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PIERCE COUNTY, WASHINGTON

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City of Tacoma  
City Clerk's Office  
747 Market Street, Room 220  
Tacoma WA 98402-3769

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<b>DOCUMENT TITLE</b>  Interlocal Agreement
<b>Grantor</b> City of Tacoma
<b>Grantees</b> Central Puget Sound Regional Transit Authority (Sound Transit)
<b>Description</b> Interlocal agreement with Sound Transit to provide for reimbursement of costs for railroad track inspections and maintenance from Sound Transit to Tacoma Rail regarding the M Street to Lakewood rail corridor.
<b>Reference Number</b>
<b>Assessor's Parcel Number</b>

**INTERAGENCY AGREEMENT  
BETWEEN  
CITY OF TACOMA, TACOMA RAIL  
AND  
CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY**

**THIS AGREEMENT** ("Agreement") is made and entered into by and between the City of Tacoma, Department of Public Utilities, Beltline Division (dba Tacoma Rail) ("TR") and the Central Puget Sound Regional Transit Authority ("ST") pursuant to the authority granted by Chapter 39.34 RCW.

**IT IS THE PURPOSE OF THIS AGREEMENT** for Tacoma Rail to provide Sound Transit track inspection and maintenance services of the M Street to Lakewood rail corridor (defined as MP 3.18 to Bridgeport Way MP 10.4), in Pierce County, Washington, prior to the start of passenger train service on the rail corridor.

**RECITALS:**

**WHEREAS** the City of Tacoma is a municipal corporation operating as a first-class City under the laws of the State of Washington, and its Department of Public Utilities, Beltline Division is a municipal department of the City, and

**WHEREAS** the Beltline Division, doing business as Tacoma Rail, is the existing freight operator, controller of train operations, only railroad currently operating (*with Burlington Northern Santa Fe Railroad ("BNSF") operates occasionally under TR's trackage rights over a limited portion of the line*) on the M Street to Lakewood rail corridor, and

**WHEREAS** in accordance with its agreement with BNSF and its agreement with Sound Transit as successor in interest to BNSF as the holder of the railroad freight easement, TR was responsible for maintenance activities in the rail corridor until ST started construction of the new track, and

**WHEREAS** ST is now responsible for the maintenance of the M Street to Lakewood rail corridor, and

**WHEREAS**, when it has completed construction Sound Transit would like for TR, as the freight easement holder and only operating railroad on the corridor, to continue providing maintenance services until it starts its commuter rail operation sometime after July 26, 2012.

**NOW, THEREFORE**, in consideration of the terms and conditions contained herein, the above named parties mutually agree as follows:

**1. GENERAL STATEMENT OF RESPONSIBILITIES**

TR responsibilities:

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- A. Perform all inspections and maintenance of the M Street to Lakewood rail corridor. The inspection and maintenance will be conducted as required in Part 213 of Title 49 of Code of Federal Regulations.
- B. Maintain track to Class II standard.
- C. Inspect and maintain the right of way to 25 feet on each side of the track as measured from the centerline. Where there is more than one track, the right of way to maintain will be figured inclusive of the area between the tracks and 25 feet from centerline of each outside track.
- D. Provide railroad flagging and protective services as defined in 49 CR 214 as required.
- E. Remove litter, debris, and similar objects.
- F. Remove obscene or gang-related graffiti if required by law enforcement or similar authority; however, repainting of bridge structures or walls will be considered a capital improvement requiring mutual consent (see below).
- G. Create and supply monthly reports of track inspection and maintenance activities.
- H. Coordinate with D Street to M Street construction contractor as needed.
- I. Submit and retain required reports to the Federal Railroad Administration on inspection and maintenance activities.
- J. Provide potential coordination with successor maintenance services provider following the termination of this Agreement.

ST responsibilities:

- A. Pay for the cost of inspection and maintenance of the M Street to Lakewood rail corridor as provided in Section 4.
- B. Pay for ad hoc flagging services as required.
- C. Pay for emergency services as agreed to by the parties, which consist of activities that are outside of routine inspection and maintenance services.
- D. Provide current track charts for the M Street to Lakewood rail corridor.
- E. Provide real property management services not including the inspection and maintenance responsibilities of TR.
- F. Provide security services.
- G. Pay for capital improvements as agreed to by the parties (as way of example, but not limited to tie replacement, rail replacement, ballast replacement, bridge/trestle repair, repainting of bridge or wall structure, wall repair, etc.).
- H. Maintain all signals and utilities.
- I. Pay for the removal of hazardous materials, refrigerators, tires, automobiles, and other similar objects requiring specialize disposal methods or dumping fees.

**2. TERMS AND CONDITIONS**

All rights and obligations of the parties to this Agreement shall be subject to and governed by the terms and conditions contained in the text of this Agreement.

**3. PERIOD OF PERFORMANCE**

Subject to its other provisions, the period of performance of this Agreement shall commence on \_\_\_\_\_, 2010 through December 31, 2011. TR understands that the exact time when ST starts testing it commuter rail system is not known. Therefore, ST may, at its sole option, extend the term of the agreement for up to 2 additional years. ST will give TR 30 days written notice

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before the end of the term or any extension term, of ST's intention to extend the term of this Agreement.

**4. CONSIDERATION**

ST shall pay TR \$5,420.25 per month for inspection and maintenance of the rail corridor plus the costs of any materials. Any other work that is estimated to be over \$5,000 that is not covered in the routine maintenance are subject to Sound Transit approval using task orders.

**5. BILLING PROCEDURE**

TR shall invoice ST monthly for the inspection and maintenance fee as set forth in section 4 of this Agreement. The invoice should be submitted to Sound Transit, Accounts Payable, 401 S. Jackson, Seattle, Washington 98104 and shall include an itemized list of any materials costs or other services costs/fees that TR is entitled to be reimbursed from ST as provided in Section 1. ST shall pay TR within 45 days of a properly documented invoice as provided above.

ST may contest costs in the invoice within 30 days of receipt of the disputed invoice. TR will investigate ST's claims and will make appropriate amendments to the invoice, if necessary. Nonetheless, ST will still be required to pay the amount due on the invoice (following TR's investigation); however, ST does not waive its rights to further dispute resolution processes after making the required payment.

**6. ENFORCEMENT ACTION, AND INDEMNIFICATION,**

If either party fails to comply with a law or regulation that results in the imposition of any fine, penalty, cost, or charge by an enforcement or regulatory body against the other party or its officers, officials (elected or appointed), employees, or agents, then the party found to be in violation shall reimburse, indemnify, and hold harmless the other party and its officers, officials (elected or appointed), employees, or agents, for any such fine, penalty, cost, or charge to the extent it arises out of the actions of the party found to be in violation. The parties further agree, upon receiving notice of any action seeking to impose any such fine, penalty, cost, or charge against the party alleged to be in violation, to defend such action at that party's own expense.

To the extent permitted by law, each party to this Agreement shall protect, defend, indemnify, and save harmless the other party, and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property, which arise out of, or in any way result from, or are connected to, or are due to any negligent acts or omissions of the indemnifying party. No party shall be required to indemnify, defend, or save harmless the other party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the party seeking indemnification. Where such claims, suits, or actions result from concurrent negligence of the parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the party's own negligence. Each party agrees that its obligations under this indemnification section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each party, by mutual negotiation, hereby

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waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. In the event of any claims, demands, actions and lawsuits, the indemnifying party upon prompt notice from the other party shall assume all costs of defense thereof, including legal fees incurred by the other party, and of all resulting judgments that may be obtained against the other party. In the event that any party incurs attorney fees, costs or other legal expenses to enforce the provisions of this section, all such fees, costs and expenses shall be recoverable by the prevailing party. This indemnification shall survive the expiration or earlier termination of this Agreement. In the event that any party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the parties hereto agree that any such action or proceedings shall be brought in a court of competent jurisdiction situated in Tacoma, Pierce County, Washington.

## 7. Insurance

During the course and performance of the services herein specified, TR and TR's agents, consultants, sub consultants, contractors and subcontractors shall maintain the following insurance coverage:

- a. **Workers Compensation:** insurance coverage for its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. The consultant or contractor will be responsible for Workers Compensation insurance for any subconsultant or subcontractor who provides work under subcontract.

If TR and TR's agents, consultants, subconsultants, contractors and subcontractors is qualified as a self-insurer under Chapter 51.14 of the Revised Code of Washington, it will so certify to Sound Transit by submitting a letter signed by a corporate officer, indicating that it is a qualified self-insurer, and setting forth the limits of any policy of excess insurance covering its employees.

- b. **Commercial General Liability:** insurance coverage must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$6,000,000. Coverage must be purchased on a post 1998 ISO occurrence form (CG 00 01) or equivalent.

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

Comprehensive general liability insurance policies and coverage obtained pursuant to this Agreement shall include an endorsement (standard ISO form CG 24-17) deleting all exclusions for work or incidents occurring within any distance from a railroad track or railroad property, or on, over, or under a railroad track.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

- c. **Railroad Protective Liability Insurance.** This insurance must conform with the Standard Provisions for General Liability Policies, Railroad Protective Liability Form and the specific requirements described below:

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Limits of policies shall be \$2,000,000 combined single limit Bodily Injury and Property Damage liability each occurrence, \$6,000,000 annual aggregate.

The railroad protective liability policy(ies) shall be on an occurrence basis and shall be issued with the name of the insured being Sound Transit and stating that coverage under such policy is primary over and non-contributory with any insurance the Sound Transit may maintain.

- d. **Commercial Automobile Liability:** As specified by Insurance Services Office, form number CA 0001, Symbol 1 (any auto). Such policy(ies) must provide coverage with a combined single limit of not less than \$1,000,000 for each accident for bodily injury and property damage.

Certificates of the above insurance coverage shall be delivered to the ST within ten days of demand by the ST, by TR's and TR agents, consultants, contractors and subcontractors insurance carrier(s) or agent(s) certifying the above insurance coverage items are in effect and will not be cancelled or materially changed without thirty (30) days written notice given to the City

The parties agree in lieu of procuring and providing the above insurance policies, TR may self-insure as is customary under its risk management program. TR warrants that the self-insured retentions are in keeping with its net worth and cash flow and are consistent with that of other corporations and municipalities of similar operations and size. Adequate reserves are maintained for claims within the retentions.

## 8. AGREEMENT CHANGES, MODIFICATIONS AND AMENDMENTS

This Agreement may be changed, modified or amended by written agreement executed by both parties.

## 9. ASSIGNMENT AND NO THIRD PARTY BENEFICIARIES

The work to be provided under this Agreement, and any claim arising from such work, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld. This Agreement shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

## 10. Dispute Resolution

The Parties shall make every reasonable effort to settle any dispute arising out of this Agreement. If the contract management team listed in section 11 is unable to resolve the dispute, it will be submitted to the Sound Transit Operations Executive Director, or designee, and the City of Tacoma's Director of Public Utilities or designee. If they are unable to resolve the dispute the Parties will seek arbitration when appropriate.

## 11. CONTRACT MANAGEMENT

The representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

- A. The Sound Transit representative on this Agreement shall be:



Martin Young, Sounder Operations Manager  
Sound Transit  
401 South Jackson Street  
Seattle, WA 98104  
(206) 398-5115

B. The Tacoma Rail representative on this Agreement shall be:

Dale W. King, Superintendent  
Tacoma Public Utilities, Tacoma Rail  
2601 SR 509 North Frontage Road  
Tacoma, WA 98421  
(253) 502-8818

## **12. GOVERNANCE**

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The parties agree that the jurisdiction and venue to resolve any dispute or for the filing of court shall vest solely in the Superior Court of Pierce County, Washington, or the Western District of the Federal District Court for Washington State.

## **13. INDEPENDENT CAPACITY**

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

## **14. COMPLIANCE WITH APPLICABLE ENVIRONMENTAL LAWS**

TR agrees to comply with all applicable federal, state and local environmental laws and regulations (including but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, (CERCLA) in its performance of this Agreement. In no case shall TR be responsible for any pre-existing liability, claim, or obligation or anything arising there from nor shall TR be required to take any action in regards to such matter, unless TR was caused the pre-existing liability, claim or obligation.

## **15. FORCE MAJEURE**

Either party shall not be deemed in default with the provisions of this agreement if performance is rendered impossible by war, riot, civil disturbances, floods, or other natural catastrophes or act of God, provided that such party has made and is making all reasonable efforts to perform such obligation and minimize any and all resulting loss or damage. Such performance shall be excused until the event of force majeure has passed.

## **16. SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement, which can be given effect without the invalid provision if such remainder conforms to the

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requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

**17. TERMINATION**

Either party may terminate this Agreement upon 60-days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**18. WAIVER**

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

**19. ALL WRITINGS CONTAINED HEREIN**

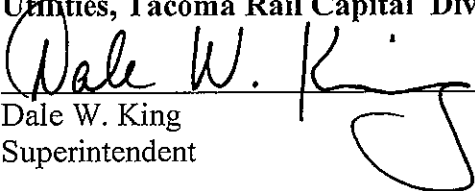
This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Central Puget Sound  
Regional Transit Authority


City of Tacoma, Department of Public  
Utilities, Tacoma Rail Capital Division

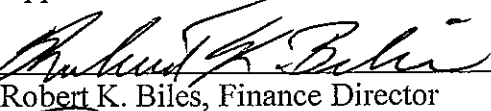
  
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Joan M. Earl  
Chief Executive Director


  
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Dale W. King  
Superintendent

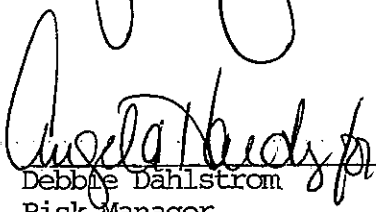
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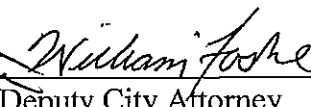
Approved:

  
\_\_\_\_\_  
Sound Transit Legal Counsel

  
\_\_\_\_\_  
Robert K. Biles, Finance Director

  
\_\_\_\_\_  
Approved as to Form:

  
\_\_\_\_\_  
Debbie Dahlstrom  
Risk Manager

  
\_\_\_\_\_  
William Forke  
Deputy City Attorney

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