

**VII. STANDING COMMITTEES****A. Finance, Audit and Facilities Committee**

*in Joint Session with*

**B. Academic and Student Affairs Committee****Master Implementation Agreement with Sound Transit****RECOMMENDATION:**

It is the recommendation of the administration and the Finance, Audit and Facilities Committee that the President be delegated authority to enter into the Master Implementation Agreement for Sound Transit's entry to the University of Washington Seattle Campus subject to final language being substantially similar to the attached version of the Agreement.

**BACKGROUND:**

The five principles which have guided the negotiations between the University of Washington (UW) and Sound Transit (ST) are as follows:

- Light rail alignment which provides reasonable pedestrian access to station locations from the University's Seattle campus is desirable and wanted by the University and Sound Transit.
- Sound Transit's commitment and funding to extend the northern portal beyond the University District is necessary to minimize further congestion in the area.
- UW and ST work together on any on-campus alignment, access and station locations and designs, with the University making best efforts to accommodate ST's needs on campus property, and ST committed to protecting UW's research, education, patient care, as well as future uses of campus development sites.
- Both ST and UW work together to minimize costs to extend light rail north; to fulfill ST's commitments to fund adequate mitigation and UW staff costs incurred to work with ST on the analyses, planning and construction of on-campus sites; to use UW property.
- ST committed to ensure appropriate insurance, indemnification and security during construction and operation of stations sited on the campus.

Negotiations between the University and ST staff initially began in 1998. However, after 2001 ST changed the alignment to cross under the Montlake Cut with a station located near Husky Stadium. Concerns regarding impacts upon vibration and electromagnetic

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#### Master Implementation Agreement with Sound Transit (continued p. 2)

sensitive teaching and research located in buildings on the Seattle campus resulted in the Modified Mountlake Route (MMR) as portrayed on the attached aerial photograph.

The initial segment which necessitates the major construction work located on the Seattle campus consists of digging the station box located near Husky Stadium as well as site for boring the dual tunnels from that station to Capital Hill (shown in blue). That initial segment is planned not to exceed 2,008 days starting in the second quarter 2009.

The boring of the dual underground tunnels (yellow) from the Brooklyn Avenue and 45<sup>th</sup> St. station to Husky Stadium will occur in a future phase. When that occurs the boring under the Seattle campus will not exceed 304 days with ST providing UW no less than two years advance notice prior to commencing the borings. From the planned Brooklyn Ave. and 45<sup>th</sup> St. station, the light rail tunnels will then go north (red) toward Northgate.

The MIA document along with the previously approved (July 2000) Memorandum of Agreement (MOA) address the terms and conditions under which ST is given access to UW property during construction as well as providing future transit service under the Seattle campus. The MIA also provides for UW approvals of ST decisions which impact University property which include protections to prevent interference with UW's mission while contributing to a safe and secure campus environment.

Since the University has recently acquired the Safeco properties, the MIA will need to have a future addendum to provide ST access to UW property impacted to construct and operate ST's station planned at Brooklyn Ave. and 45<sup>th</sup> St. The impacts and access agreement for that station are not included in the MIA presented for approval. It is expected that those negotiations will begin soon since it is ST's intent to secure funding to extend light rail service from Husky Stadium north to Northgate as soon as possible.

The key provisions of the MIA include the following which address the guiding principles listed previously.

#### RELATIONSHIPS BETWEEN UW AND ST:

MOA prescribes that the Board of Regents has ultimate approval authority on design, mitigation and monitoring plans required of ST under the MIA.

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#### Master Implementation Agreement with Sound Transit (continued p. 3)

Prior to commencement of transit revenue service an operating agreement shall be in place covering safety, security, insurance and indemnification along lines specified in the MIA.

Close dialogue between UW and ST staff to avoid unexpected cost and schedule risks.

#### CONDITIONS FOR ST ENTRY

ST agrees to incorporate mitigations to protect UW's mission of performing teaching, research and service including events, UW construction and patient care during ST construction and operation of the transit system.

ST commits to aggressively pursue funding to extend light rail service toward Northgate as soon as possible.

Impacts due to hazardous materials as well as cultural resources encountered during construction are borne by ST; however, UW agrees in certain situations between now and 2040 to reimburse costs incurred outside the easement areas if the University elects to construct a project and as part of that project would have been required to clean up the hazardous materials if ST had not done so.

ST provides UW with \$5,200,000 for staffing and consultant expenses to provide timely design reviews, develop operating agreements, relocation planning and construction coordination on UW property throughout design and construction on UW property east of 15<sup>th</sup> Avenue.

The Federal Consumer Price Index for Seattle will be used to escalate the costs, liquidated damages, payments and other financial terms of the MIA.

Protects research and instruction by defining levels of vibration and magnetic field(MF) thresholds which ST shall not exceed without advance approval by the University; includes a monitoring program to assure real time compliance as well as liquidated damages if any threshold is exceeded by ST.

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#### Master Implementation Agreement with Sound Transit (continued p. 4)

Time limits and notice requirements for construction with liquidated damages amounts to be paid by ST if not completed within agreed upon time limits.

UW accepts responsibility to mitigate the maximum loss of 600 temporary parking spaces during construction in the C-12, E-11 and E-12 parking lots during construction as well as a maximum of 100 of those spaces lost on a permanent basis in exchange for ST paying UW \$10,000,000.

ST accepts responsibility to restore their construction sites with like facilities or parking spaces with UW approval.

ST accepts responsibility to mitigate, or relocate if necessary, UW activities that cannot be conducted because of ST construction, which includes patient care services as well as athletic venues being able to operate at full capacity in compliance all safety codes; safe and reliable emergency vehicle access to UW's medical center and Seattle campus; as well as ST paying for supplemental police, security and traffic control staff necessitated by traffic and crowd control plans approved by UW.

ST and UW work together to insure that concurrent University construction projects previously identified to ST are protected and held harmless from ST construction.

ST and UW agree upon a lump sum payment of \$20,000,000 by ST to the University as consideration for the terms, conditions and easements contemplated in the MIA as well as reflecting the allocation of risks and obligations afforded to each party associated with the first two segments of the North Link program on and under the Seattle Campus east of 15<sup>th</sup> and south of 45th.

The staffs of ST and UW have worked diligently together along with advice from University faculty as well as staff from the Medical Center and Intercollegiate Athletics to craft an MIA which minimizes the risks to the University as well for ST to construct and operate light rail transit service to and under the Seattle campus. Continued cooperation with open dialogue and communications among all involved will be required to achieve a successful project of this magnitude and complexity.

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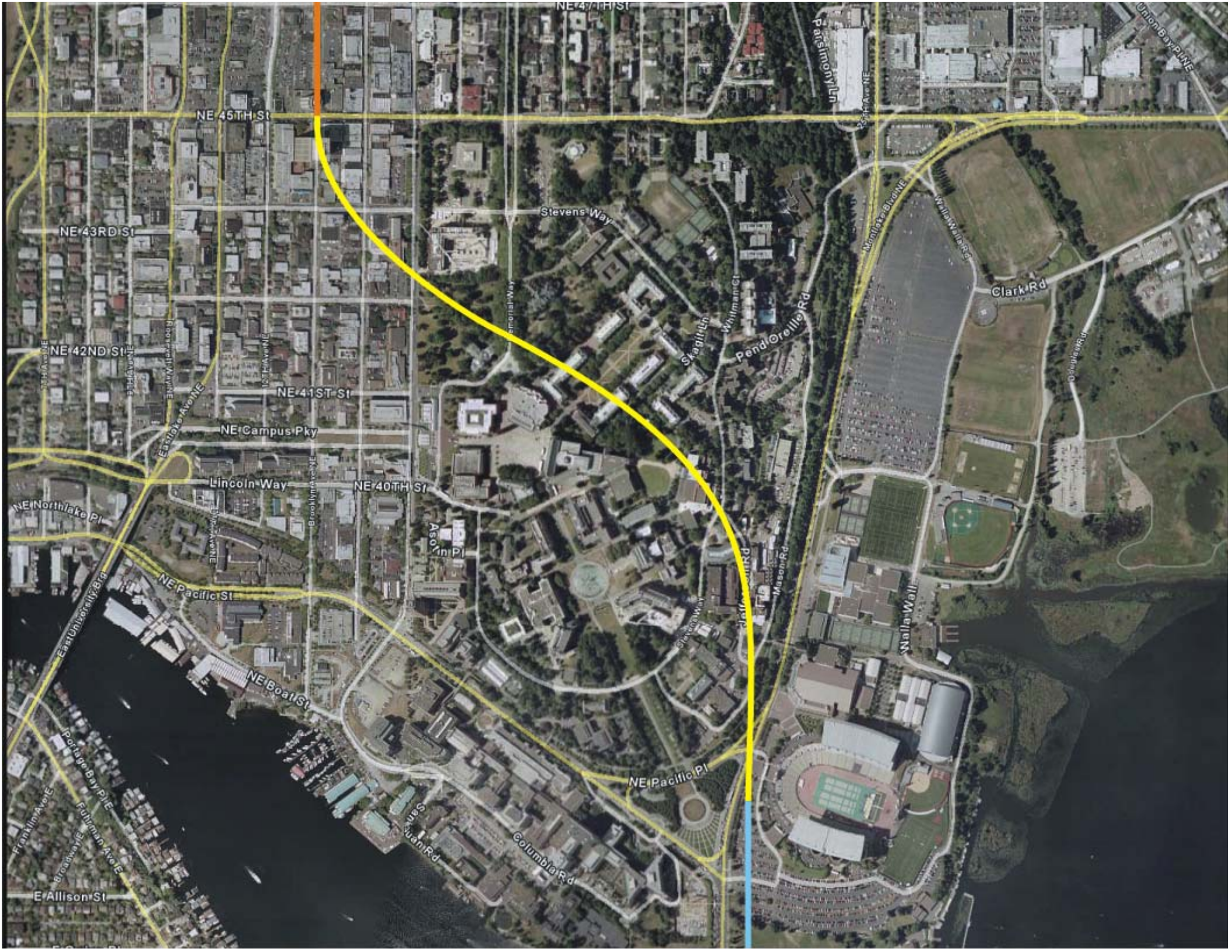
Master Implementation Agreement with Sound Transit (continued p. 5)

The Master Implementation Agreement with Sound Transit has been recommended for approval by the President and Executive Vice President.

Attachments:

1. Aerial photograph of Seattle campus showing the planned Modified Montlake Route for light rail tunnel.
2. Draft Master Implementation Agreement for Sound Transit Entry to the University of Washington Seattle Campus.







# **MASTER IMPLEMENTATION AGREEMENT FOR SOUND TRANSIT ENTRY TO THE UNIVERSITY OF WASHINGTON SEATTLE CAMPUS**

**THIS MASTER IMPLEMENTATION AGREEMENT** is made and entered into between the BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON (“the University”) and the BOARD OF THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (“Sound Transit”), together, the “Parties.”

**WHEREAS**, the University and Sound Transit entered into the July 12, 2000 Memorandum of Agreement (“MOA”), applying to all access to and use of University Property by Sound Transit or its contractors, successors, and assigns, including, but not limited to, any temporary or permanent occupation of the land surface, subsurface, or air space; and

**WHEREAS**, Sound Transit elected to investigate alternative routes to that contemplated in the MOA and has identified in Sound Transit Board Resolution R2006-07 the Modified Montlake Route (“MMR”) and station and entrance locations shown on the attached Exhibit “C”, the “Alignment Map”, which is incorporated herein, as Sound Transit’s final adopted route; and

**WHEREAS**, the MMR will cross University Property within the original Seattle campus boundary, commonly referred to as “Section 16,” and fully described in RCW 28B.20.340, such Property which may not be sold or condemned as provided in RCW 28B.20.344; and

**WHEREAS**, Sound Transit believes it must have “continuing control” as defined in 49 USC 5309(d) of the property on which light rail transit facilities will be constructed and Sound Transit believes “continuing control” may be satisfied through the University’s grant of easements to use the property for the operation and maintenance of its light rail transit facilities; and

**WHEREAS**, the University believes that it is within its authority to grant transportation easements to Sound Transit so long as the proposed light rail transit facilities support and do not interfere with the University’s mission of teaching, research, and service; and

**WHEREAS**, the Parties acknowledge the University is and has for several years been ranked as the premier public research university in the United States of America with grants approaching One Billion Dollars (\$1,000,000,000) per year; and

**WHEREAS**, the Parties recognize the University must be able to carry out its mission of teaching, research, and service with minimal disruption from Sound Transit activities; and Sound Transit pledges its commitment to mitigate impacts to University Facilities and mission as provided in this Agreement; and

**WHEREAS**, the University recognizes that, with adequate protection of its environment and mission, the construction and operation of the Light Rail Transit System along the MMR is viable for providing light rail service to campus; and

**WHEREAS**, the University recognizes the importance of extending the Light Rail Transit System to the University's Seattle Campus and beyond and pledges its commitment to continue working with Sound Transit in a collaborative effort to ensure that the Light Rail Transit System begins operations on University Property at the earliest opportunity; and

**WHEREAS**, the Parties acknowledge the probable long-term presence of the light rail system on the University Properties and the importance of investing in the protection of said properties from impacts due to vibration, electromagnetic interference, or other rail-induced impacts as long as Sound Transit utilizes University Property; and

**WHEREAS**, the Parties have a shared desire for the Light Rail Transit System to reach Northgate as expeditiously as possible with adequate protection of University Property but recognize that construction and operation of the Light Rail Transit System is likely to occur in phases; and

**WHEREAS**, the Parties desire that the agreements of the Parties reflected in the MOA be implemented in the context of the MMR and in a manner that reflects the altered terms and conditions under which Sound Transit may have access to University Property so that Sound Transit may better prepare for future planning, engineering, construction, operation, monitoring and maintenance of its Light Rail Transit System;

**NOW, THEREFORE**, the Parties agree to enter into this Master Implementation Agreement ("Agreement") governing Sound Transit's access to and use of University Properties for the purpose of designing, constructing, operating, monitoring and maintaining the Light Rail Transit System as generally depicted on Exhibit C.

## **Section One: Relationship of Agreements between the Parties**

1.1. **MOA.** This Agreement implements the MOA between the Parties. The MOA remains in effect. If conflict occurs between the MOA and this Agreement, this Agreement shall prevail. Under Article VII of the MOA, the University Board of Regents has ultimate approval authority on design, mitigation and monitoring plans required under this Agreement. In accordance with Section 7.3 of the MOA, after receiving the recommendation of University staff, the Architectural Commission, and the Landscape Advisory Committee, Sound Transit shall present proposed facility designs to the University Board of Regents at the schematic and design development stages of the design process. To promote mutual understanding of design requirements, the Parties shall, in conjunction with interim reviews of proposed Light Rail Transit System facility designs, maintain and share all comments and recommendations offered by the Architectural Commission, Landscape Advisory Committee, and University Board of Regents. Sound Transit shall secure approval from the Board of Regents of design,



mitigation and monitoring plans prior to implementing construction of facilities, except for intrusive field work necessary before commencing construction of facilities, which work shall be subject to an entry permit from the University. The principles and provisions of the MOA, including but not limited to all of Appendix B (“Siting and Design Principles”) and Appendix C (“Mitigation Program”) will be applied to the new alignment (MMR) to the maximum extent possible except as expressly modified by this Agreement. Specific calendar dates, but not terms, contained in the MOA are herein voided.

**1.2. FUTURE AGREEMENTS.** The Parties recognize that Sound Transit’s plans and ultimate needs will gain precision with time and additional engineering. As such, the Parties contemplate one or more agreements regarding construction, operations, monitoring and performance (“Operating Agreements”), consistent with this Agreement, will be developed for, e.g., protection and relocation of utilities, specific contractor parking arrangements, installing cable in light rail tunnels, specific monitoring of thresholds, insurance provisions during operations, licensing arrangements within the University of Washington Station and similar relationships between the Parties as Sound Transit plans and designs progress. Prior to commencement of Revenue Service an Operating Agreement(s) shall be in place that will, at a minimum, include provisions covering safety, security, insurance and indemnification. Any such Operating Agreement(s) shall be governed by this Agreement, and this Agreement shall be incorporated into such Operating Agreement(s) by reference therein.

**1.2.1. Safety and Security Plan.** Sound Transit will develop a safety and security plan for operation of the Light Rail Transit System on University Property. The safety and security plan shall set forth the obligations of Sound Transit regarding the safety and security of University students, staff, campus visitors and property. Sound Transit’s safety and security plan shall be subject to review and approval by the University as set forth in the MOA at Article VII. Sound Transit shall, at Sound Transit’s own cost, operate, maintain, repair and replace the Light Rail Transit System located within the University’s Seattle Campus in a safe and responsible manner for the students, faculty, staff, visitors to or property of the University.

**1.2.2 Insurance and Indemnification.** The indemnification provisions in the appropriate Operating Agreement shall be as set forth in the MOA. Sound Transit shall, at its expense, maintain the following insurance throughout the term of any Transportation Easement with coverage requirements and amounts generally consistent with the following:

Commercial General Liability with limits of not less than \$2,000,000 each occurrence for bodily injury and property damage; \$2,000,000 each occurrence for personal injury; and \$2,000,000 each occurrence for employer’s liability.

Umbrella and Excess Liability with limits of not less than \$98,000,000 per occurrence, inclusive of primary limits; and \$98,000,000 annual aggregate, inclusive of primary limits.

Pollution Legal Liability with limits not less than \$50,000,000 per occurrence and \$50,000,000 policy aggregate.

Commercial Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles with limits of not less than \$1,000,000 combined single limit.

Workers' Compensation with limits as required by law, including, if required, Jones Act and USL&H coverage.

All insurance policies (other than Workers' Compensation) obtained by Sound Transit and relevant to this Agreement shall name the University and its Board of Regents as additional insureds, and shall be primary and noncontributory insurance for any claims arising from the activities governed by the Transportation Easement and Operating Agreement(s). Any insurance or self-insurance programs maintained by the University shall not be limited by the amount of insurance coverage maintained by Sound Transit. The University shall have the right to review the policies and to require that additional insurance be obtained if the University reasonably determines that the insurance provided is inadequate. Sound Transit shall provide certificates of insurance on execution of the Operating Agreement(s) and upon renewal thereafter.

**1.3 WORKING RELATIONSHIP BETWEEN THE PARTIES** In addition to formal Operating Agreements and because this Agreement is executed prior to significant Sound Transit design and construction, the Parties anticipate a close dialogue during the course of Sound Transit design and construction planning to maximize the probability that Sound Transit plans will be acceptable to the University Board of Regents. By working together in this fashion, the Parties intend to avoid cost and schedule risks.

## **Section Two: Purpose and Definitions**

**2.1. PURPOSE.** In addition to those purposes set forth in Section II of the MOA, the purpose of this Agreement is to broadly define for Sound Transit the conditions under which Sound Transit may have access to and use of University Property so that Sound Transit will better be able to plan for, design, construct, operate, maintain, monitor and mitigate the impact of its Light Rail Transit System.

**2.2. DEFINITIONS.** For the purpose of this Agreement, the following terms shall have the following meaning:

“Baseline Predictions” shall mean the Predictions based on the preliminary engineering (30% design completion) for the Light Rail Transit System using thirty (30) miles per hour train speed and as further described in Puget Sound Transit Consultants and Wilson, Ihrig & Associates, Inc., “Preliminary Engineering Vibration Control for the North Link Preferred Alternative at the University of Washington” dated April, 2006 and LTK Engineering Services, “Sound Transit Link Light Rail Project, North Link Hi-Lo Mitigation EMI Report” dated April, 2006. Both reports cited are incorporated in this Agreement by reference herein.

“Day” shall mean a calendar day unless otherwise defined in this Agreement.

“Exceedance” shall mean an incident caused by the Light Rail Transit System that results in a vibration or MF level which is above a Threshold.

“Final Design” shall mean that phase of advanced civil, systems and architecture design that includes deliverables at 60, 90, and 100 percent completion.

“Hazardous Materials” shall mean and include any substance that is or contains petroleum, asbestos, polychlorinated biphenyls, lead, or any other substance, material or waste which is now or is hereafter classified or considered to be hazardous or toxic under any federal, state or local law, rule, regulation or ordinance relating to pollution or the protection or regulation of human health, natural resources or the environment including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9601, or the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, or the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901. The term “hazardous waste” as used in the MOA is herein replaced with the term “Hazardous Materials.”

“Infrastructure Failure” shall mean a failure of a component of the Light Rail Transit System on University Property that increases vibration or MF levels above Thresholds.

“Light Rail Transit System” shall mean a public rail transit line, including structures, track work, equipment including but not limited to ventilation structures, traction power substations, light rail transit stations, related passenger amenities as approved by the University, and transit station access facilities that operate at, below or above grade level and that provides high-capacity, regional transit service owned or operated by a regional transit authority (for purposes of this Agreement, Sound Transit) authorized under chapter 81.112 RCW.

“Long Term System Degradation” shall mean deterioration over time of the Light Rail Transit System infrastructure that would likely increase vibration or MF levels above Thresholds.

“MF” shall mean magnetic field.

“Modified Montlake Route” or “MMR” shall mean that portion of Light Rail Transit System on University Property as adopted by the Sound Transit Board in Resolution R2006-07 and as shown on Exhibit C.

“Predictions” shall mean calculated estimates of future Light Rail Transit System-related vibration and MF levels.

“Relocate” or “Relocation” shall mean modifying or securing other available existing facilities or constructing new facilities on the Seattle campus or elsewhere, as acceptable to the University, to accommodate users of facilities impacted by construction, vibration and/or MF caused by the Light Rail Transit System and those directly affected by said accommodation. Relocation shall be consistent with Section 5.9 of the MOA and include, at a minimum the furnishings, finishes and equipment of such impacted facilities and the physical transfer of such users and their programmatic needs from impacted to acceptable facilities. Such facilities shall be functionally comparable to the vacated space and shall be modified or constructed to the University’s standards current at the time of such modification or construction.

“Revenue Service” shall mean any date of commencement of light rail passenger service, whether or not fares are charged, immediately following construction of any segment of the Light Rail Transit System on University Property. Each segment constructed separately shall have a unique Revenue Service date.

“Threshold” shall mean a maximum, not-to-exceed, vibration or MF level as displayed in Exhibits A-1 and B-1 and as will ultimately be displayed in new Exhibits A and B as contemplated in Section 4.1.2, below.

“University of Washington Station” shall mean Sound Transit’s Light Rail Transit System station to be constructed and operated near Husky Stadium on the University’s Seattle campus.

“University Facilities” means all structures, grounds, parking lots, waterfront, and airspace owned or operated by the University of Washington.

“University Property” or “University Properties” or “University’s Seattle Campus” as used in this Agreement and its attached Exhibits shall mean any real estate subject to the control of the Board of Regents of the University of Washington that is located east of 15<sup>th</sup> Avenue Northeast and south of Northeast 45<sup>th</sup> Street in Seattle, Washington.

“University Requested Threshold” shall mean the vibration and MF levels intended to accommodate Light Rail Transit System operation on University Properties and acceptable to the University at the time of execution of this Agreement for the buildings described in Exhibits A-1,A-2, B-1 and B-2, attached and incorporated herein.

“Vehicle Failure” shall mean a failure of a component or operation of a specific Light Rail Transit System train traveling under University Property that increases vibration or MF levels above Thresholds.

### **Section Three: General University Conditions on Sound Transit Entry**

**3.1. PERMISSION AND SCOPE OF MITIGATION.** Sound Transit may enter or use University Properties only as provided under this Agreement. The University approvals of Sound Transit entry to and use of University Properties are subject to the conditions and authorities provided in this Agreement, the MOA, and subsequent agreements between the Parties. The Parties agree that any mitigation agreed upon in the future is not limited by the scope of Sound Transit’s SEPA/NEPA documents and that such mitigation shall be consistent with the terms of this Agreement and the MOA.

**3.2 PROTECTION OF UNIVERSITY MISSION, CONSTRUCTION COORDINATION.** Sound Transit, and not the University, has selected a route, and shall design, construct, operate, monitor and maintain the Light Rail Transit System subject to the conditions provided in this Agreement. So long as Sound Transit adequately protects the University’s ability to pursue its mission, the University shall not interfere with Sound Transit’s construction and operation along the MMR.

**3.3. PROTECTION OF UNIVERSITY MISSION, MITIGATION, EVENTS.** The University must be able to carry out its mission of teaching, research and service, including but not limited to, events, construction and patient care, with minimal disruption during Sound Transit construction and operation of the Light Rail Transit System. Sound Transit will mitigate, financially or otherwise as acceptable to the University, any disruption or damages to the University caused by the Light Rail Transit System, as provided in this Agreement.

**3.4. STATION, INTERIM TERMINUS, TUNNELS, NORTHGATE, BUS SERVICE, SPOILS REMOVAL, ACCESS POINTS.** Sound Transit may construct and operate one (1) station on University Property which may be an interim terminal station located near Husky Stadium on University Property (“University of Washington Station”) and two (2) tunnels along the MMR as described in Exhibit C, PROVIDED THAT Sound Transit shall aggressively pursue funding to extend the Light Rail Transit System beyond University Property toward Northgate as expeditiously as possible including incorporating options in Sound Transit’s design contracts for final design service to Northgate if funding becomes available during the term of such contracts, and Sound Transit’s consideration of contract package alternatives for extending the Light Rail Transit System north of the University Seattle Campus with an interim terminus south of Northgate; and PROVIDED THAT Sound Transit shall not include design features for public automobile parking or bus service changes with layover or loading areas in the vicinity of University of Washington Station that do not, in the University’s judgment, directly benefit the University; and PROVIDED THAT Sound Transit shall not remove any tunnel spoils excavated from north of University of Washington Station from any opening on University property; and PROVIDED THAT Sound Transit shall



construct no fewer than two (2) station public access points to the University of Washington Station, acceptable to the University, at least one (1) of which shall be located north of North East Pacific Place and the Burke Gilman Trail; and PROVIDED THAT Sound Transit shall comply with the requirements of Appendix C, B.1.2 of the MOA by applying those requirements to the University of Washington Station. Nothing in this Agreement shall prevent or limit the University's ability to seek further remedies and/or compensation from Sound Transit or any other party should the Light Rail Transit System fail to extend to Northgate in a timely manner.

3.5. **PERMITS.** Sound Transit shall secure and abide by all non-University permits necessary to construct and operate the Light Rail Transit System at Sound Transit's expense and hold the University harmless from, and compensate any University costs associated with, its failure to do so.

3.6. **CABLE.** Sound Transit shall design, install and maintain, at University expense, cable and associated infrastructure in the Light Rail Transit System from the Pine Street Stub Tunnel to Northgate, PROVIDED THAT the University provide and the Parties mutually agree on the specifications during Final Design of the initial phase of the Light Rail Transit System that will enter University Property.

3.7. **FINANCIAL TERMS ADJUSTMENT.** The basis for all costs, liquidated damages, payments and other financial terms of this Agreement not paid at execution of this Agreement are in (May, 2007) dollars; such amounts shall be adjusted annually from the date of execution of this Agreement by dividing the then current federal Consumer Price Index for All Urban Consumers for the Seattle Metropolitan Statistical Area by the (May, 2007) Index (**DUE JUNE 15 -215.767 at April, 2007. KARIN, IS IT THE INTENT TO INSERT THE MAY NUMBER ON JUNE 15 AND STRIKE THE WORDS "DUE JUNE 15"? STEVE) yes** Such adjustment shall be calculated annually on the anniversary of the execution date of this Agreement and remain fixed until the next anniversary date.

3.8. **STAFFING COSTS.** Sound Transit shall pay the University the amount of Five Million Two Hundred Thousand Dollars (\$5,200,000) upon execution of this Agreement to fully compensate the University for staffing and consultant costs associated with providing timely design review, preliminary plans and cost estimates for Relocation, Operating Agreements, and construction coordination during Sound Transit design, construction and testing activities on University Properties for the MMR, PROVIDED THAT, this payment shall compensate the University for these activities only.

3.9. **RESTORATION.** Sound Transit shall restore University Properties to their condition as existed prior to construction in the event Sound Transit fails to complete construction of the Light Rail Transit System on University Properties or fails to enter into Revenue Service on University Properties.

3.10. **DISCOVERY OF HAZARDOUS MATERIALS, HISTORIC, CULTURAL RESOURCES OR HUMAN REMAINS.** The Parties acknowledge the possibility that

Sound Transit's work on University Property could result in delays, increased construction costs, cleanup or preservation costs, and claims arising out of, or related to, the presence, misuse, disposal, release or threatened release of hazardous materials or the presence of historic or cultural resources or human remains. Sound Transit shall bear the consequences of any such delay, any increased construction costs and any costs associated with resolving any dispute with the agency or agencies responsible for enforcement of applicable laws. Further, Sound Transit agrees to pay any such site management costs and defend, indemnify and hold harmless the University from and against any such claims and any resulting real or alleged liability therefrom. Without cost to the University (other than staff resources) the University will cooperate with and fully support Sound Transit in resolving disputes with the agency or agencies responsible for enforcement of applicable laws. The University will cooperate with Sound Transit to develop and implement innovative approaches, such as grant funding or other opportunities, to recoup such site management costs incurred by Sound Transit. This indemnity obligation does not limit Sound Transit's ability and right to seek contribution from third parties and the University will cooperate with Sound Transit in such efforts. The University agrees, however, that for construction projects it commences on University Properties before December 31, 2040, the University shall reimburse Sound Transit for any costs Sound Transit has reasonably incurred pursuant to a plan for such work which has been approved in advance by the University to monitor, contain, mitigate, or remediate any hazardous materials, historic or cultural resources or human remains outside Sound Transit easement area(s) to the extent the University would have otherwise incurred those costs in connection with the University's own projects. Further, the University agrees to require comparable reimbursement for Sound Transit in any written agreement that allows a third party to perform non-University projects on the University's Seattle Campus prior to December 31, 2040. The Parties shall endeavor to inform each other, to the extent allowed by law, regarding the presence, misuse, disposal, release or threatened release of Hazardous Materials or the presence of historic or cultural resources or human remains concurrent with notifications to agencies responsible for enforcement of applicable laws. A dispute over the terms of this section shall be expressly subject to the dispute resolution process set out in Section 7.4.3 of the MOA.

## **Section Four: Select Mitigation Conditions on Sound Transit Entry**

### **4.1. GENERAL VIBRATION AND MF MITIGATION CONDITIONS**

#### **4.1.1. Thresholds for Specific University Buildings, Damages, Exception.**

Sound Transit shall not exceed the Thresholds for vibration and MF for University buildings described in Exhibits A-1 and B-1 of this Agreement and shall be subject to any and all liquidated damages for any Exceedances thereof, PROVIDED THAT, the University shall waive such payments for Exceedances that are planned for, scheduled, and approved by the University during Sound Transit's pre-Revenue Service testing, maintenance and capital replacement. Appendices E ("Vibration Mitigation Drawing") and H ("EMI Drawing and Description of EMI Mitigation Program") of the MOA are herein voided.

**4.1.2. Requested Thresholds, Final Thresholds.** Sound Transit has developed the vibration and MF Baseline Predictions for University buildings displayed, along with the University Requested Thresholds, in Exhibits A-2 and B-2 of this Agreement. During Final Design of the Light Rail Transit System Sound Transit shall maintain as a primary design objective the attainment of the University Requested Thresholds for vibration and MF through state-of-the-art infrastructure and operational means coupled with optimal location of the tunnel alignment. At the 60%, 90% and 100% levels of Final Design Sound Transit shall recalculate Predictions, using the methodology used to develop Baseline Predictions and for the buildings depicted in Exhibits A-2 and B-2, based upon the most current actual performance and design data available at those percentile achievements. In the event that the recalculated Predictions exceed Baseline Predictions in Exhibits A-2 and B-2 at each percentile achievement, Sound Transit shall take such steps as may be necessary so that the recalculated Predictions are below or at Baseline Predictions in Exhibits A-2 and B-2 unless otherwise agreed to by the University. Sound Transit shall provide opportunities for and encourage the University's review and participation at all levels of Final Design. Unless otherwise agreed to by the University, the 100% Final Design components that yield the final Predictions shall be incorporated by Sound Transit as requirements in subsequent construction, maintenance, and operational agreements for any of its Light Rail Transit System activity on University Properties. Prior to completion of pre-Revenue Service testing for each segment of the Light Rail Transit System, Sound Transit shall develop for and receive the University's approval of Thresholds for the buildings displayed in Exhibits A-2 and B-2 and consolidate these approved Thresholds with the Thresholds described in Exhibits A-1 and B-1 into new Exhibits A and B, which shall represent Thresholds not to be exceeded by Sound Transit for vibration and MF, respectively and shall be reflected in an amendment to this Agreement.

**4.1.3. Thresholds, Commencement of Revenue Service, Damages.** In no event shall Sound Transit commence Revenue Service on University Properties if Thresholds in Exhibits A-1 and B-1 are exceeded. For each segment of the Light Rail Transit System on University Property, Revenue Service shall not commence until such time as Sound Transit demonstrates to the University that operation of that segment of Light Rail Transit System on University Property will not exceed the Thresholds contemplated in Section 4.1.1, for at least a two (2) year period following commencement of Revenue Service. In the event Sound Transit causes any Threshold to be exceeded at any time, as provided for in this Agreement Sound Transit shall pay liquidated damages to the University as described in this Agreement.

**4.1.4. Monitoring Program.** Prior to construction of the Light Rail Transit System, the Parties shall jointly develop a detailed vibration and MF monitoring program to identify, measure and report on if and when a Threshold Exceedance occurs that is directly attributable to the Light Rail Transit System. The details of the monitoring program shall be memorialized in an Operating Agreement,

PROVIDED THAT said Operating Agreement shall require that the monitoring program: be developed at Sound Transit expense; include early warning vibration detectors north and south of University Property; provide data that is auditable by the Parties in real time; is highly reliable; is acceptable to the University, is installed prior to Revenue Service for each segment of newly constructed Light Rail Transit System on University Properties; and is capable of identifying long term trends of increased average and peak vibration and MF levels over time attributable to the general degradation of the Light Rail Transit System.

## 4.2. INFRASTRUCTURE MITIGATION

**4.2.1. Continuing Obligation for Infrastructure Mitigation.** In order to minimize vibration and MF, Sound Transit shall have a continuing obligation to employ, over the term of this Agreement, the most current and effective design and material, including but not limited to quadrupole mitigation techniques at least within the limits of the University's Seattle campus, floating slabs and ultra straight track designed to produce minimum undulation and vibration, particularly at low frequencies, from the University of Washington Station to at least the northwest boundary of the University's Seattle Campus, "frogs" for crossover track work, and real time, continuous vibration and MF monitoring, detection, and warning system installed on University Property and vibration monitoring in tunnels north and south of the University Seattle campus boundaries. Such mitigation elements shall be designed and constructed as integral components of the Light Rail Transit System to the extent known prior to 100% Final Design.

**4.2.2. Continuing Obligation for Maintenance And Improved Mitigation.** In order to minimize vibration and MF impacts on University Property on a continuing basis over the term of this Agreement, Sound Transit shall employ an aggressive maintenance program and schedule specifically for University Property such that during Sound Transit's scheduled major maintenance of the Light Rail Transit System the most current and effective vibration and MF mitigation design and material known at that time will be incorporated as improvements under University Property once existing infrastructure components approach or reach the end of their useful life.

**4.2.3. Infrastructure Failure, Damages.** In the event of an Exceedance caused by Infrastructure Failure, Sound Transit shall pay to the University liquidated damages of Ten Thousand Dollars (\$10,000) per day for the first twenty four (24) hours. In the event such Exceedances are caused by failure in both tunnels simultaneously, Sound Transit shall have not more than seven (7) days, including the first 24 hour period, to correct the failure during which time the above level of liquidated damages accrue and are payable to the University. If Sound Transit fails to remedy the defect within the first seven days and an Exceedance occurs Sound Transit shall pay the University liquidated damages of Seventy Five Thousand Dollars (\$75,000) per day from the eighth day and thereafter until remedied. If failure occurs in only one tunnel, and Sound Transit continues to use

that tunnel and cause Exceedances, Sound Transit shall pay to the University liquidated damages of One Hundred Thousand Dollars (\$100,000) per day after the first twenty four (24) hours of a monitored Exceedance. For purposes of this paragraph, the term “day” shall mean twenty four (24) hours.

**4.2.4. Monitoring And Warning System Failure, Damages.** In the event the monitoring and warning system described in Section 4.2.1, becomes inoperative for more than two (2) consecutive days, Sound Transit shall pay to the University liquidated damages in the amount of One Hundred Thousand Dollars (\$100,000) per day following the two day period until the monitoring and warning system is made operational.

**4.2.5. Infrastructure Testing.** If Sound Transit determines that the University of Washington Station must be an interim terminus until funds are available to construct north to Northgate, Sound Transit shall install, within a portion of the North Link segment between downtown Seattle and the University of Washington Station, test infrastructure elements as generally described in Section 4.2.1, so that the Parties can jointly measure and assess the probable impact of Light Rail Transit System operations under University Property north of the University of Washington Station.

### 4.3. CONSTRUCTION MITIGATION

**4.3.1. Notice of Tunneling, Time Limit for Tunneling, Damages.** Sound Transit shall not begin any operation of a tunnel boring machine (“TBM”) under University’s Seattle Campus north of the University of Washington Station without providing University at least two (2) years advance notice of the tunnel boring commencement date(s). Sound Transit shall limit the elapsed time from commencement of any and all TBM tunneling activity under the University Seattle Campus north of the University of Washington Station to not more than three hundred four (304) days. For each day beyond this period, Sound Transit shall pay as liquidated damages to the University Twenty Thousand Dollars (\$20,000) per day until TBM operation is complete. Sound Transit shall develop and submit for the University’s approval a plan to extract the TBM(s) immediately north of the University of Washington Station within ninety (90) days of providing the above advance notice to the University.

**4.3.2. Time Limits for Staging Area Preparation, Construction and Restoration, Exceptions, Staging Area Acreage and Wall, Damages.** Unless otherwise approved by the University in writing, Sound Transit shall limit any Light Rail Transit System staging area preparation, staging, construction, and restoration activity above ground on the six (6) acres described below, the Triangle Garage area, and C-12 Parking Lot of University Property to no more than two thousand eight (2,008) days elapsed time. Use of the Triangle Garage area and C-12 Parking Lot shall be limited to construction support for the middle and north station access and associated structures and facilities only and the



minimum amount of time necessary. This total of 2,008 days shall not include the 304 day tunnel construction duration described in Section 4.3.1, the time necessary to construct temporary parking areas as described in Section 4.3.3, utility relocations and the time required to perform surveys, geologic tests, or similar non-invasive activities that will not interfere with the University's ongoing business activities. The total of 2,008 days shall not include time to comply with the clean up requirements described in Section 3.10 provided the University approves of such exclusion. Nothing in this section shall limit Sound Transit's obligations set forth in Section 4.3.4 of this Agreement. Staging areas east of Montlake Boulevard shall be surrounded by a wall with an exterior finish as approved by the University and shall be no greater in the aggregate than six (6) acres and shall be phased consecutively as follows:

Phase One: Four (4) acres for six hundred thirty eight (638) days;

Phase Two: Six (6) acres for one thousand ninety five (1,095) days; and

Phase Three: Two (2) acres for two hundred seventy five (275) days.

For each day beyond the 1,733 day total limit for Phases One and Two, above, Sound Transit shall pay as liquidated damages to the University Twenty Thousand Dollars (\$20,000) per day. For each day beyond the 1,095 day total limit for Phase Two, above, Sound Transit shall pay as liquidated damages to the University Twenty Thousand Dollars (\$20,000) per day. For each day beyond the 2008 day total limit for Phases One, Two and Three, above, Sound Transit shall pay as liquidated damages to the University Twenty Thousand Dollars (\$20,000) per day.

**4.3.3. Parking.** The University accepts the responsibility to mitigate the loss of a maximum of 600 parking spaces that will be lost on a temporary basis as a result of Sound Transit's construction in the C-12, E-11 and E-12 Parking Lots. The University also accepts the responsibility to mitigate up to a maximum of 100, of the 600, parking spaces thought to be permanently lost as a result of Sound Transit's long term facilities associated with the University of Washington Station. In return Sound Transit will pay to the University Ten Million Dollars (\$10,000,000) upon execution of this Agreement. This payment will need to occur in June, 2007 in order for the University to design and construct the replacement parking in accordance with public works laws and within University policies.

Should a significant unknown structural condition arise at the Triangle Garage location which significantly increases the costs at that location or if a third party agency makes parking on top of the Triangle Garage prohibitive, Sound Transit and the University will discuss options and agree on a plan to provide the necessary parking, which may include Sound Transit reimbursing the University for reasonable differential costs which may be required to develop and implement the agreed alternative plan. The University shall obtain the approvals and permits

required from agencies having jurisdiction in connection with developing the parking on the top of the Triangle Garage and Sound Transit, at no cost to Sound Transit other than staff resources, will work with and fully support the University in such efforts.

The restoration of Sound Transit's construction areas remains the responsibility of Sound Transit. If parking is lost in other areas of the University Seattle Campus beyond the anticipated 600 temporary and 100 permanent parking spaces because of Sound Transit construction, Sound Transit shall provide parking mitigation for those areas.

#### **4.3.4. Protection of University Activities From Sound Transit Construction.**

In addition to those requirements in Section 3.3, Sound Transit shall, as acceptable to University, Relocate or otherwise mitigate those University activities that cannot be conducted due to or because of the Sound Transit construction contemplated herein. Sound Transit's responsibility shall include, but not be limited to: (a) assuring that all University Facilities (for example, but without limitation, athletic events at sports venues and patient care at University medical facilities) are not hampered by Sound Transit construction and are able to operate at full capacity and in compliance with all fire safety regulations, "homeland security" or other regulations addressing terrorism, building codes, and all other governmental regulations; (b) not degrading below pre-Sound Transit construction levels the safe and reliable emergency vehicle access to all University Facilities, including but not limited to the University of Washington Medical Center in accordance with University approved traffic and crowd management plans; and (c) paying for supplemental police, security and traffic control staff as necessitated by light rail construction and spelled out in University-approved traffic and crowd management plans. Further, for any University construction activity identified in writing to Sound Transit at least 90 days before Sound Transit issues the major Request for Proposals (RFP) for construction at the University of Washington Station or on University Properties for which Sound Transit has an approved Easement, Sound Transit will plan for and manage its construction so as to protect and hold harmless the University from delays and increased construction costs associated with those identified University construction activities. In addition, Sound Transit shall include in its procurement documents the list, description and schedule of projects as provided by the University.

4.3.4.1. Sound Transit shall, unless otherwise authorized in writing by the University, halt construction activities and secure staging areas for patron protection and access during the University's Commencement, Convocation, and up to two (2) additional events per year. Sound Transit shall, unless otherwise authorized in writing by the University, halt activities that would interfere with Football games, Opening Day of the Boating Season (the Windermere Cup), and Basketball games during the time of Sound Transit construction staging described in Section 4, herein .

Sound Transit shall cooperate with the University to develop incremental traffic and crowd management plans, developed and executed at Sound Transit expense, that allow use of portions of the construction staging area for patron access during football games to the extent that it is mutually determined by the Parties to be safe and feasible. The University shall provide to Sound Transit information as to event dates as soon as such dates are known to the University and subsequent to the University receipt of the Sound Transit Board approved Light Rail Transit System construction schedule affecting University Property.

4.3.4.2. Sound Transit shall not conduct any Light Rail Transit System design, staging, construction or other use east of the existing fence located on the western edge of the E-10 Parking Lot as shown on Exhibit “---“. The University shall not conduct any of its project design, staging, or construction west of the existing fence on the western edge of the existing E-10 Parking Lot as shown on Exhibit “---“, during the time limits for staging and construction of the Light Rail Transit System in this area as provided in Section 4.3.2. These requirements shall not apply to the removal or replacement of University structures or facilities as approved by the University. The Parties may mutually agree to waive or modify the requirements of this Section.

4.3.5. **Community Outreach.** Sound Transit and the University shall coordinate on community outreach related to construction of the Light Rail Transit System on University Properties and the University’s construction activity as identified by University under Section 4.3.4, PROVIDED THAT, Sound Transit shall be responsible for addressing community concerns regarding its Light Rail Transit System construction projects on University Properties.

4.3.6. **Construction Traffic.** Prior to Sound Transit’s submittal of design, mitigation and monitoring plans for approval of the Board of Regents, Sound Transit shall evaluate construction truck traffic impacts and, as part of its plans, propose construction traffic routes and scheduling that minimize impacts to the University’s operations.

4.3.7. **Limitation on Use of Construction Staging Area.** Sound Transit shall limit its use of the construction staging area on University Properties to those activities necessary to support the construction of tunnels for the Light Rail Transit System from Capital Hill to University of Washington Station and future removal of the TBM. The Staging Area shall not be used to store or transship materials used in construction of the Capital Hill Station or any part of the Light Rail Transit System south of the Capital Hill Station unless approved in writing by the University.

#### 4.4. SECURITY RISK MITIGATION

**4.4.1. Design Construction and Operation.** Sound Transit shall design, construct, and operate the Light Rail Transit System on University Property with particular attention to potential terrorist threats to the University.

**4.4.2. Background Check, Plans, Assessments and Protection of Documents.** Sound Transit shall complete background checks on all of its employees, contractors, and agents with access to University Medical Center properties, install and monitor closed circuit television or other means of security acceptable to the University, prepare a security plan, specific and unique vulnerability assessments or specific and unique response or deployment plans, all subject to University approval which shall not be unreasonably withheld. Sound Transit shall protect such plans and assessments, as well as the detailed designs of the tunnels within University Properties, to the maximum extent allowed under Washington State law. The security plan and system for protecting documents from public records requests shall be completed during Final Design and approved by, among others, University prior to Sound Transit issuing bids for construction of the Light Rail Transit System.

**4.4.3. Security Plan.** Sound Transit shall develop a confidential security plan for terrorism protection on all portions of the Light Rail Transit System on University Properties. This plan shall be completed prior to commencement of Revenue Service.

#### **4.5. MAINTENANCE AND OPERATIONS MITIGATION**

**4.5.1 Relocation Prior to Construction.** Sound Transit shall provide the University with 90% Final Design Predictions for Light Rail Transit System operations as called for in Section 4.1.2, prior to commencement of construction of the Light Rail Transit System. Within ninety (90) days receipt of the 90% Final Design plans the University shall provide draft Relocation plans and estimated Relocation costs to Sound Transit. Upon completion of 100% Final Design the Parties shall collaborate on a confirmation review to achieve the final Relocation plan and estimated costs. Sound Transit shall pay all actual costs, including staffing and administrative costs, for the University to Relocate research or other University activities that cannot be conducted in buildings in which they are then located because the Predictions for vibration or MF at 100% Final Design indicate that the University Requested Thresholds for those buildings will be exceeded. At the sole discretion of the University, other mitigation measures, provided at Sound Transit expense, may be considered as an alternative to Relocation on a case-by-case basis.

**4.5.2. Maintenance Program.** Sound Transit shall develop and fund a maintenance program adequate to prevent deterioration of the infrastructure described in Section 4.2.1 and the rolling stock which makes use of said infrastructure on University Properties such that the Thresholds contemplated in this Agreement do not experience Exceedance.

**4.5.3. Early Warning Detectors Actuation, Exceedance, Damages.** In the event a light rail vehicle or vehicles actuates the north or south-of-campus early warning vibration detectors contemplated in Section 4.2.1, Sound Transit shall prohibit such defective vehicle(s) from passing under University Property unless such passage can, by way of slow speed or other operational means, be made without causing an Exceedance.

4.5.3.1. In the event of an Exceedance caused by a light rail Vehicle Failure, Sound Transit shall pay to the University liquidated damages of Ten Thousand Dollars (\$10,000) per monitored Exceedance for passage of that vehicle under campus, PROVIDED THAT should such Exceedance result from Sound Transit allowing the same defective vehicle to pass under University Property more than once Sound Transit shall pay to the University liquidated damages of Fifty Thousand Dollars (\$50,000) per monitored Exceedance for passage of that vehicle under campus, and PROVIDED THAT the University may waive or reduce liquidated damages for Exceedances, as authorized in writing by the University, to allow defective Sound Transit vehicles to pass under University Property en route to a Sound Transit repair facility. Liquidated damages shall apply separately to vibration and MF Exceedances.

**4.5.4. System Degradation, Required Action, Exceedance, Damages.** In the event a long term trend of system degradation (“Trend”) is identified by the monitoring program contemplated in Section 4.1.4. that could result in Exceedances within two years if general system improvements are not implemented, each of the following shall apply:

4.5.4.1. Sound Transit shall, within ninety (90) days of the identification of such Trend provide a system improvement action plan to the University which plan shall describe the nature of the Trend, identify system improvements necessary to address it, and identify a schedule and budget for implementation.

4.5.4.2 Sound Transit shall implement the system improvement action plan and remedy the Trend prior to the end of a two (2) year period from identification of the Trend.

4.5.4.3. In the event of an Infrastructure or Vehicle Exceedance occurs during this two year period, Sections 4.2.3 and 4.5.3, shall apply.

4.5.4.4. In the event Sound Transit fails to perform under Section 4.5.4.1 Sound Transit shall pay the University liquidated damages in the amount of Five Thousand Dollars (\$5,000) per day for each day after 90 days until remedied by providing an acceptable plan to University for its consideration. In the event Sound Transit fails to perform under Section 4.5.4.2 or receive the University’s approval of an amended plan, which



may include operational measures as well as physical modifications, within that time frame, Sound Transit shall pay University liquidated damages in the amount of Twenty Thousand Dollars (\$20,000) per day for each day until the Trend is remedied. The University shall not unreasonably withhold plan approval. Any Exceedance that occurs beyond the two year period and is attributable to Sound Transit's failure to perform under Section 4.5.4.2 shall require Sound Transit to pay liquidated damages in the amount of One Hundred Fifty Thousand Dollars (\$150,000) per each day of any monitored Exceedance.

## **Section Five: Additional Clarification of Remedies to University**

**5.1. APPLICATION OF MOA.** The remedies available to the Parties under the MOA (for example but without limitation, IV regarding reserved claims and VI regarding unanticipated impacts) continue to apply, with the additions and clarifications provided in this Agreement.

**5.2. LIQUIDATED DAMAGES.** For impacts to research or experimental activities, actual damages to the University caused by the failure of Sound Transit to achieve the requirements of this Agreement are presently and will continue to be difficult to determine. Therefore, in partial but not exclusive reimbursement for damages to the University, the liquidated damages specified throughout this Agreement are reasonable estimates of direct, indirect, and consequential damages suffered by the University for such impacts as caused by Sound Transit's failure to meet the specified requirements.

**5.2.1. Payment of Liquidated Damages, Interest.** Payment(s) of liquidated damages shall be due and payable to the University, without any action by the University to request such payment(s), within thirty (30) days from the first date of an event creating a liquated damage condition. Sound Transit will pay liquidated damages to the University no later than the first business day of each calendar month following the 30 day period described above until the condition(s) creating the liquidated damages have been remedied and all liquidated damages have been paid to the University. Failure to provide payment(s) as described will result in interest at the rate of one percent (1%) per month on the unpaid balance added to any payment between one but less than two months late. For any payments more than two months late, Sound Transit shall pay interest on the unpaid balance at the rate of two percent (2%) per month.).

**5.3. DAMAGES AND RELIEF FOR LARGE SCALE OR LONG-TERM FAILURES.** The estimates of damage underlying the liquidated damages set forth in this Agreement are based on the assumption that Sound Transit's failures will be neither severe nor prolonged. The liquidated damages will not be adequate estimates of the University's direct, indirect, and consequential damages for large scale or long-term failures. Therefore the liquidated damages set forth above shall apply only for a reasonable period of time as determined by the University on a case by case basis depending on the nature of the research or experimental activity being damaged. After

such determination by the University, and the University's notification to Sound Transit of such determination, such liquidated damages shall cease and the University will be permitted to prove and recover actual damages in excess of the liquidated damages and/or may seek any relief at law or in equity including immediate relief directly through superior court.

**5.4. FAILURE TO PERFORM – COSTS AND DAMAGES.** For impacts which are caused by Sound Transit's failure to perform under this Agreement but which are not addressed by liquidated damages under this Agreement, including but not limited to personal and property damage, Sound Transit shall pay to the University the true and full costs including, but not limited to, all direct, indirect, and consequential damages, and attorney fees incurred by the University to enforce this Agreement and Sound Transit performance resulting from such failure by Sound Transit to perform under this Agreement.

**5.5. FAILURE TO PERFORM – OTHER RELIEF.** For impacts which are caused by Sound Transit's failure to perform under this Agreement but which are not addressed by liquidated damages as provided in this Agreement, the University shall be entitled, in addition to any other rights and remedies it shall have at law or in equity, the following:

**5.5.1. Construction.** During construction, Section 7.4.3 of the MOA guides the manner in which relief may be sought, with two clarifications: (1) arbitration, pursuant to the 2000 Revised Uniform Arbitration Act, is required to resolve disputes using a mutually agreed upon retired judge through either the Judicial Arbitration and Mediation Services ("JAMS") or a similar organization and (2) any relief at law or in equity including immediate relief requiring action or restraining action may be granted.

**5.5.2. Operation.** During operation, any relief at law or in equity including immediate relief requiring action or restraining action may be sought either as described in Section 5.5.1 or directly through superior court.

**5.6. INDEMNIFICATION.** The Parties agree that the indemnification provisions of the MOA shall apply to this Agreement.

## **Section Six: Easement(s) Provided to Sound Transit by University**

**6.1. INTEREST TO BE GRANTED, EXTENT OF EASEMENTS.** The University shall retain fee ownership of all University Property. In consideration of and subject to the terms and conditions contained in this Agreement, the University shall grant to Sound Transit temporary construction easements and transportation easements to construct, operate, maintain, and monitor public transportation facilities on University Properties. The exact location, terms and conditions of each easement shall be described in separate easements which shall be made part of this Agreement pursuant to Section 1.2 above. Each easement shall include rights of ingress and egress across, over, and through the University's Seattle Campus, as reasonably necessary to use the easement areas for the

purposes identified therein. The location and applicable terms of such ingress and egress shall be as reasonably approved in advance by the University from time to time. Except for temporary construction easements, easements shall remain in effect for so long as University Property, subject to the easements, is used by Sound Transit for transportation purposes.

**6.2. TEMPORARY CONSTRUCTION EASEMENTS--TERM.** Temporary construction easements needed for construction north to the University of Washington Station will cease by January 1, 2020, in the absence of further agreement by the Parties. The temporary property rights period can only be extended with the agreement of the University.

**6.3. TEMPORARY CONSTRUCTION EASEMENTS—OTHER CONDITIONS.** Any temporary construction easement shall include provisions that: (i) the easement is subject to the acreage and time limitations set forth in 4.3 and 6.2, above, (ii) the property will be returned in a condition satisfactory to the University; and (iii) Sound Transit shall provide written notice in recordable form of termination of such temporary construction easement(s) when the work there under is complete.

**6.4 TRANSPORTATION AND TEMPORARY CONSTRUCTION EASEMENTS—OTHER CONDITIONS.** Any transportation easement or temporary construction easement granted to Sound Transit shall include provisions which make the easements subject to the terms of this Agreement. Specifically and without limiting the application of other parts of this Agreement, the following terms are applicable to the easements: (a) construction and operation within the easement areas by Sound Transit shall be subject to the University's approval as set forth in the MOA and this Agreement, such approval includes, but is not limited to, review and approval of a construction safety and security plan; (b) Sound Transit is responsible for restoration of any easement area at its expense and subject to the University's approval of design and final restoration plans; (c) Sound Transit is responsible for all permit and regulatory requirements in its use of all easement areas; (d) Sound Transit must comply with the applicable insurance, indemnification and hazardous and non-hazardous waste management requirements set forth in the MOA; and (e) Sound Transit shall be solely responsible for all costs and expenses related to its use of these easements.

## 6.5. FORM OF EASEMENTS

6.5.1. Attached hereto as EXHIBIT D-1 is a form of Temporary Construction Easement and Agreement with respect to the construction of Sound Transit's Light Rail Transit System to be constructed from downtown Seattle to and including the University of Washington Station that is within the University's Seattle Campus ("Segment 1").

6.5.2. Attached hereto as EXHIBIT D-2 is a form of Transportation Easement and Agreement with respect to Segment 1.

6.5.3. Attached hereto as EXHIBIT D-3 is a form of Temporary Construction Easement and Agreement with respect to Sound Transit's Light Rail Transit System from the University of Washington Station toward Northgate that is within the University's Seattle Campus ("Segment 2").

6.5.4. Attached hereto as EXHIBIT D-4 is a form of Transportation Easement and Agreement with respect to Segment 2.

6.5.5. At such time as the conditions for the granting of each such Easement are satisfied, the Parties shall finalize the Easement in substantially the form attached hereto, attach all required exhibits, execute the Easement, and record it in the real property records of King County, Washington.

## **Section Seven: Consideration for Easements Provided to Sound Transit**

**7.1. PAYMENT TO UNIVERSITY UPON EXECUTION OF EASEMENTS.** The Parties agree the Per Square Foot Land Surface Value of the easements contemplated by this Agreement is One Hundred Seventy-Five Dollars (\$175). The Parties also agree the use of the land covered by the easements does vary and therefore in calculating the value of the easements this Per Square Foot Land Surface Value should at times be discounted to reflect the varied uses. The Parties recognize that calculating the value of the easements simply by using the precise square footage for each easement and this dollar value (\$175), discounted as appropriate, could be difficult and would not reflect the rights, risks, and obligations set forth in the entire Agreement. Consequently the Parties have agreed to a lump sum, firm, fixed payment of Twenty Million Dollars (\$20,000,000) by Sound Transit to the University as consideration for the terms, conditions, and easements contemplated in this Agreement. This payment is subject to adjustment pursuant to Section 3.7 should the payment occur after May 31, 2008. This amount is based in general on the Per Square Foot Land Surface Value noted above and the square footage shown on Exhibit \_\_\_\_ but also reflects the allocation of risks and the rights and obligations afforded to each Party by this Agreement. Payment shall be made to the University upon execution of the easements contemplated in Sections 6.5.1 and 6.5.2. The Parties agree that the easements contemplated in this Agreement may be executed at the same time. The Twenty Million Dollar (\$20,000,000) payment set forth in this Section is unrelated to, separate from and in addition to the costs, payments and damages otherwise specifically identified in this Agreement. The square footage set forth in Exhibit \_\_\_\_ establish the maximum square footage that Sound Transit can use for each specific use and the total square footage available for all uses. The square footages between uses may be reallocated up to the maximum square footages with the University's approval.

## **Section Eight: Severability**

**8.1. SEVERABILITY.** If any term or provision of this Master Implementation Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and

provisions of this Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

## **Section Nine: Modification or Amendment, Waivers**

**9.1. MODIFICATION OR AMENDMENT, WAIVERS.** No amendment, change or modification of this Agreement shall be valid unless in writing and signed by all of the Parties hereto. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof or of any other covenant or provision in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

## **Section Ten: Captions**

**10.1. CAPTIONS.** Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by any one of the Parties, but rather as if all Parties had prepared it. If the date on which any party is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

## **Section Eleven: Time**

**11.1. TIME.** Time is of the essence of every provision of this Agreement.

## **Section Twelve: Assignment**

**12.1. ASSIGNMENT.** Except as expressly provided herein, Sound Transit shall not assign or pledge this Agreement or any part hereof, whether voluntarily or by operation of law, or permit the use or occupancy of any easement areas or any part thereof by anyone other than Sound Transit and its permitted employees, agents and contractors, without the University's prior written consent, which shall not be unreasonably withheld.

**12.1.1. Transfer Notice.** If Sound Transit desires to assign this Agreement or to grant the right to use or occupy any easement area, Sound Transit shall give the University written notice ("Transfer Proposal") at least one-hundred and twenty (120) days prior to the effective date of such proposed assignment or occupancy. The Transfer Proposal shall contain all of the information reasonably requested by the University to address the University's conditions specified below. From the date of the University's acceptance of the Transfer Proposal as complete, the University shall then have a period of ninety (90) days to notify Sound Transit in writing of the University's response to Sound Transit's Transfer Proposal. If the University fails to notify Sound Transit in writing within said period, the University shall be deemed to have rejected Sound Transit's Transfer Proposal. Consent to any assignment by the University shall not constitute consent to any subsequent assignment.

**12.1.2. Conditions to University Consent.** Without limiting the other instances in which it may be reasonable for the University to withhold the University's consent to a Sound Transit Transfer Proposal, it shall be reasonable for the University to withhold its consent in the following instances:

- (a) If the proposed assignee does not agree to be bound by and assume the obligations of Sound Transit under this Agreement; and
- (b) If the use of any easement area by such proposed assignee would not be a permitted use under this Agreement.

**12.1.3. Liability.** No assignment of any or all of Sound Transit's rights under this Agreement, permitted or otherwise, shall relieve Sound Transit of any obligation under this Agreement or alter the primary liability of Sound Transit for the performance of its obligations hereunder. The University may receive payments and otherwise deal with any such assignee, but no such action of the part of the University shall be deemed to be a waiver of this Section 12 or a release of Sound Transit from the further performance by Sound Transit of its obligations hereunder.

**12.1.4. Unpermitted Assignment.** Any assignment by Sound Transit of any or all of its rights or obligations under this Agreement which has not been permitted by the University in accordance with this provision shall be void.

## **Section Thirteen: Successors and Assigns**

**13.1. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and shall inure to the benefit of the University, its successors and assigns, and shall be binding upon and inure to the benefit of Sound Transit, its successors and, to the extent assignment is approved by the University as provided in this Agreement, Sound Transit's assigns.

## **Section Fourteen: Entire Agreement**

**14.1. ENTIRE AGREEMENT.** This Agreement contains all terms, conditions and provisions agreed upon by the Parties hereto, and shall not be modified except by written amendment.

## **Section Fifteen: Exhibits Incorporated**

**15.1. EXHIBITS.** All Exhibits identified in this Agreement are incorporated by reference into this Agreement.

## **Section Sixteen: Correspondence and Notice**

**16.1 Designated Representatives.** All notices provided for herein shall be in writing and addressed to each of the Parties at the following addresses:

University: For construction issues the AVP for Capital Projects, University of Washington Capital Projects Office, University of Washington Facilities Building, Box 352205, Seattle Washington 98195-2205. For operations issues the AVP for Facilities Services, University of Washington Physical Plant Office Building, Box 352215, Seattle Washington 98195-2205

Sound Transit: Chief Executive Officer, Sound Transit Union Station, 401 S. Jackson Street, Seattle, WA 98104-2826

**16.2 Method of Notice.** The method of notice shall be as set forth in Section 9.2 of the MOA

## Section Seventeen: Execution

17.1 **EXECUTION.** This Master Implementation Agreement is entered in multiple counterparts and becomes effective on the date of the last signature, the signers of which have authority from their respective Boards.

SOUND TRANSIT

UNIVERSITY OF WASHINGTON

\_\_\_\_\_  
Joan M. Earl  
Chief Executive Officer  
Date: \_\_\_\_\_

\_\_\_\_\_  
Mark A. Emmert  
President  
Date: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Stephen G. Sheehy  
Legal Counsel

By: \_\_\_\_\_  
Karin L. Nyrop  
Assistant Attorney General