensed to do business in the State of Washington.
- D. The City will provide certificates of insurance evidencing its coverage annually starting before the execution of this Agreement. Sound Transit will permit the City to inspect and copy the policies upon advanced written notification.

6.3 MAINTENANCE OF LIABILITY PROTECTION

If Sound Transit cannot or does not obtain the insurance coverage it is required to secure above, then Sound Transit will either make other arrangements to provide equivalent liability protection for the City, or the City may, but is not required to, purchase the insurance coverage, subject to Sound Transit's reimbursement. If the City does not purchase the insurance in such a situation, then Sound Transit will indemnify the City to the same extent as if such insurance were purchased.

6.4 SUBROGATION RIGHTS

The Parties waive subrogation rights against each other, and will require their respective insurers to waive subrogation rights against the other party and such other party's insurers, to the extent any liability for property damage, bodily injury (including death), or other loss may be covered by the proceeds of insurance.

ARTICLE 7 LIABILITY, REIMBURSEMENT, AND INDEMNIFICATION

7.1 - ALLOCATION OF LIABILITIES

- A. Subject to Subsection 7.1.E. and section 2.5, Sound Transit will, as between the Parties, bear all Loss or Damage to a Sound Transit Party.
- B. Subject to Subsection 7.1.E., the City will, as between the Parties, bear all Loss or Damage to a City Party.
- C. (1) Subject to Subsection 7.1.E., when Loss or Damage to a Third Party involves a Sound Transit commuter rail Train, and does not result from and is not contributed to by an accident, collision, or derailment of a Train on the Tacoma Dome Segment

other than a Sound Transit commuter rail Train, such Loss or Damage will, as between the Parties, be borne exclusively by Sound Transit.

(2) Subject to Subsection 7.1.E, when Loss or Damage to a Third Party involves a the City rail Train, and does not result from and is not contributed to by an accident, collision, or derailment of a Train on the Tacoma Dome Segment other than a the City rail Train, such Loss or Damage will, as between the Parties, be borne exclusively by the City.

- D. Subject to Subsection 7.1.E., when Loss or Damage to a Third Party involves a Sound Transit Train and a City Train on the Tacoma Dome Segment, then such Loss or Damage will be allocated, as between the parties, in proportion to the Train Miles operated over the Tacoma Dome Segment during the calendar month before the Loss or Damage (or when the lost or damage was first discovered), with Sound Transit bearing the Loss or Damage in the proportion to its and Amtrak's Train Miles and the City bearing the Loss or Damage in proportion to its and other freight carriers (there by City right) Train Miles.
- E. Provisions of this Agreement other than Section 6.2 notwithstanding, as between the Parties, to the extent Loss or Damage is caused by or arises from the gross negligence or willful or wanton misconduct of a party to this Agreement (including that party's officers, directors, agents, employees, and contractors), such Loss or Damage will be borne exclusively by that party.
- F. Loss or Damage occurring on the Tacoma Dome Segment and not involving any rail Train on the Tacoma Dome Segment will, as between the Parties, be borne by Sound Transit.
- G. Except as may be provided by applicable rules of collateral estoppel or res judicata, the allocation of Loss or Damage provided in this Article is not affected by any allocation of Loss or Damage between Sound Transit or the City and a Third Party.
- H. The Parties will not introduce Subsections 7.1.A., B., C., D., E., F., G., or H., or Subsection 7.2 into evidence in any litigation between the Parties, or between a party or the Parties and any Third Party in which Loss or Damage is sought to be imposed under applicable law without regard to the provisions of this Agreement.
- I. For purposes of this Article, the City and its employees, agents, contractors, licensees, lessees, invitees, customers, and patrons are not considered to be employees, agents, or contractors of Sound Transit.

7.2 ENVIRONMENTAL LOSS OR DAMAGE

- A. Subject to Subsections 7.1.E. and 7.2.C., as between the Parties, Sound Transit will bear all Environmental Loss or Damage, other than to a City Party, caused by the operation of Commuter Rail Service.
- B. Subject to Subsections 7.1.E. and 7.2.C., as between the Parties, the City will bear all Environmental Loss or Damage, other than to a Sound Transit Party, caused by or

arising or resulting from a City's predecessor in interest's or the City's or a City Party's past, present, or future use of the Tacoma Dome Segment.

- C. Subject to Subsection 7.1.E., if any Environmental Loss or Damage is caused by or arises or results from both the operation of Commuter Rail Service and the City's or a the City Party's past, present, or future use of the Tacoma Dome Segment, then, as between the Parties, Sound Transit will bear so much of such Environmental Loss or Damage as was contributed by the operation of Commuter Rail Service and Amtrak service, and the City will bear so much of such Environmental Loss or Damage as was contributed by the City's predecessor in interest's, the City's or a City Party's past, present, or future use of the Tacoma Dome Segment.

7.3 RELEASES AND INDEMNIFICATION

- A. Sound Transit will release the City (including for all purposes of this paragraph, the City's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) from any claims it could otherwise assert against the City for Loss or Damage for which Sound Transit is liable under the provisions of this Article, whether or not such Loss or Damage is the result of the negligence of the City (other than gross negligence or willful or wanton misconduct or negligence), including without limitation any Loss or Damage awarded in any court action.
- B. The City will release Sound Transit (including Sound Transit's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns, as well as persons under Section 6.1.D.3 from any claims it could otherwise assert against Sound Transit (or any claims it could otherwise assert against Sound Transit's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns, arising from or related to the actions or inaction of Sound Transit) for Loss or Damage for which the City is liable under the provisions of this Article, whether or not such Loss or Damage is the result of the negligence of Sound Transit (other than gross negligence or willful or wanton misconduct or negligence), including without limitation any Loss or Damage awarded in any court action.
- C. To the extent permitted by law, each party will pay all Loss or Damage for which it is liable under the provisions of this Article, and will defend, indemnify, and hold harmless the other party (including without limitation the other party's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns, and including in the case of Loss or Damage for which the City is liable.
- D. The indemnification obligations assumed by the Parties here include without limitation any liability, suits, claims, damages, judgments, lawsuits, demands, causes of action, losses and expenses under the Federal Employer's Liability Act, the Safety Appliance Act, or the Boiler Inspection Act, including claims for strict liability.
- E. For purposes of this section, the City and Sound Transit, by mutual negotiation, waive, with respect to the other only, any immunity against claims for which they have assumed an indemnification obligation that would otherwise be available under the industrial insurance provisions of Title 51 Revised Code of Washington or other applicable disability benefits or employee benefits acts.

- F. Nothing in this Agreement is intended to be construed to require either party to indemnify the other party against the other party's own gross negligence or willful or wanton misconduct or negligence.
- G. If any provision of this Agreement purports to indemnify a party against Loss or Damage and such indemnification is prohibited by or unenforceable under the laws of the State of Washington (including a determination that indemnification under the circumstances involved is against public policy of the State of Washington), the indemnity provided by such provision will be deemed to be limited to and operative only to the maximum extent permitted by law.

7.4 SURVIVAL

The allocations of liability, releases, and indemnifications under this Agreement will survive termination of this Agreement.

7.5 CLAIMS

- A. The City or Sound Transit may settle, or cause to be settled for it, all claims for Loss or Damage for which that party is liable under the provisions of this Article, and to defend, or cause to be defended, all suits for the recovery of any such Loss or Damage.
- B. If a suit is commenced against either party, or a claim is asserted for or on account of a Loss or Damage for which the other party may be solely or jointly liable under the provisions of this Article, the party sued or against whom the claim is asserted will promptly notify the other party in writing of the pendency of the suit or claim. The other party will assume or join in the defense of such suit or claim.
- C. In the event that both of the Parties may be liable for any Loss or Damage and the Loss or Damage claim is settled by a voluntary payment of money or other valuable consideration by one of the Parties who may be jointly liable for the Loss or Damage, the settling party will secure a release from liability for and in the name of the other party (including employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns of Sound Transit or the City, and the State of Washington, Amtrak, and King, Pierce, and Snohomish counties) who may also be liable. Before settling any claim or suit for an amount in excess of one hundred thousand dollars (\$100,000), the settling party must obtain the written consent of the other party, which consent may not be unreasonably withheld. The party being requested to give consent will provide the same within 30 days of the request being made. In the event that a response is not received within 30 days it will be conclusively presumed that such consent has been given. Giving of such consent, impliedly or expressly, may not be deemed an admission that such claim involves joint liability.
- D. Neither party will be conclusively bound by any judgment against the other party, unless the party has reasonable notice requiring it to defend and reasonable opportunity to make such defense. As between the Parties only, when such notice and

opportunity is given, the notified party will be conclusively bound by the judgment as to all matters that could have been litigated in such suit.

- E. If Sound Transit provides claim services under the circumstances under Section 7.5.A., then the City will reimburse Sound Transit's costs as direct expenses as more fully set out in Section 3.2. Such expenses include, but are not limited to: 1) a reasonable hourly rate for the claim agent assigned to handle such investigation (including associated supervisory and payroll associated expenses); and, 2) reasonable costs of defense counsel, experts and related litigation costs. In the event that attorneys fees are expected to exceed \$50,000, counsel will be required to submit to Sound Transit and the City a written litigation management report including expected fees and expenses for the particular matter. Said management report will be due to Sound Transit and the City within 60 days of it becoming clear that said expenses will exceed \$50,000.

ARTICLE 8 EFFECTIVE DATE, TERM, AND TERMINATION

8.1 EFFECTIVE DATE AND TERM

This Agreement is effective on the date in the introductory paragraph and will remain in effect so long as the City does not abandon its freight rights and responsibilities.

8.2 RIGHTS UPON TERMINATION

Termination or cancellation of this Agreement does not release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of such termination or cancellation.

ARTICLE 9 DISPUTE RESOLUTION

9.1 PREVENTING CONFLICTS

Preventing Conflicts. The Parties will use their best efforts to prevent and resolve potential sources of conflict before they escalate into disputes, claims, or legal actions.

9.2 RESOLVING DISPUTES THROUGH NEGOTIATION

The Parties will use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute escalation process should any such disputes arise:

- A. Level One – Sound Transit's Commuter Rail Operations Manager, or equivalent designee at the time of dispute, and the City's Chief Mechanical Officer (Tacoma Rail) will meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within 15 business days after referral of that dispute to Level One, either party may refer the dispute to Level Two.
- B. Level Two – Sound Transit's Executive Director of Operations, or equivalent designee at the time of the dispute, and the City's Rail Superintendent will meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve

the dispute within 15 business days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.

- C. Level Three – Sound Transit’s Chief Executive Officer or equivalent designee at the time of the dispute, and the City Manager will meet to discuss and attempt to resolve the dispute, in a timely manner.

9.3 FAILURE TO RESOLVE A DISPUTE THROUGH BEST EFFORTS

Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within 15 business days after referral of that dispute to Level Three, either party may commence a civil action in a federal court of competent jurisdiction. Until the dispute is resolved, the Parties will continue to perform and make any required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

ARTICLE 10 - MISCELLANEOUS

10.1 FORCE MAJEURE

A party will be excused from performance of any of its obligations under this Agreement, where such non-performance is caused by any event beyond the non-performing party's reasonable control, which may include, without limitation, an order, rule, or regulation of any federal, state, or local government body, agency, or instrumentality, work stoppage by the Sound Transit employees or contractors or a labor dispute resulting in a strike by the Sound Transit employees or contractors, extraordinary unavailability of essential materials from third-party suppliers, accident, natural disaster, or civil disorder (“Force Majeure Event”); provided that the party excused under this section will use all reasonable efforts to minimize its non-performance and to overcome, remedy, or remove such Force Majeure Event in the shortest practical time.

10.2 ENTIRE AGREEMENT

This Agreement, the attached Appendices, and the deed in the transfer of certain property interests to Sound Transit embody the entire agreement and understanding between Sound Transit and the City relating to the joint operation of the Tacoma Dome Segment following the sale of rights in the Tacoma Dome Segment under the Purchase and Sale Agreement dated March ___, 2014. There are no restrictions, promises, representations, warranties, covenants or undertakings, oral or otherwise than those expressly set forth or referred to here.

10.3 AMENDMENTS

Except as otherwise expressly provided in this Agreement, no waiver, modification, addition, or amendment to this Agreement is enforceable unless reduced to writing executed by the authorized officers of each party.

10.4 SEVERABILITY

In the event that any term of this Agreement, or the application of that term is found to be invalid or unenforceable in any respect, the remainder of this Agreement, and the application of

such term or provision to other persons or circumstances nevertheless will be binding with the same effect as if the invalid or unenforceable provision were originally deleted. The parties will bargain in good faith to reform this Agreement or replace any invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision.

10.5 NOTICES

Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement must be in writing and either be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered via facsimile, with confirmation of receipt by telephone, with an original deposited postage prepaid in the first class mails of the United States, addressed to Sound Transit at:

Sound Transit
401 S. Jackson St
Seattle, WA 98104-2826
ATTN: Commuter Rail Operations

Or to the City at:

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

With a copy to:
City of Tacoma dba Tacoma Rail
c/o Real Property Services
3628 South 35th Street
Tacoma, WA 98409

or to such person and at such other addresses as either party may at any time or from time to time designate for itself by notice in accordance herewith. Each such request, notice, demand, authorization, direction, consent, waiver or other document will be deemed to be delivered to a party when received at its address set forth or designated as above provided.

10.6 RIGHTS AND REMEDIES

The duties, obligations, rights, and remedies available under this Agreement are in addition to and not a limitation of or waiver regarding any duties, obligations, rights and remedies otherwise available by law except as otherwise provided in Section 9. No waiver by either party of any default affects or impairs any right arising from any subsequent default. The failure of either party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy provided for in this

Agreement does not impair any such right or remedy nor be construed as a waiver or relinquishment of that right or remedy.

10.7 APPLICABLE LAW; CHOICE OF FORUM

The laws of the State of Washington govern the interpretation of this Agreement, the relationship of the Parties, and all disputes relating to the matters stated in this Agreement, without regard to the choice of law principles of that State. Litigation arising out of or in connection with this Agreement may be instituted and maintained only in the courts located in the Seattle or Tacoma, Washington, and the Parties consent to the exercise by those courts of jurisdiction and consent to service of process issued by such courts. The venue for any action relating to this Agreement is the State of Washington.

10.8 SUCCESSORS

This Agreement is binding and inures to the benefit of the successors of the City and Sound Transit. Any successor is required to accede, in writing, to all of the terms, conditions, and requirements of this Agreement.

10.9 TRANSFER OR ASSIGNMENT

- A. The City may transfer or assign its freight easement, and the right conferred by the easement to conduct freight operations on the Tacoma Dome Segment, to a TPO subject to the provisions of this Section. A transfer of the freight easement must include an assignment of the City's interest in this Agreement.
- B. The City will provide Sound Transit 1 years' notice of its intent to transfer or assign its freight rights to a TPO. The notice must contain the intended transfer date and the name of the proposed TPO and a contact person with the TPO who will be responsive to Sound Transit's investigation.
- C. Sound Transit may research the TPO, including interviewing the TPO and others, to help determine the safety record of the TPO, the financial viability of the TPO, and the suitability of the TPO for conducting freight operations on the Lakeview subdivision. If Sound Transit believes, in its reasonable judgment, that the proposed TPO does not have an acceptable safety performance history, or, in the case of a TPO that has not previously conducted rail operations, does not demonstrate a commitment and capability of performing safe rail operations in the future on the Tacoma Dome Segment, Sound Transit may notify the City within 2 months of receipt of the notice of Sound Transit's safety concerns. If Sound Transit believes, in its reasonable judgment, that the proposed TPO does not have the financial resources to fulfill all the obligations of the City transferred to the TPO, Sound Transit may notify the City of Sound Transit's financial concerns. If Sound Transit provides the City notice of any safety or financial concerns, the City and Sound Transit will meet to address such concerns. If, after such meetings, Sound Transit still believes, in its reasonable judgment, that the proposed TPO does not have an adequate safety record or the financial resources to conduct freight operations on the Tacoma Dome Segment, Sound Transit may notify the City in writing of its rejection of the proposed TPO. To the extent that the City is not in agreement with Sound Transit's

rejection, the City may invoke the dispute resolution provisions of Article 9. If Sound Transit does not provide written notification of its rejection of the TPO within 6 months from the initial City notice, the City may proceed with the transfer or assignment of freight rights.

10.10 BENEFITS

This Agreement is intended for the sole benefit of the Parties. Nothing in this Agreement is intended or may be construed to give any person or entity, other than the Parties hereto, their permitted successors, and permitted assigns, any legal or equitable right, remedy, or claim under this Agreement.

10.11 PREPARATION

The Parties and their legal counsel have cooperated in the drafting of this Agreement. Accordingly, this Agreement is deemed to be the joint work product of the Parties and not be construed against either party by reason of such preparation.

10.12 HEADINGS

The section headings of this Agreement are for convenience and reference only and not to define, limit or describe the scope or intent of the section or this Agreement.

10.13 - COUNTERPARTS

This Agreement will be simultaneously executed in duplicate counterparts, each of which will be deemed an original copy of the Agreement.

This Agreement is signed by authorized representatives of the Parties on the dates shown below.

**Central Puget Sound Regional
Transit Authority**

City of Tacoma

By:

By:

Title:

Title:

Date: _____

Date: _____

Approved as to form.

Approved as to form.

Legal Counsel

Legal Counsel

Appendix A

Adjustment of Car Mile Rate

Commencing effective January 1, 2005, the Car Mile Rate set forth in this Agreement shall be adjusted annually, upward or downward by the amounts specified above.

For example, the \$0.248 per Car Mile Rate will be adjusted annually with the first adjustment in February, 2005, retroactive to January 1, 2005. The adjustment will be based on 80% of the annual percentage change in the Labor Component of the Rail Cost Adjusted Factor and 20% of the annual percentage change in the Consumer Price Index for Seattle-Tacoma-Bremerton WA. The Labor Component of the RCAF (LRCAF) is available from Table D, Line 1 of the Quarterly publication of the Association of American Railroads titled "AAR Railroad Cost Indexes." The Consumer Price Index for Seattle-Tacoma-Bremerton WA is available from the Bureau of Labor Statistics, U.S. Department of Labor. (See link to web site below).

To calculate the Labor Component, the average of the labor index for the four quarters of the most recent year will be compared to the average of the labor index for the four quarters of the previous year and the result is multiplied by 80.0%. To calculate the Consumer Price Index, the annual price index of the most recent year is compared to the annual price index of the previous year and the result is multiplied by 20.0%. The rate of change (i.e., escalator) for the contract is the sum of the Labor and CPI results described above.

-
For example, the February, 2003 rate adjustment would have been as follows:

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
2001 LRCAF	254.4	254.5	256.3	253.0
2002 LRCAF	260.3	257.3	257.1	267.6

$$\text{CLRCAF} = (260.3 + 257.3 + 257.1 + 267.6) / 4 = 260.575$$

$$\text{PLRCAF} = (254.4 + 254.5 + 256.3 + 253.0) / 4 = 254.55$$

$$\text{CCPI} = \text{Then current CPI-Seattle for 2002} = 189.3$$

$$\text{PCPI} = \text{Then prior CPI-Seattle for 2001} = 185.7$$

$$\begin{aligned} \text{AER} &= [I + (((((260.575 - 254.550) / 254.550) * .80) + (((189.3 - 185.7) / 185.7) * .20)))] * \text{BR} \\ &= (1 + 0.022813) * \text{BR} \end{aligned}$$

In other words, the escalation from the prior rate is 2.2813 %.

Thus, the adjusted rate effective January 1, 2005 for an original rate established and effective January 1, 2004 shall be determined as follows:

Annual Rate Adjustment Formula:

$$\text{AER} = [(((\text{CLRCAF} - \text{PLRCAF}) / \text{PLRCAF}) \times 0.80) + (((\text{CCPI} - \text{PCPI}) / \text{PCPI}) \times 0.20) + 1] * \text{BR}$$

Where:

AER = the Annual Effective Rate as of March 1, 2005
 $CLRCAF = (LRCAF\ 1^{st}\ Qtr\ 2004 + LRCAF\ 2^{nd}\ Qtr\ 2004 + LRCAF\ 3^{rd}\ Qtr\ 2004 + LRCAF\ 4^{th}\ Qtr\ 2004) / 4$

$PLRCAF = (LRCAF\ 1^{st}\ Qtr\ 2003 + LRCAF\ 2^{nd}\ Qtr\ 2003 + LRCAF\ 3^{rd}\ Qtr\ 2003 + LRCAF\ 4^{th}\ Qtr\ 2003) / 4$

CCPI = the Current CPI--Seattle published for the full year, 2004

PCPI = the Previous CPI--Seattle published for the full year, 2003

BR = the Base Rate; where, for example, the Base Rate equals \$0.248 per car mile through 2004 and escalated according to the cumulative impact of the 80/20 adjustment for subsequent years.

The adjustment process described above shall be repeated by the end of February, 2006 and by the end of February thereafter during the Term of this Agreement, with the new Annual Effective Rates for the twelve (12) month period retroactive to January 1 prior to each such adjustment being determined by application of the formula described above for that Adjustment Date to the Annual Effective Rates and charges in effect during the preceding twelve (12) month period, provided in no event shall any of the

Appendix A

Adjustment billings shall be made to reflect the adjustment retroactive to January 1. If the AAR or a successor ceases to publish the Labor Component of the RCAF, or materially alters the methodology by which the RCAF is derived, the parties shall meet to determine the most appropriate substitute index to be used for adjustments for the remainder of the Term of this Agreement. If, within sixty (60) days after the discontinuance or material alteration of the RCAF, the parties are unable to reach agreement on a suitable substitute index either Sound Transit or BNSF may submit the matter for resolution by arbitration in accordance with Article IX of this Agreement. If the AAR or the STB, or Department of Commerce (or successor) rebases the LRCAF or CPI respectively during the Term of this Agreement, a linking factor shall be developed and applied in order to calculate the first adjustment to the Effective Rates occurring on or after the date the rebasing takes effect. The linking factor shall be equal to the ratio of the respective index for the year prior to rebasing divided by the index for the same year as rebased. The current year's index value as adjusted by the linking factor will then be on a similar basis as used for the year prior to rebasing. The linking factor shall only be used to rebase the index as described herein for the annual adjustment immediately following the rebasing. Commencing with the next ensuing Adjustment Date, the rebased index value as published for the prior and current years shall be used for purposes of adjustments hereunder. In computing the annual adjustment described herein, all published indices shall be rounded to the nearest thousandth of an index point, all calculated indices shall be rounded to the nearest tenth of an index point, and all rates and charges shall be rounded to the nearest half cent. If there is no nearest thousandth of an index point, tenth of an index point, or half cent, as the case may be, the indices, rates, and charges shall be rounded to the nearest even thousandth of an index point, tenth of an index point, or half cent. For example, \$0.2835 and \$0.2845 would be rounded to \$0.284.

Exhibit 4

Proposed Caption Summary

**Before the
Surface Transportation Board**

Finance Docket No. 35812

**CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF CITY OF TACOMA
IN PIERCE COUNTY, WASHINGTON**

CAPTION SUMMARY

The Puget Sound Regional Transit Authority (“Sound Transit”) has filed a Notice of Exemption to purchase from the City of Tacoma (“City”) the physical assets and associated right-of-way comprising approximately one mile of the rail line known as the Mountain Division located approximately between East D Street and the BNSF mainline near the Port of Tacoma in the City of Tacoma, Pierce County, Washington, Milepost 1.0 to Milepost 1.99 (the “Tacoma Dome Segment”). The City will retain an exclusive, permanent freight easement on the Tacoma Dome Segment, and will continue to provide freight rail service through the Tacoma Rail Mountain Division, a division of the City of Tacoma Public Utilities Department. Because Sound Transit will not acquire either rights or obligations that implicate in any way the freight common carrier operations that remain attached to the Tacoma Dome Segment, and thus will not become a rail carrier providing transportation subject to the jurisdiction of the Board, Sound Transit has

concurrently filed a Motion to Dismiss this Notice of Exemption in the docket for this proceeding.

Comments must be filed with the Board and served on Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Avenue, NW, Suite 800, Washington, DC 20036, (202) 955-5600.

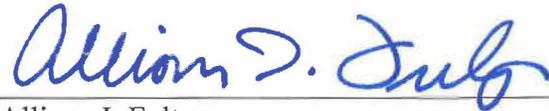
This Notice is filed under 49 C.F.R. § 1150.41. If this Notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

Certificate of Service

I hereby certify that I have this day caused a copy of the foregoing Notice of Exemption of the Central Puget Sound Regional Transit Authority to be served by first class mail, properly addressed and with postage prepaid, upon the following:

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

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



Allison I. Fultz

Dated: April 15, 2014