This Link Operations and Maintenance Agreement (“Agreement”) is entered into by and between the Central Puget Sound Regional Transit Authority (hereinafter referred to as “Sound Transit”) and King County (hereinafter referred to as “the County”), as may be referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, pursuant to chapters 36.56 RCW and 35.58 RCW and public vote, the County is authorized to perform metropolitan public transportation functions; and

WHEREAS, pursuant to RCW 81.112.070 and public vote, Sound Transit is authorized to perform regional public transportation functions; and pursuant to RCW 39.33.050 may contract with any public transportation benefit area, any county, transportation authority, city, metropolitan municipal corporation, and any private person, firm, or corporation for the operation of high capacity transportation system facilities within Sound Transit’s service area boundary set forth in Sound Move, the Ten Year Regional Transit System Plan; and

WHEREAS, Sound Move and Sound Move 2 provide for a high-capacity transit system comprised of an electric light rail component that currently operates between the Cities of Seattle, Tukwila, and SeaTac and is being expanded to serve other cities in King, Pierce, and Snohomish counties, referred to in this Agreement as “Link” and as further defined in Exhibit Aand the route of which is generally described in Exhibit B; and

WHEREAS, the County and Sound Transit approved a Memorandum of Understanding dated May 11, 1998 that describes the general relationship between the County and Sound Transit and provides for specific project agreements to be developed by the County and Sound Transit as warranted; and

WHEREAS, Sound Transit, the County and the City of Seattle entered into an Agreement regarding the Design, Construction, Operation, and Maintenance of the Downtown Seattle Transit Tunnel (DSTT) and Related Facilities effective July 9, 2002 (DSTT Agreement), which describes the general conditions and relationship between Sound Transit and the County regarding use of the DSTT; establishes that Sound Transit shall have the right to use or purchase the DSTT for high capacity transportation (“HCT”) purposes; and directed the development of an intergovernmental agreement for operations and maintenance of Link between Sound Transit and the County; and

WHEREAS, as of April 2019, Sound Transit and the County are negotiating a potential transfer of the DSTT from the County to Sound Transit, and in addition, Sound Transit and the County are negotiating for the County to operate and maintain the DSTT on behalf of Sound Transit.

WHEREAS, the regional transportation system was improved for many years during the initial development and subsequent expansion of the Link system by having buses and light rail trains operate through the DSTT and thus enabling regional bus routes to continue to use the Tunnel and benefit transit patrons not directly served by light rail; and

WHEREAS, the Parties acknowledge that bus operations in the DSTT ended in March of 2019 and that bus operations in in the DSTT would likely have ended not later than 2021 with the commencement of Link service to the Northgate station, which would have necessitated shorter headways between Link trains in the DSTT and thus made it difficult if not impossible to continue to operate bus service there; and

WHEREAS, Sound Transit is authorized to contract for public transportation services as herein provided pursuant to RCW 39.33.050; and

WHEREAS, Sound Transit and the County entered into an Intergovernmental Agreement for the Operation and Maintenance of Link in June of 2003 ("June 2003 IGA"); and

WHEREAS, Sound Transit and the County determined that revisions of the June 2003 IGA were necessary to incorporate better practices and procedures for carrying out the operation of Link and to include the Airport segment of the system in the Intergovernmental Agreement.; and

WHEREAS, the June 2003 IGA was administratively revised in 2009 in ways that did not affect the policy or intent of the June 2003 IGA (“December 2009 Revision”); and

WHEREAS, the Parties administratively extended the term of the December 2009 Revision from time to time through July 17, 2019, as permitted under the terms of that agreement; and

WHEREAS, Sound Transit and the County have determined it to be within the public interest to enter into a new agreement for the County’s continued operation of Sound Transit’s Link light rail system; and

WHEREAS, the Parties wish to enter into a new agreement for the County, through its Metro Transit Department ("KCM") to operate and maintain Sound Transit’s Link light rail system for a period of years,

NOW, THEREFORE, in consideration of the mutual terms and obligations contained herein, the Parties agree as follows:

1.0 PURPOSE AND SCOPE OF AGREEMENT

1.1 Purpose and Scope

This Agreement, including all attached Exhibits, specifies the Parties’ roles and responsibilities regarding the operations and maintenance of Link during Start-Up and passenger services.

1.2 Definitions

Certain capitalized words used in this Agreement are defined in Exhibit A.

2.0 SYSTEM DESCRIPTION

Link is a system that serves Seattle and the greater Puget Sound Area, using a barrier-free proof of payment system. Exhibit B is a general description and diagram of the portion of Link that is covered by the terms of this Agreement. Exhibit B will be updated by the Parties’ Designated Representatives as Link extensions and facilities are added or removed over time.

3.0 GENERAL

3.1 The County’s Obligations

3.1.1 Work

The County will perform all Work related to operating and maintaining Link as described in this Agreement. The County will perform at a level that will meet or exceed the standards set forth in the Performance Standards attached as Exhibit C that address providing safe, well-maintained equipment and facilities, on-time operations, and high-quality service. The Work includes, but is not limited to the following:

A. Operating Link in accordance with the Link Rail Fleet Management Plan;

B. Maintaining equipment, specified facilities, systems, and right-of-way in accordance with the Link Rail Maintenance Management Plan and the Link Rail Maintenance Matrix attached hereto as Exhibit D;

C. Preparing, updating, and maintaining all procedures for the plans as listed in the Responsibility Matrix attached as Exhibit E;

D. Providing paratransit services for Link;

E. Providing and managing operations, maintenance, and supervisory personnel assigned to the Rail Division and other support personnel as necessary;

F. Taking immediate action to manage any situation that would cause a delay or loss of Link service; and

G. Assisting Sound Transit with Start-Up activities on all Link extensions, expansions, facilities, and enhancements.

3.1.2 Separate Rail Division

A. The County will maintain a Rail Division with distinct job classifications (including multi-skilled positions), work rules, and management staff, to operate and maintain Link. Rail Division seniority will be based on the start date of hiring into a specific classification in the Rail Division unless specified otherwise in a labor agreement. The Rail Division will include mission-critical activities wholly and exclusively devoted to Link operations, including vehicle maintenance, rail operations, and maintenance of right-of-way power, and signals. These activities are considered mission critical because of the tight integration and incident response requirements of these elements in rail system operations. The County will ensure that its Rail Division is organized separately as it relates to mission-critical functions from its existing Transit Department divisions and sections, including, but not limited to, streetcar functions, and will negotiate terms of any labor agreements related to Rail Division staff as distinct and separate from those currently in place for other King County Metro personnel.

B. The County will employ a managing director of Streetcar to handle all Streetcar operations and maintenance separately. The purpose is to more clearly separate Link and Streetcar functions, and to add capacity to streetcar operations. The County will identify a new Deputy Director to oversee all Link operations and maintenance.

C. Functions that are not mission-critical to Link may be performed by other administrative and support departments within the County or third parties. These functions include support from King County central services and support from Metro divisions outside of the Link Division. Staff in the County's Rail Division will be headquartered at Sound Transit's Operations and Maintenance Facility. The Rail Division will have an external Sound Transit identity in areas such as employee uniforms, communications materials, and telephone greetings.

D. The County may not increase staffing solely because King County Metro has transitioned from a Division to a Department and the Rail Section has transitioned to a Division unless otherwise pre-approved by Sound Transit. Elevation of leadership to accommodate this change other than those necessary to support Link operations must also be pre-approved by Sound Transit.

E. The County Rail Division staff must utilize the Sound Transit email system (firstname.lastname@soundtransit.org or successor Sound Transit email) for all email business conducted on behalf of Sound Transit. County email may be accessed at the O&M facility via a secure web connection to be utilized only for King County business email not pertaining to Sound Transit business.

F. County Rail Division staff must store all documents and files pertaining to Sound Transit systems and activities in Sound Transit-provided repositories or cloud services. No documents or files may be stored in repositories not approved by Sound Transit.

G. The County’s Rail Division staff will follow and comply with all applicable Sound Transit administrative and security policies when using Sound Transit-provided technology hardware of any kind, or when connecting to Sound Transit technological infrastructure or systems.

H. Sound Transit will periodically train the County’s Rail Division on all applicable information security as Sound Transit may deem appropriate and necessary for the Work being performed on Sound Transit technological infrastructure and systems.

3.1.3 Third Party Contracts

The County will subcontract the services listed in Exhibit F. The County may subcontract other Work with Sound Transit’s approval. Unless otherwise provided herein, prior to initiating procurement of a subcontractor to perform services for Sound Transit under this Agreement, the County will provide an estimated scope, cost, and schedule to Sound Transit for review and prior approval. Any Third-Party contract requires the approval by Sound Transit prior to the commencement of Work. Such approval is not to be unreasonably withheld, conditioned, or delayed. Sound Transit may review Third Party Work invoices at its sole discretion. Sound Transit will notify the County when a subcontract will require the incorporation of the federal grant funding conditions as provided in Subsection 23.1.2.

3.1.4 Information Systems

Sound Transit may choose to have the County use the County’s information systems for the Work. A determination will be made as described in Section 5 and Exhibit G, regarding Start-Up, if the County will use and provide ongoing maintenance and monitoring for the systems.

A. All County provided applications accessed from the Operations and Maintenance Facility are to be accessed via a secure web connection (such as Citrix), as agreed by both Parties, maintained and supported by the County, and compliant with Sound Transit’s security policies and standards. Sound Transit does not permit persistent remote-control desktop applications due to bandwidth and performance concerns.

B. The underlying data for County-provided applications are stored on the County network. Sound Transit has the right to request extracts of the underlying data from County applications utilized for Sound Transit business, as needed to be extracted from County applications and securely transmitted to the Sound Transit network using methods approved by Sound Transit Information Security that do not compromise the security posture of Sound Transit’s systems.

3.2 Sound Transit’s Obligations

3.2.1 Retained Responsibilities

Sound Transit will retain certain responsibilities in connection with the operations and maintenance of Link. These responsibilities include but are not limited to the following:

1. Make policy decisions;
2. Maintain financial control and management oversight of the Agreement;
3. Approve County’s Link staffing levels;
4. Provide and replace facilities, systems, equipment and vehicles listed in Exhibit H, List of Sound Transit Owned Facilities and Equipment, except as otherwise provided in this Agreement;

E. Handle fare policy, fare collection, fare equipment maintenance, and fare enforcement;

F. Design and manage Link Security Program;

G. Procure equipment and vehicles, except as otherwise provided in this Agreement;

H. Coordinate with utility companies for services and with cities for traffic signal coordination. The County will assist when appropriate;

I. Engineer and design capital improvements and manage major capital improvements and replacements for Link, including engineering support for these elements related to the operation of Link;

J. Prepare and amend the Service Plan with assistance of the County;

K. Contract for service not specifically assigned to the County under this Agreement;

L. Configuration Management to include capital improvements, maintenance of as-built drawings, development or approval of all campaigns or system modifications of all types;

M. Review and approval of requests by the County to contract with Third Parties as provided in this Agreement;

N. Provide information system operational standards and maintenance strategies;

O. Maintain and support Sound Transit provided technology hardware;

P. Ensure that all Sound Transit computers at the O&M facility will be connected to the Sound Transit corporate network and managed by Sound Transit IT and will comply with all applicable Sound Transit security policies and standards;

Q. Ensure that Link staff can communicate on King County Metro’s emergency talk group networks;

R. Provide information security and system administration policies, standards and procedures covering the operation and maintenance of all technology systems required to operate Central Link;

S. Provide direction and coordination of response to information security events and incidents involving Sound Transit technological infrastructure and systems;

T. Provide information security controls (technical and administrative) to properly manage risks to Sound Transit systems and technological infrastructure;

U. Provide security training for the Work being performed on Sound Transit’s technological infrastructure and systems.

3.2.2 Coordination with the County

A. The Parties will discuss policy, service development, financial and planning issues affecting Link; however, final authority regarding each of these matters remains with Sound Transit.

B. Sound Transit will convene a Joint Leadership Team and schedule regular meetings of the team to evaluate service performance, identify areas of performance improvement, determine where corrective action plans are needed, and discuss staffing issues and determine solutions. Each meeting, the Parties will review performance tracking metrics and evaluate the need for corrective actions.

4.0 OWNERSHIP AND USE OF LINK

4.1 Sound Transit owns Link. The County may not use, nor permit Third Parties to use, Link for any purpose other than the operation and maintenance of Link. The County may not lease, sublease, license, or permit the use of any of the premises or equipment of the Link system except as specifically permitted or required by Sound Transit.

4.2 Sound Transit may direct the County to permit use of Link facilities by Third Parties. If FTA approval is required, Sound Transit will obtain such approval in advance of directing the County. Revenues accruing from such use will be retained by Sound Transit. Third Party use of such Link facilities will be considered a variation to the Work, and the County will be compensated as set forth in Subsection 22.1.6 of this Agreement for any additional costs it incurs in connection with this use, including disruption to regular service or maintenance activities. Sound Transit will require that a Third Party execute an indemnity agreement providing both Parties with defense, indemnity, and insurance protection.

4.3 The management, scheduling, and authorization of access to employees and contractors to perform Work on, near or adjacent to the right-of-way or any Sound Transit facilities is controlled by the County’s Track Access Coordinator through the Track Access Procedures. In all cases, all employees will follow the Track Access SOP.

4.4 Sound Transit will establish a process to channel requests for media access, tours, or other activities that may interrupt day-to-day operations through a central point in the Sound Transit Operations Department. In the case of any questions related to any access request, the County will contact Sound Transit staff as listed above. All requests that are received by the County must be forwarded to Sound Transit.

5.0 START-UP

5.1 If Sound Transit requires the County to operate or maintain new facilities such as the extension of Link right-of-way to the Northgate Station, a maintenance facility, or station, then the Start-Up Period will start at least 24 months before the facility opening date (FOD) or the revenue service date (RSD), depending on the size and complexity of the extension or facility, and end when the Start-Up activities identified in Exhibit G are completed. The Start-Up Period will overlap with construction and some Start-Up activities may continue past the FOD and or RSD. The Start-Up Period will be used to prepare for the integration of the new facility into Link, and will include tasks such as system testing, hiring of staff, training, public education, system certification and commissioning, and development of plans and procedures as outlined in Exhibit G. Exhibit G is not an exhaustive list of possible tasks or responsibilities.

5.2 Sound Transit is responsible for testing, safety certification, public education and system commissioning. Where appropriate, Sound Transit will assist the County in its preparation for assuming its duties as the operator and maintainer of the system. The County will also assist Sound Transit when requested by Sound Transit to complete its activities related to Start-Up, oversight, procurement, or any operational support activities as identified by Sound Transit and in consideration of the Rail Division staff availability.

5.3 Sound Transit will develop a preliminary scope, staffing plan, and cost estimate for new facilities Start-Up based upon Sound Transit operational requirements for this extension/facility. The Parties will meet and confer to discuss the scope, staffing plan, and cost estimate as the assumptions used to define tasks including level of effort and timing, the FOD and RSD schedule, and the equipment and systems procurement schedules are refined. The review will follow the process outlined in Section 22.0.

5.4 The Parties acknowledge that there may be tasks that are key to system start-up but need to be accomplished before the defined Start-Up Period. The Parties may review and consider these tasks for funding and staffing as needed.

5.5 Sound Transit will establish the final FOD or RSD and inform the County at least three (3) months in advance of the selected date. The FOD or RSD may not necessarily occur at the start of a transit service change. If the RSD is other than at the start of a transit service change, the County will coordinate its bus service at the next service change.

6.0 SERVICE PLANNING AND SCHEDULING

6.1 Service Plan

By the end of the second quarter of each year, Sound Transit will provide the County an annual service plan for the coming year that includes headways, special events, and operating hours. Sound Transit will discuss proposed changes with the County prior to finalizing this plan.

6.2 Scheduling/Assignments

The County will prepare train schedules and personnel and equipment assignments to meet the annual service plan. For special events that require additional staffing, Sound Transit will provide prior notice to the County as soon as possible to allow the County time to prepare for and adequately staff the event. The County will make every effort to provide personnel and equipment for special events requests not included in the Annual Service Plan.

6.3 Rail/Bus Coordination

The County and Sound Transit will cooperate on the coordination and integration of bus and rail service. To the maximum extent practicable the Parties will endeavor to coordinate Link service changes with the County’s regularly scheduled service changes.

7.0 OPERATIONS

7.1 Overall Services

The County will operate Link using the vehicles, facilities, equipment, and systems provided or approved by Sound Transit. Except as otherwise provided herein, the County will manage operational activities including but not limited to service quality, communications systems, training, emergency response, employee management and assignment, safety, and special events. The County will manage the service during normal, special, and emergency operations.

7.2 Operations Plans

The County’s operation and management of the Link system will be guided by several plans including the Link Operations Plan, the Link Maintenance Plan, the Link Fleet Management Plan, and the Link Security Program Plan. These plans will be prepared by Sound Transit with support by the County. Any revisions to the plans will be provided to and discussed with the County. The plans will serve as the basis for the County to develop staffing plans, training programs, operating and maintenance rules, and standard operating procedures for Link service.

7.3 Operating Procedures

The County will implement and maintain the Operating Rulebook and the Standard Operating Procedures. The Parties will establish a process for approval of rules, procedures, and revisions by both Parties and will carry out that process at the agency level except where legislative action is required by law.

7.4 Training Program

7.4.1 The County will create, implement, and maintain a training program that includes certification, recertification, and refresher training. The program will include training for support staff, contractors, and emergency response personnel. The County will ensure that all employees and contractors are properly trained in workplace safety. The program will contain at a minimum the following elements:

1. Complete job descriptions for all Rail Division positions;
2. Minimum training requirements for each position;
3. County-required training, any license, certificate or endorsement;
4. Expiration dates of all training;
5. Certification and re-certification dates;
6. Completion status (pass or fail, if applicable); and
7. Training delivery methods.

These requirements will apply to all Rail Division positions performing Work on Link.

7.4.2 The training program will be jointly developed and approved by the County and Sound Transit. The program will be reviewed and updated by the County annually and submitted to Sound Transit for approval.

7.4.3 The County will be responsible for recordkeeping of these training requirements for Rail Division employees and Rail Division contractors. The County will comply with all rules, policies, procedures, regulations and any governmental or jurisdictional requirements applicable to such recordkeeping. These records will contain at a minimum, the individual’s name, training provided, date, delivery method, completion status, certificate number and expire date, if any. Auditable records to ensure compliance with all required training will be maintained at the O&M facility in hard copy, electronically or both. The County will provide training program information to Sound Transit upon request, and identities of employees may be protected or redacted if necessary by the County.

7.5 Emergencies, Service Disruption, Incidents, and Accidents

7.5.1 Notification.

In the event of an emergency, accident, incident, or hazardous condition that impacts or will impact light rail operations, the County will follow Standard Operating Procedures (SOP) for Link Control Center Callout Procedures, the Callout Chain of Command, and applicable All Hazard Response Plan for immediate notification to Sound Transit. The County will also follow those procedures for any police actions, stoppage of service, station closures, or incidents on or near Link facilities, right-of-way on-board trains. SOPs governing notifications will be updated in accordance with the Link System Safety Program Plan (SSPP) and SOP Rules and Procedures Development Issuance and Revision.

7.5.2 Response.

When responding to accidents, incidents, hazardous conditions, or emergencies on trains, at stations, on or near Link facilities, or along the right-of-way the County will follow SOP Link Control Center Emergency Response Procedure. The response will include notification of appropriate emergency services, Sound Transit, and providing replacement, limited replacement or supplemental service when primary rail service is interrupted. SOPs governing emergency response will be updated in accordance with the SSPP and SOP, Rules and Procedures Development Issuance and Revision.

7.5.3 Bridging Link with Bus Service

The County will bridge the Link service during emergencies or planned disruptions in accordance with the approved SOPs.

7.6 Operations Control Centers

7.6.1 LinkOperations Control Center

The County will provide continuous and uninterrupted operations of the Link Operations Control Center. The County will operate and manage the Link communications systems including the radio, SCADA, CCTV, public address, and variable message signs.

7.6.2 DSTT Operations Control Center

The County will monitor and control train and other vehicle movements in the DSTT and operate communications systems including radio, SCADA, CCTV, public address, and variable message signs from the DSTT Operations Control Center. If the DSTT is subsequently transferred to Sound Transit as contemplated elsewhere in this Agreement, then in connection with such transfer the Parties will determine how to manage vehicle movements and communications in the DSTT from and after the date of such transfer.

7.6.3 Location and Back-Up of Control Centers

The Link Operations Control Center and DSTT Operations Control Center are located at the King County Metro Building at 1263 6th Avenue, Seattle, Washington. They will be referred to collectively as the Link Control Center. The back-up control center will be located at Sound Transit’s Operations and Maintenance Facility at 3407 Airport Way South, Seattle, Washington.

7.6.4 Changes in Location

Sound Transit may relocate the DSTT Operations Control Center to the Operations and Maintenance Facility, at which time the King County Metro Building space will be used for the back-up Link Operations Control Center and DSTT Operations Control Center.

8.0 MAINTENANCE

8.1 Overall Services

The County will maintain Sound Transit vehicles, facilities, equipment, and systems in accordance with the Link Maintenance Management Plan, manufacturer’s recommendations, warranty requirements, industry practice, information provided by final design and installation contractors, and Exhibit D. The County will implement and update standard maintenance procedures and preventive maintenance schedules. The level of maintenance will be approved by Sound Transit.”

8.2 General Maintenance

This section addresses matters common to the maintenance of systems, facilities, equipment, assets, and vehicles.

8.2.1 Enterprise Asset Management System (EAMS)

1. The County will track and maintain accurate records for all Sound Transit assets including vehicles, facilities, equipment and systems using the EAMS system that is currently owned and managed by Sound Transit. Such use will be in accordance with the EAMS policies and procedures manual that has been provided to the County by Sound Transit.
2. In compliance with Sound Transit’s asset management program, Sound Transit will update the assets in the EAMS database as soon as the information becomes available. Missing data in the EAMS system does not preclude the County’s responsibility to perform any work.

8.2.2 Parts

1. Sound Transit will provide, and the County will maintain, a level of spare parts and equipment based on a minimum/maximum criterion agreed upon with Sound Transit. As spare parts, materials, or equipment are used or consumed, the County will order them through the Sound Transit EAMS material requisition process or a Sound Transit-approved alternative. All parts, materials, tools, equipment, and other items except consumables will be procured through Sound Transit with all invoices sent to Sound Transit for payment directly to the supplier. The County will inspect, process, and inventory spare parts and equipment in accordance with Sound Transit-approved procedures.
2. The County will purchase consumables, unless otherwise directed by Sound Transit. The County will manage and store consumables at the Operations and Maintenance Facility and will track their consumption in a manner approved by Sound Transit.

8.2.3 Tools and Test Equipment

Special test equipment and tools will be provided by Sound Transit. All such test equipment and tools will be inspected and inventoried by the County on a quarterly basis, and the associated records will be submitted to Sound Transit and maintained at the Operations and Maintenance Facility. The County will also ensure that each employee will have a quantity of hand tools in accordance with the approved minimum tool list outlined in the collective bargaining agreement, if applicable.

8.2.4 Documentation

Sound Transit will provide all as-built drawings and maintenance manuals and will be responsible for updating this information. Configuration management responsibility is defined in Section 9.0.

8.2.5 Appearance of Vehicles, right-of-way and Facilities

The County is responsible for the regular and detailed cleaning of all Sound Transit vehicles, right-of-way and all Link facilities. Vehicles, right-of-way and facilities will be cleaned in accordance with Exhibit D.

8.2.6 Use of Vehicles and Equipment

The County may use the vehicles and equipment provided by Sound Transit for the purpose of operating Link service or for maintenance and other uses directly associated with the Link service, and for no other purpose. Should the County return any vehicle or equipment prior to the end of the Agreement or at the end of the Agreement, such property will be returned in good condition assuming normal wear and tear. Non-revenue vehicle use will be governed by the County’s procedure on non-revenue vehicles. Sound Transit will equip non-revenue vehicles with a driver specific vehicle GPS monitoring system that will be available to assist the County in administration of the County’s non-revenue vehicle policy. The County will apply the same rule infractions for the operation of a light rail vehicle to the operation of a non-revenue vehicle.

8.3 Communications and SCADA Systems Maintenance

8.3.1 The County is responsible for providing all field-maintenance of all hardware included in the Link SCADA and Control Systems. The SCADA and Control Systems include all hardware elements such as the cable transmission system and cable plant, including but not limited to maintenance of cable records; voice systems; managed network, radio systems; SCADA systems, including power supplies; the public address system; and variable message signs, CCTV, programmable controllers, media converters, terminal servers, or other field located equipment providing data to, or controlled by, the systems.

8.3.2 Sound Transit will support the SCADA and Control Systems with network and operations technology services. The Sound Transit Operations Engineering and Technology Division will provide managed network support, including firewalls, routers, and managed switches on the Train Control Network (TCN) and Emergency Fire/Life Network (EFN). The Sound Transit Operations Engineering and Technology Division will also provide engineering services for SCADA and Control Systems life cycle health, enhancements, upgrades and system administration related to monitoring tools, cyber-security, and centrally managed support tools.

8.4 Facilities Maintenance

The County is responsible for Link facilities maintenance activities as identified in Exhibit D. The facilities include, but are not limited to, the Operations and Maintenance Facility, parking lots, stations, plazas, and tunnels, including interior rooms (i.e. electrical, mechanical, systems), and building screening.

8.4.1 Art at Facilities

Sound Transit is responsible for artwork repair, maintenance, and cleaning.

8.4.2 Signage Maintenance

Signage at the Link stations will conform to Sound Transit specifications and standards. The Parties' respective responsibilities for signage fabrication and maintenance are outlined in Exhibit J.

8.5 Right-of-way Maintenance

The County is responsible to inspect, maintain and repair of right-of-way (sometimes referred to as ROW). This includes, but is not limited to, track, special track work, grade crossings, stray current testing, bridges, tunnels, culverts, drainage structures, vegetation control, pest control, overhead contact systems, traction power, signals, SCADA, CCTV, and other systems used for the purpose of light rail transit operations. Other responsibilities include removal of debris, emergency track repair, and responding to derailments or other incidents (See Exhibit D,).

8.6 Vehicle Maintenance (Light Rail, Other Vehicles and Equipment)

The County will inspect, maintain, and repair Sound Transit’s light rail vehicles (LRV) consistent with Exhibit D, Maintenance Matrix. Representative duties include, but are not limited to: LRV interior and exterior daily and deep cleaning and washing; preventive maintenance of all LRV systems and components such as trucks, propulsion, suspension, braking, communications, doors, cab, passenger area, roof equipment, wheel truing; and other LRV systems used within the vehicle for the purpose of Link service. The County will also repair LRVs damaged in collisions, accidents, incidents, or derailments, as well as coordinate the alteration of LRVs for advertising campaigns. The County will allow Sound Transit employees and contractors access to light rail vehicles on a pre-arranged schedule to install or remove advertising on the exterior or interior of the vehicles.

8.6.1 Car History Documentation and Updates

Sound Transit is responsible for the receipt and safeguarding of car history books prepared by LRV manufacturers. The County will provide maintenance data to update the car history books for Sound Transit. The County will document and update all configuration information in the car history books.LRV maintenance history such as scheduled preventive maintenance, scheduled or unscheduled corrective maintenance and repair will be documented and updated within the Sound Transit EAMS database by the County. LRV manufacturer campaign records will be documented and updated by the County within the Sound Transit EAMS database and car history books.

8.6.2 Non-Revenue Vehicles and Equipment

The County will arrange competitively-priced maintenance for all other Sound Transit provided vehicles following the Original Equipment Manufacturer (OEM) recommended preventative maintenance and repair schedule and approved by Sound Transit unless Sound Transit makes other maintenance arrangements. For repairs falling outside of the current OEM preventive maintenance and repair schedule, the County will analyze options that include subcontracting and will present Sound Transit with the options, including an estimated scope, cost, and schedule, for Sound Transit’s review and prior approval. These repairs will require a task order.

8.7 Heavy Repairs, Overhauls, Projects, Special Campaigns and System-Wide Modifications

8.7.1 Heavy repairs, overhauls, special campaigns and system-wide modifications must be in accordance with Sound Transit-approved plans and procedures and conform to Sound Transit configuration management requirements as described in Section 9. The County will provide a cost benefit analysis, scope of work, and schedule documentation for heavy repairs, overhauls, projects, special campaigns, and system-wide modifications of all LRV, Facilities and right-of-way systems and equipment. Sound Transit will analyze KCM proposed options that include subcontracting or the County performing the Work. Sound Transit reserves the right to perform its own cost benefit analysis, scope of work and schedule documentation in support of such efforts. Sound Transit will make the final determination and authorization of heavy repair, overhauls, projects, special campaigns and system-wide modifications of Link LRV, facilities and right-of-way project ownership and delivery. The County will support Sound Transit in any heavy repairs, overhauls, projects, special campaigns and system-wide modifications.

8.7.2 Prior to completion of construction and systems contracts, re-work and modifications may be conducted by the original contractors or manufacturers and will be supported by the County.

8.7.3 If Sound Transit property, facilities, or equipment require modification or configuration change in support of heavy repair, overhauls, projects, special campaigns, system-wide modifications or any other reason, the County will provide justification, details, drawings or other documentation in support of the requested change. Sound Transit will have final approval authority of such modifications or configuration changes.

8.8 Part / Component Repair

The County will provide Sound Transit with a cost benefit analysis, scope of work, and schedule to evaluate proposed part and component repairs for LRV, non-revenue vehicle (NRV), facilities, and right-of-waysystems. Sound Transit will use this information to provide the County with direction. Part and component repair will be performed by the County or approved contractors or vendors in accordance with Sound Transit-approved procedures.

9.0 CONFIGURATION MANAGEMENT

9.1 Configuration Changes:

Sound Transit is responsible for configuration changes that would result in modification of the as-built configuration, and related documentation of Link vehicles, equipment, and facilities after they have been constructed and transitioned to the Sound Transit

Operations Department.

9.2 Configuration Control:

The County is responsible for Configuration Control. The County may propose changes to Link capital assets that affect their physical and/or operational characteristics via a formal change proposal. The configuration change process is described in detail inSound Transit Administrative Policies and Procedures #38.

9.3 Approval of Proposed Configuration Changes

Sound Transit will review the County’s proposal documentation details and determine if the change merits implementation. No configuration change may occur without signed approval of the plan by the Sound Transit Executive Director, Operations. Once formal approval is given, Sound Transit will prepare and fund a work order to effect the change. Once the Work is completed, Sound Transit will inspect the Work for adherence to the proposal, applicable codes and regulations, and quality of workmanship. Sound Transit will revise the as-built drawings and maintenance manuals to reflect the updates and will maintain the master file for all as-built drawings and documentation. Updated drawings and manuals will be provided to the County.

9.4 Alternate Part Qualification Procedure

The alternate part qualification procedure, Standard Maintenance Procedure (SMP) 25.17, provides the requirements and procedures that must be followed to propose and test an alternate part when the original part cannot be sourced or is no longer available from the manufacturer.

10.0 CUSTOMER SERVICES/INFORMATION/MARKETING

10.1 Overview

The County will provide the management, training, automated information, and telecommunications services necessary to provide customer services and products for Link as described in this section.

10.2 Customer Services

10.2.1 Schedule Information and Trip Planning

The County will provide Link schedule information and trip planning using customer service representatives and/or automated systems in the same manner provided for County transit services during the standard hours of service. County customer service representatives should refer to Link as a Sound Transit service.

10.2.2 Customer Services

The County will provide Link customer services in accordance with agreed-upon Customer Service Operating Policies and Procedures. The Parties will update procedures as necessary.

10.2.3 Electronic Information

The County will provide Link online service information including trip planning, special event, and emergency information via a link on the County’s web site to the Sound Transit web site, developed and maintained by Sound Transit. All information provided on the County web site should specify that Link is a service of Sound Transit. The County and Sound Transit will coordinate service information.

10.2.4 Lost and Found

Sound Transit will provide lost-and-found services. The Parties anticipate that they will develop a Lost and Found Procedures SOP that each Party will adhere to.

10.2.5 Rider Alerts During Service Interruptions

In coordination with Sound Transit, the County will electronically produce and post customer notification information using various systems alerts such as public address (PA) and variable message announcements (VMA), email, text messaging, rider website and automated phone system. The County will send electronic transit alerts for Link service as outlined in the Customer Service Policy and Procedures. If the Link Control Center is relocated to the Operations and Maintenance Facility under Section 7.6, then Sound Transit will perform this task.

10.3 Fare Media Sales

The County and Sound Transit have entered into separate fare collection agreements that will govern regional fare media sales.

10.4 School Education Program

The County will include Sound Transit-provided information about Link in any school outreach activities conducted by the County.

10.5 Printed Customer Information Distribution

The County will distribute Sound Transit-produced Link schedule information at employment sites and other locations where it is geographically appropriate and in the normal course of business.

10.6 Training

The County will provide Link-specific training to County customer service staff and others providing Link-related customer services. Such training programs must be approved by Sound Transit.

10.7 Signage Hardware/Changeable Information Displays

The Parties’ responsibilities for signage hardware and changeable information displays are outlined in Exhibit J. Consistent with that Exhibit, the County will install and maintain the changeable information such as system maps, area maps, and ticket vending machine information produced by Sound Transit for inclusion in the Link station display cabinets. The County will produce and install rider alerts, schedules, and related bus information at Link stations and adjacent bus stops. The County will update Sound Transit-produced customer information in the interior and exterior of the Link vehicles.

10.8 Surveys

The Parties will collaborate on customer surveys and share information as appropriate.

10.9 Marketing

Sound Transit is responsible for all marketing and advertising of the Link service. The County will include Sound Transit-provided marketing materials about Link where it is geographically appropriate and in the normal course of business.

10.10 Technology

Sound Transit will work with the County to modify the current system or develop future technology so that the Link stations ring-down telephones will be answered by the County as “Sound Transit.” If communications systems technology changes, then it will be configured so that all customer calls may be identified separately and answered by the County staff as “Sound Transit.”

10.11 Media Relations

Except as otherwise provided in this Agreement, Sound Transit is responsible for all communications with the media about Link operations regardless of circumstance, including media communications related to accidents or injuries. The County will direct all media requests for information to the Sound Transit’s media relations specialist or designee. Media advisories or notifications involving Link special service or service disruptions will be coordinated between the County and Sound Transit.

11.0 SAFETY RESPONSIBILITIES

The County, as the contract operator of Link service, is primarily responsible to operate Link service in a safe and efficient manner in accordance with the terms of this Agreement.

11.1 Incident Notification, Investigation and Reporting

11.1.1 The County is responsible for initial incident notification, investigation and reporting to Sound Transit in accordance with Standard Operating Procedures. The County will maintain an incident notification, investigation, and reporting standard operating procedure which Sound Transit will review and approve. Both Parties must adhere to the procedures. The County will investigate Link-related incidents that (i) appear to meet the regulatory thresholds for investigation and (ii) that are alleged to have occurred in or on Link service, right-of-way or facilities. Sound Transit has the right to conduct additional investigations of incidents. Sound Transit will inform the County if a federal or State Safety Oversight agency has assumed this responsibility. The County will provide qualified personnel to lead the investigations and maintain appropriate documentation.

11.1.2 The County will provide preliminary incident investigation reports to the Sound Transit Safety and Quality Management Department (STSQM) and Sound Transit Director of Light Rail within two business days. The STSQM will provide the preliminary report to regulatory agencies and other internal and external stakeholders.

11.1.3 The County will complete and submit a final incident report to the Sound Transit Director Light Rail Operations and STSQM within thirty calendar days. Any disputes about the conclusions in the final incident accident report will be referred to the Link Light Rail Joint Safety Committee (as defined in Subsection 11.2 of this Agreement) for review and discussion. If the committee cannot agree on the conclusions contained in the final report, the disputed items will be presented to the Sound Transit Light Rail Director and the County Rail Division Director.

11.1.4 System Safety Program Plan

The County will maintain and review annually the System Safety Program Plan (SSPP) in accordance with chapter 468-550 WAC. STSQM will conduct a final review of the updated SSPP prior to final approval by the County. The County’s Rail Division safety team and the STSQM will respectively ensure compliance with the plan.

1. Performance Reviews

The County will develop performance standards in accordance with the SSPP. The County will monitor and report on progress during the Joint Leadership Team meeting, along with identifying where any deficiencies exist. No later than the following Joint Leadership Team meeting, the County will then develop and submit to Sound Transit a written corrective action plan and timeline to address any deficient performance.

1. Goals and objectives

The County and STSQM staff will meet to set safety goals and objectives, which will be tracked and monitored. These goals will be reported on quarterly and be evaluated for appropriateness annually.

11.1.5 Accident Prevention Plan

The County will implement and maintain an Accident Prevention Plan in accordance with chapter 296-800 WAC. The County will inform Sound Transit of any updates to the published plan. Sound Transit reserves the right to conduct spot checks of the Accident Prevention Plan implementation.

11.2 Link Light Rail Joint Safety Committee

The Link Light Rail Joint Safety Committee will meet monthly, or as needed, to review incident trends and accident preventability. The Committee co-chairs will maintain a joint charter and both Parties will operate in accordance with charter protocols. The Committee will develop and implement recommendations for remedial actions designed to address identified safety hazards or adverse trends.

11.3 System Reviews

The State Safety Oversight Agency, or designee, conducts a triennial review of the System Safety Program Plan and the System Security Plan. The County must participate and cooperate fully with any such review. The County and Sound Transit will develop corrective action plans to respond to any noted deficiencies. Sound Transit will pay any penalties associated with the state safety oversight review.

11.4 Issuance of Equipment

The County and Sound Transit acknowledge the need to establish protocols for issuance of equipment via Standard Operating Procedures and Standard Maintenance Procedures. Subject-matter experts from each agency will engage in a good faith effort to establish the Standard Operating Procedures and Standard Maintenance Procedures no later than December 15, 2019.

11.5 Access

The County will provide STSQM with access to facilities, equipment, and personnel, as necessary. ST Safety personnel must follow applicable KCM rules and request procedures for such access.

12.0 SECURITY

Sound Transit will provide police and security for the Link system, including in the DSTT, through its contractors as follows:

A. All police work will be performed by sworn police officers from the contracted police agency through a direct contract with Sound Transit.

B. All security work will be performed by the security contractor through a direct contract with Sound Transit.

C. Sound Transit will also perform all fare enforcement on the Link system through a combination of its contracted police force and its contracted security provider.

D. Sound Transit’s police will coordinate as needed with King County Metro Transit Police.

13.0 DOWNTOWN SEATTLE TRANSIT TUNNEL (DSTT)

The Downtown Seattle Transit Tunnel (DSTT) includes the Tunnel and the Merge Zone, and the Tunnel Annex. The County is responsible for the operation and maintenance of the DSTT, except for DSTT security and security on Link trains in the DSTT, which are the responsibility of Sound Transit as provided in Section 12. The County’s responsibility for operation and maintenance of the DSTT will cease upon transfer of the DSTT to Sound Transit except as otherwise agreed between the Parties.

13.1 Operations

13.1.1 Communications

All communications related to the DSTT will be controlled and coordinated by the County from the Link Control Center. The County is responsible for radio communications with the operators of all trains and other vehicles when they enter the DSTT. The County is responsible for public communication that will occur via an audio public address system and variable message signs.

13.1.2 Systems

The County will monitor and manage all DSTT systems through SCADA. The County will provide electricity, water, telephone service, and other utilities necessary for the operation of the DSTT. Sound Transit will provide, install and maintain software, hardware, and metering devices on any Sound Transit primary or backup power source that is connected to a County power supply. Such devices must be able to measure and record power consumption by LRVs as well as accurately identify and calculate appropriate billing rates during the consumption period as applied by the utility provider (i.e. SCL).

13.1.3 Power

Sound Transit will pay for power consumed to operate the LRVs and any light rail elements in the DSTT.

13.2 Maintenance

The County will maintain the DSTT and all its systems, components, equipment, vehicles and parts, except as identified in this section. This includes performing on-going inspections, testing, periodic maintenance, and inventory and data management.

13.2.1 Ticket Vending Machines

Sound Transit is responsible for procurement, installation, and maintenance of TVMs.

13.3 DSTT Maintenance After Transfer to Sound Transit

The Parties acknowledge that they are negotiating a potential transfer of the DSTT from the County to Sound Transit. The Parties further acknowledge that they are negotiating for King County to operate and maintain the DSTT on behalf of Sound Transit for a period equal to the term of this Agreement. If the Parties reach agreement on the terms of a DSTT transfer, then effective upon such transfer Sound Transit will be responsible for all operations and maintenance matters in the DSTT and this section 13 will be void as to matters occurring from and after such transfer. Sound Transit may contract with the County to operate and maintain the DSTT on behalf of Sound Transit following such transfer, either by amending this agreement or entering into a new DSTT agreement. The Parties intend (at the time of the Execution of this Agreement) that if Sound Transit and the County enter into a new agreement for DSTT operations and maintenance, then the new DSTT agreement will supersede this Section 13 as to matters concerning DSTT operations and maintenance.

14.0 PARATRANSIT

14.1 Service Requirements

The County will provide complementary paratransit service as required by Section 223 of the Americans with Disabilities Act of 1990 and as promulgated in 49 CFR Part 37, Subpart F, as amended.

14.1.1 Due to the linear configuration of the Link’s rail alignment, the Link paratransit service area shall be a continuous corridor as indicated by the map, which is attached as Exhibit K. A linear corridor extending three-quarters of a mile on each side of the alignment is used to ease the administration of this Agreement.

14.1.2 The following conditions will also be met:

A. If the County contracts with a Third Party to provide service, Sound Transit will be provided with an opportunity to participate in the contractor evaluation process. Sound Transit will be provided with a copy of the contract and any amendments agreed to during the term. When contracting for this service, the County is not subject to Subsection 3.1.3 of this Agreement.

B. The County will notify Sound Transit’s Accessibility Services Manager of any federal or state Office of Civil Rights or its successor agency ADA complaints arising out of or relating to Link paratransit service and will provide Sound Transit the opportunity to review and comment on the response.

C. The County will provide Sound Transit with all relevant information on its Link paratransit service so that Sound Transit can report that information to the National Transit Database (NTD) and document it in the WSDOT Summary of Public Transportation Report.

14.2 Eligibility Requirements

The County will provide a copy of the current eligibility requirements to include the application form and appeal process. The County will keep Sound Transit informed of any changes in eligibility requirements or procedures.

14.3 Estimated Cost of Service for Budgeting Purposes

The County will prepare annual estimates of the cost to provide paratransit service in the Link corridor to assist Sound Transit in the development of an annual budget.

14.4 Implementation of Service

14.4.1 Administration of Services

The County will furnish qualified and properly trained personnel as may be necessary to provide the complementary paratransit service under this Agreement. The County will provide and operate the paratransit vehicles and manage all aspects of the paratransit operation including service quality, communications, security, training of its personnel, and safety. Service provided by the County will be consistent with and in accordance with the County’s standard operating procedures including emergency procedures, unless otherwise stated. The County will provide copies of all procedures to Sound Transit upon request. The County will provide accident and incident investigation and management for safety, security, employee and customer issues. If an emergency involving Link paratransit and resulting in property damage, injury, or police presence occurs within the Link corridor, the County will notify Sound Transit within one hour of the accident/incident. The County will also provide emergency management and response for Link paratransit, including adverse weather planning.

14.4.2 Performance Standards

The County will provide Sound Transit a copy of its current performance standards for the provision of paratransit services.

14.4.3 Service Performance Reports

The County will provide service performance data as specified in Exhibit L.

14.4.4 Review

Sound Transit and the County will review the scope and the cost of complementary paratransit service within the Link paratransit service area annually. Following the review, the Parties will negotiate adjustments for compensation as needed.

14.4.5 Paratransit Cost Formula

Sound Transit will pay fifty percent (50%) of the paratransit trip cost having both origin and destination within the Link paratransit service area corridor and fifty percent (50%) of the registration and certification costs for those registered paratransit riders within the Link paratransit service area corridor.

A) Sound Transit Monthly Trip Cost

The Parties will use the average system trip cost to calculate the trip costs in the Link paratransit service area corridor. The cost per trip is limited to the contractor’s costs and fuel. The Sound Transit monthly cost is calculated by multiplying the number of trips that have both origin and destination within the Link paratransit service area times the average system trip cost, multiplied by 50%:

(Number of monthly trips x average system trip cost x 50%) = Sound Transit monthly trip cost

B) Sound Transit Monthly Registration/Certification Cost

Sound Transit will pay registration and certification costs for fifty percent (50%) of registered paratransit riders who live within the Sound Transit paratransit service area corridor:

(Monthly certification and registration cost x # of registered riders residing in Corridor x 50%) = Sound Transit Certification & Registration Cost

C) Sound Transit Total Monthly Paratransit Costs.

Sound Transit’s total monthly paratransit costs are equal to the sum of the amounts calculated under 14.4.5.A and 14.4.5.B:

(Sound Transit Monthly trip cost) + (Sound Transit Monthly Certification & Registration Cost) = Total Sound Transit Monthly Paratransit Cost

14.4.6 Travel Training Program

The County will provide travel training services for disabled and senior riders who specifically request training to use Sound Transit Express, Link or Sounder service. Sound Transit will reimburse the County for the estimated cost of one Transit Instructor plus overhead and administrative costs. The County will provide Sound Transit with updated reimbursement expense in the last quarter of each calendar year for the following year of operations. The County will invoice Sound Transit on a monthly basis and provide the training dates, name of the individuals and groups trained, the route/trip number, mode on the with the training was conducted, the total cost of each training session and the cost per person trained. Invoices should be directed to the Director of Commuter Rail, Bus, and Paratransit or designee.

15.0 ADMINISTRATION

15.1 Recruitment/Selection

15.1.1 The County will maintain job requirements, job descriptions, and compensation tables for the Rail Division positions in consultation with Sound Transit. The County must comply with applicable federal, state, and county laws, regulations, and collective bargaining agreements relevant to the recruitment and selection of employees providing service under this contract.

15.1.2 The County and Sound Transit will not discriminate against any employee or applicant for employment because of race, color, religion, creed, marital status, sex, sexual orientation, gender identity or expression, age (except by minimum age and retirement provisions), national origin, veteran status, or the presence of any sensory, mental or physical disability unless based upon a bona fide occupational qualification, and the County and Sound Transit will comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations that prohibit such discrimination.

15.1.3 The County will conduct competitive recruitment processes open to both internal and external applicants that result in highly qualified individuals being selected for the Rail Division. If evening shifts are required, the County will provide this specification in the job posting. The County will include Sound Transit in the interviewing, and selection process, and will regularly apprise Sound Transit at each step of process. The County will have full responsibility for the design, development, and implementation of recruiting strategies, selection processes, job analysis, classification, compensation, testing, employment decisions, screening tools, and relevant background checks for applicants who will be operating and maintaining Link.

15.1.4 The County will consult and include Sound Transit in the recruitment and selection of all leadership positions. If the Sound Transit Director of Link Light Rail is unable to participate in the interview process, the Executive Director of Operations for Sound Transit will be included in leadership position interviews, or his or her delegate as directed. “Leadership” for purposes of this section includes all supervisor and manager positions above the rank of chief and Sound Transit will be included in the interview, recruitment and hiring process and can provide input into final selections. The County will include Sound Transit in the annual performance evaluation process for all leadership positions, subject to relevant provisions in the collective bargaining agreements.

15.1.5 The County will include Sound Transit in the recruitment and selection of the head of the Link Light Rail Division and his/her annual evaluation performance process. The Chief Executive Officer of Sound Transit must concur in the King County Metro general manager’s recommendation for the selection of the head of the Rail Division by before that recommendation moves forward.

15.2 Unsatisfactory Employee Performance and Employee Conduct

15.2.1 The County will ensure that Rail Division employees perform their jobs in a satisfactory manner. In the event an employee fails to perform satisfactorily or whose conduct is found to be unsatisfactory, the County will take appropriate corrective measures. Further, if Sound Transit becomes aware that a Rail Division employee is not performing satisfactorily, such information will be reported to the County. Sound Transit may request that appropriate action be taken with respect to any Rail Division employee whose performance causes a legitimate concern to Sound Transit. However, determination of any appropriate sanctions or actions rests with the County, which will be obligated to deal responsibly and responsively to such Sound Transit request.

15.2.2 The King County Director of Rail Operations, and others as needed, will meet with Sound Transit regularly to discuss and monitor employee performance issues as they arise to prevent the necessity of further actions. This includes, but is not limited to, pending arbitrations, concerns about employee performance and/or recommendations on any proposed serious disciplinary actions, and consideration of impacts on other employees if returned to the Rail Division. The County will provide Sound Transit with briefings regarding any serious disciplinary action up to and including proposed suspensions and terminations. Sound Transit will have the right to formalize and document any of these concerns and to submit them to the Director of the Rail Division and the Assistant General Manager of Employee Services. The Director of the Rail Division is required to confirm, in writing, receipt of Sound Transit’s formalized and documented concerns.

15.2.3 When the County is aware of a safety violation that could lead to termination has been committed by an employee, the employee will be removed from the position (e.g. placed on paid administrative leave) by the responsible supervisor, effective immediately, unless this action conflicts with the relevant collective bargaining agreement.

15.3 Uniforms

15.3.1 Sound Transit will determine which job classifications in the Rail Division require the use of uniforms. Sound Transit will select uniforms for those classifications. The County will manage the uniform contracts including any contractual or task specific uniform requirements. Standardization will extend to all uniforms and items such as, safety vests, jackets, hats, foul weather and rain gear. All maintainers’ uniforms regardless of craft will be of one standard issue across all crafts unless an alternate item is justified and approved by Sound Transit.

15.3.2 The County may purchase and allow Rail Division employees to wear a standardized lapel pin, no greater than 1 inch in size, to identify staff as County employees.

15.4 Appearance Standards

All employees working on Link are expected to be neat and clean when they are performing their work. The County will apply appearance standards approved by Sound Transit to Rail Division employees and contractors providing service under this Agreement. Sound Transit may conduct checks of the appearance of the County’s employees and employees of their contractors and will report any issues to the County for proper action.

15.5 Drug Use and Alcohol Testing Program

Sound Transit prohibits the illegal manufacture, distribution, possession, or use of any controlled substance on Sound Transit property or equipment.

15.5.1 The County will establish, implement, and maintain a drug and alcohol testing program that complies with 49 CFR Parts 655 and 40, produce any documentation necessary to establish its compliance with Parts 655 and 40, and, to the extent provided by law, permit any authorized representative of the United States Department of Transportation or its operating administrations, and Sound Transit, to review the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and audit the testing process and documentation with reasonable notice.

15.5.2 The County will certify annually its compliance with Part 655 by March 1 of each year of the Agreement and submit the Management Information System (MIS) reports by March 1 of each year of the Agreement to the Link Operations Manager or designee. To certify compliance, the County will use the “Substance Abuse Certifications” in the “Annual List of Certifications and Assurances for Federal Transit Administration Grants” and “Cooperative Agreements,” which is published annually in the Federal Register.

15.5.3 The County will submit to Sound Transit written evidence of a program and certify compliance with the regulations including a copy of the Policy Statement developed to implement its drug and alcohol testing program, prior to commencement of service under this Agreement. The County further agrees to notify Sound Transit in writing of any changes or modifications to its drug and alcohol-testing program prior to implementing such changes or modifications.

15.6 Human Resources Information

The County will provide Performance Reports and information regarding Human Resources activities as provided in the attached Exhibit L.

15.7 Benefits and Records

The County is responsible for all payroll, benefits and employee records for the staff in the Rail Division.

15.8 Performance Monitoring

The County is responsible for the ongoing performance management of its employees and will provide copies of their ongoing performance monitoring programs and tools for the Rail Division employees to Sound Transit upon request. The County will monitor and report on performance monitoring and related progress during the Joint Leadership Team meeting.

15.9 Labor Relations

15.9.1 Compliance with Laws

1. The County will comply with current and future laws and decisions of courts, administrative bodies and arbitrators, regulations, collective bargaining contracts, and other labor-related agreements applicable to the County’s performance of labor relations activities and this Agreement. Nothing in this Agreement may be construed as requiring the County to take any action that would violate current and future laws and decisions of courts, administrative bodies and arbitrators, regulations, collective bargaining contracts, and other labor-related agreements.

B. If a provision of this Agreement is or becomes in conflict with laws, regulations or decisions of courts, arbitrators, administrative judges or examiners, or quasi-judicial administrative bodies whose decision have a precedential effect on the County’s labor relations activities with regard to the Work, the Parties will amend this Agreement to eliminate the conflict.

15.9.2 Notice

The County will promptly inform Sound Transit of any notice from a union representative which proposes terms in a collective bargaining agreement covering Rail Division employees that conflict with the terms of this Agreement or materially change the terms of said collective bargaining agreement. Before negotiating such a change, the County will provide Sound Transit with an analysis of the potential effects of the proposed change on the County’s ability to comply with the terms of this Agreement and the cost of performing Link Work.

15.9.3 Reimbursement

Sound Transit will reimburse the County for the costs incurred by the County in complying with obligations under current and future laws, regulations and decisions of courts, arbitrators, administrative judges or examiners, or quasi-judicial administrative bodies. Provided, however, in the event this Agreement is terminated based upon the County’s default, or is terminated by the County for its convenience, then the County will be responsible for the labor costs, if any, that arise from the termination under the County’s collective bargaining agreements, ordinances, policies, and procedures, including but not limited to terms and conditions regarding seniority and layoff procedures.

15.9.4 13(c)

As a condition of Sound Transit’s receipt of federal grant funds to acquire capital assets in connection with Link, Sound Transit and various unions representing transit employees in the Sound Transit service area have entered into an “Agreement Pursuant to Section 13(c) of the Federal Transit Act,” dated February 29, 1996 and as amended March 30, 1999 (hereinafter referred to as Sound Transit’s 13(c) Agreement). Sound Transit will reimburse the County for the cost of complying with all 13(c) agreements applicable to Rail Division employees. Provided, however, in the event this Agreement is terminated based on the County's default, or is terminated by the County for its convenience, then the County will be responsible for the costs, if any, that arise from a provision in the County's 13(c) agreement(s) that affords a greater benefit to a subject employee than is afforded in Sound Transit's 13(c) agreement(s). Before responding to 13(c) issues, the County will confer with Sound Transit and obtain Sound Transit's approval for the response.

15.10 Apprenticeship Programs

The Parties will develop apprenticeship programs in selected trade classifications. The Parties will jointly determine the implementation of the programs. The programs will recognize that workforce diversity is valued and encouraged.

15.11 Reasonable Access to Employment-related Records

Sound Transit will provide the County with reasonable access to information contained in Sound Transit’s email and information technology systems for purposes of conducting Link-related employment investigations and defense of employment-related lawsuits or claims brought by County employees in the Rail Division.

16.0 AUDITS, INSPECTIONS AND REPORTS

16.1 Audits, Financial and Environmental Records and Inspections

The County will provide Sound Transit, the State Auditor, and any of their representatives with full access to, and the right to examine, the County’s records with respect to all matters covered by this Agreement and Link facilities. The County will permit such representatives to audit, examine, and make excerpts or transcripts from such records, agreements, invoices, materials, payrolls, and other matters covered or related to this Agreement. Subject to applicable law and collective bargaining agreements, and upon reasonable advance notice to the County’s designated representative, the County will make appropriate employees available with County representation for interview by such auditors and ensure timely and appropriate response to requests for information.

16.2 Quality Assurance/Performance Audits/Oversight Audits

Sound Transit will conduct quality assurance and performance/oversight audits to determine the quality of rail operations and maintenance of Sound Transit vehicles, systems, equipment, and facilities. These audits may include any or all aspects of the operation and activities contained in this Agreement.

16.3 Review

Sound Transit will review the results of the audits with the County and determine if any additional action is needed.

16.4 Reimbursement

The County will cooperate fully with Sound Transit, the State Auditor, a federal agency auditor or any independent auditor chosen and retained by Sound Transit for auditing costs incurred under this Agreement. Sound Transit will reimburse the County for additional documented costs associated with copying.

16.5 Retention of Records

The County will provide copies of the records pertaining to the Work to Sound Transit, and records pertaining to the cost of the Work will be maintained as prescribed by the State Auditor's Office. Sound Transit will reimburse the County for additional documented costs associated with copying. All documents, books, papers, accounting records, and other materials pertaining to this Agreement must be retained by each Party in accordance with their respective records retention schedules. Provided, however, records pertaining to the cost of the Work must be retained for six years, or for the length of time required by the State’s public records laws if longer than six years; and in the event of litigation or settlement of Claims arising from the performance of this Agreement, each Party must maintain these records until all such litigation, appeals, Claims, or exceptions are finally resolved.

17.0 PERFORMANCE

17.1 Performance Responsibility

The County will provide a cost-efficient, high-quality light rail service that is dependable, comfortable, convenient, clean, safe, and secure, and perceived as such by the customers and citizens of the community it serves. The County will provide this service in a cost-effective and efficient manner. Sound Transit will hold the County accountable to meet the agreed-upon service standards as provided in this Section 17 and subject to the Dispute Resolution procedures in Section 25.

17.2 Performance Standards

The Performance Standards, set forth in the attached Exhibit C, are provided to measure quality of service and productivity, to encourage excellence, and to quickly identify and remedy problem areas. Sound Transit will provide applicable data to enable the County to produce reports in a timely manner and the County will evaluate the data to determine if corrective action is needed to meet performance standards. If the County determines that corrective action is needed, then the County will develop and submit a written corrective action plan and timeline to Sound Transit no later than the following Joint Leadership Team meeting for approval. The County will monitor and report on progress during the Joint Leadership Team meeting.

17.3 Incentive Programs

The County will implement and maintain individual and team recognition programs that encourage safety, customer service, attendance, professionalism, and outstanding performance of the Rail Division employees. The County will present such planned programs to Sound Transit for review and approval. The following principles are the basis for the program:

A. The performance indicator improves the overall Link service to the public and keeps costs contained.

B. The riders and public recognize the indicator as important to them.

C. Incentives will be established at selected performance intervals.

D. The incentive encourages employee participation.

E. The Performance Standards are used in developing the programs.

17.4 Customer Perception Survey

Sound Transit will establish an annual Customer Perception Survey that will include seven areas to be measured: system cleanliness, on-time performance, customer service, employee performance, mechanical reliability, security, and safety. Sound Transit will share the results of the survey with the County for discussion and development of action plans as needed.

17.5 Performance Reporting

17.5.1 In addition to the indicators described in Exhibit C the County will provide all required information identified in Exhibit L, . This information will accompany the monthly invoice due on the 25th day of every month and cover service from the previous month.

17.5.2 Sound Transit will use the Performance Reports and Performance Standards information to monitor the County’s performance. Sound Transit will provide feedback, as appropriate, with the objective of improving overall performance and efficiency. This information will assist in assessing the County’s performance for agreement extension. All raw data used to complete the Performance Report will be maintained by the County over the period of this Agreement and will be furnished to Sound Transit within ten (10) days, upon request.

18.0 INFORMATION REPORTING; SPECIAL NOTIFICATION MATTERS

18.1.1 Reporting Requirements

The County will provide Sound Transit a report with the monthly invoice due on the 25th of every month for service from the previous month. The County will provide reported data, as electronic extractions, to Sound Transit in a format to be determined by the Parties. Information regarding the data requirements to be submitted with the monthly invoice is available online at websites to be identified by Sound Transit. These data requirements may change as necessitated by the FTA. All reports are the property of Sound Transit. The County may not disclose the contents of these reports without prior written notification and consultation with Sound Transit.

18.1.2 NTD Reports

Sound Transit is responsible to report to NTD all employee and operating data related to light rail operations as LR-DO. The County will provide Sound Transit all required information needed to report to NTD in a timely manner for Sound Transit to report by the April 30 deadline. The County and Sound Transit will complete a preliminary reconciliation of all reported NTD data no later than March 31. This includes but is not limited to financial, operating and service data. Furthermore, all financial accruals are to be included as part of the reconciliation process and mutually agreed upon with adequate supporting documentation no later than March 31. If any additional reconciling items are identified after March 31 but prior to the completion of each agency’s financial audit, the reconciling items, unless material to the financial statements of either one or both Parties, will be considered a cost of the next fiscal period. Such determinations will be reviewed on a case-by-case basis and made by the Controller and Finance Manager of Sound Transit and the County, respectively.

18.2 Ridership Information

The County will collect and compile Sound Transit ridership data using on-board Automatic Passenger Counters. The County will transmit ridership data to Sound Transit on a monthly basis. Sound Transit is responsible for completion of the NTD reports using ridership information provided by the County.

18.3 Daily Service Report

The County will provide a daily service report by 0900 hours each morning to Sound Transit employees identified by the Director of Light Rail Operations.

18.4 Notification of County Policy Changes that may substantially affect Link

The County’s Rail Division Director or the Director’s delegees will timely notify Sound Transit’s Operations Director of material changes to (i) relevant provisions of the County code or County administrative rules, or (ii) Executive or Metro Transit Department policies if, in the County’s reasonable opinion, such changes may substantially affect the County’s performance of the Work or Sound Transit’s costs under this Agreement.

18.5 Link Shared Cost and Budget Change Notification

Consistent with Exhibit N, the County will identify and discuss with Sound Transit any proposed changes to estimated costs, Link Shared Cost definitions, or allocation methods (or any of them) as soon as the County becomes aware that such changes may be necessary. Without limiting the prior sentence, the County will identify any such issues for discussion with Sound Transit prior to the Parties’ annual operating expense budgeting and reconciliation process so that such matters may be thoroughly discussed prior to such process. The purpose of this notice and discussion requirement is to provide an opportunity for the Parties to meet and discuss proposed changes to estimated costs, Link Shared Costs, or allocation methods as needed or as may be requested by Sound Transit or the County.

18.6 Notifications regarding County’s Collective Bargaining of Labor Agreements Affecting the Rail Division

The Parties recognize that there is a nexus between Link operations and the County’s labor agreements that pertain to County staff in the Metro Transit Department’s Rail Division. In advance of the County’s collective bargaining regarding those agreements, Sound Transit will communicate to the County regarding matters of interest to Sound Transit. The County will report back to Sound Transit on the status of those items after the collective bargaining process is complete.

19.0 MATERIAL AND WARRANTY MANAGEMENT

19.1 Warranty Administration and Tracking

19.1.1 Sound Transit will administer and execute contractual warranties and warranty Claims pertaining to Link.

19.1.2 The County will initiate warranty Claims using the Sound Transit EAMS system for work order management. The EAMS system will default for initial warranty periods where appropriate; however, the County must use its best efforts to pursue warranty Claims for all assets when creating work orders by flagging ‘warranty’ whenever the possibility exists.

19.1.3 Warranty work orders that have parts issued to them will follow parts issuing and inventory procedures for Claim credits. Failed warranty parts will be returned to the Maintenance Service Center (MSC) for safekeeping pending final disposition. The County must not, whether by act or omission, void or diminish the effectiveness of any warranty provided by a manufacturer, or a vendor, or both.

19.1.4 The County will coordinate vendor provided repairs and or replacement as necessary. Sound Transit will provide final direction.

19.2 Material Management

The County will maintain agreed-upon inventory levels and manage the inventory through the Sound Transit EAMS system.

20.0 ENVIRONMENTAL MANAGEMENT

20.1 Environmental Management Compliance Program

20.1.1 The County will update and maintain an Environmental Management Compliance Program that identifies environmental laws, regulations, and ordinances that apply to operating the light rail system, describe how it will comply with them during operations, and identify or list what type of plans and procedures shall be put in place to comply with them. The program will also provide direction on environmentally sustainable practices. The County will keep the program current, track progress, and report regularly to Sound Transit on program requirements and progress. The tasks of the Environmental Management Compliance Program are listed in Exhibit I.

20.1.2 The County will meet environmental laws, regulations, and ordinances applicable to operating and maintaining Link and any additional measures established in the Environmental Management Compliance Program. The County will document and update the program and its requirements. When program updates are needed or required by law, Sound Transit will have an opportunity to review prior to the County’s final approval.

20.1.3 Environmental clean-up will be guided by the processes and procedures included in the current Spill Response Plan SMP 25.19.

20.1.4 In addition, the County will identify a contact person for environmental compliance issues during Link operation. This person will have overall responsibility for environmental compliance and the County will make that person or a qualified substitute accessible 24/7.

20.2 Environmental Monitoring Requirements

20.2.1 Sound Transit will determine if the County will perform any environmental monitoring to meet environmental regulatory and resource management agency requirements, or whether Sound Transit will do it. If Sound Transit decides that the County should conduct such monitoring, Sound Transit Environmental Staff will provide the County with a list of such duties and Sound Transit will review and update the list annually. Such monitoring may include, but is not limited to ground water monitoring, storm water monitoring, and periodic inspection and maintenance of areas developed as part of the environmental mitigation required for system development.

20.2.2 Environmental monitoring costs are not included in the Baseline Cost and will be determined when the monitoring agreements are provided to the County by Sound Transit. Sound Transit will reimburse the County for its actual costs associated with such monitoring.

20.3 Environmental Notification Responsibilities

20.3.1 Sound Transit will provide the County with the location of any known hazardous substances on Sound Transit Link properties operated by the County. Upon notice from Sound Transit, the County will be responsible to notify its employees, staff, contractors, and vendors of the location of known or potential presence of contamination of any area where there is a potential for exposure to hazardous substances.

20.3.2 The County will notify Sound Transit in advance of any scheduled compliance inspections by regulatory agencies to allow Sound Transit to attend as applicable.

20.3.3 Several sensitive areas and buffers (wetlands and streams) exist within the Link right-of-way. Sound Transit will notify the County of the location of these areas. The County will avoid alteration and landscape maintenance in these areas except as directed by Sound Transit and consistent with applicable law.

21.0 PROCUREMENT AND CONTRACTING

21.1 Sound Transit will purchase all new and replacement vehicles and equipment.

21.2 As described in Subsection 3.1.3, the County will not contract any obligations it has under the Agreement without prior approval by Sound Transit.

22.0 COMPENSATION

Sound Transit will compensate the County for its Work associated with Link Operations and Maintenance and Paratransit, under the terms of this Section.

22.1 Baseline Cost

Baseline Cost refers to the annual cost of the Work to provide the scheduled level of service identified in the Link Operations Plan. Sound Transit will reimburse the County monthly for these services according to the Baseline cost estimate established under this Section and subject to reconciliation.

22.1.1 Establishment of the Annual Baseline Cost

The Annual Baseline Cost is the annual cost for the Work that is specified in the annual Link Operations Plan. This initial Baseline Cost informs invoicing and adjustments to the Baseline Cost through Task Orders. Baseline cost is calculated using the following process:

A. Cost Summary

The Annual Baseline Costs consists of the following elements:

1. Link Direct Costs

There are two types of Link Direct Costs: labor and non-labor.

1. Labor costs for employee positions in the Staffing Plan, for employees who are wholly and exclusively employed in the Rail Division.

i) The County’s Staffing Plan is presented in chart form, and illustrates the lines of reporting among organizational units, highlights the Link Division and identifies the staff (by position) within the units comprising the Rail Division. Any changes to the annual Staffing Plan must be approved and budgeted by Sound Transit

1. All non-labor costs that are separable for the Rail Division and are unburdened from any form of overhead or support costs from organizational units that are not wholly and exclusively associated with the Rail Division. Non-labor Link Direct Costs include services (such as Third-Party contracts), materials and supplies (other than those paid directly by Sound Transit), utilities, Claims handling and risk administration, and miscellaneous costs.

2. Link Shared Costs

Link Shared Costs are the costs of resources that are shared among the Rail Division and other County services, where each service receives some pro rata share of the cost. Supporting details for these shared costs are provided in Exhibit N. The methodology and calculation will be documented as described in Section 22.1.1.C and reviewed on an annual basis in conjunction with the Annual Review of Baseline Cost as provided in Section 22.1.2.B. Shared Costs must have a demonstrable, documented calculation methodology to be eligible for reimbursement.

3. Total O&M Costs

Total O&M Costs are the sum of Link Direct Costs and Link Shared Costs described above.

B. Documentation of Link Direct O&M Costs

Labor costs comprise wages, salaries, and fringe benefits. Annual cost submittals will detail the number of FTEs assumed per position, the annual cost of each position, and a total estimate for the year. The positions included in this estimate must reconcile to the annual Staffing Plan chart described in Section 22.1.1.A.

C. Documentation of Link Shared Costs

Not later than October 31 of each calendar year during the Term, KCM staff will provide Sound Transit with all labor and non-labor costs that are allocated to Link and shared with other County operations in order to calculate the subsequent year’s Baseline Cost.

22.1.2 Revisions to the Baseline Cost for Link

1. Changes to the Baseline Cost for the following year may be proposed by either Party but may be affected only by mutual agreement. Sound Transit retains the right to approve any changes to the scope of the Work included in the Baseline Cost and the Staffing Plan, which approval will not be unreasonably withheld, conditioned, or delayed.

B. Annual Review of the Baseline Cost

The Parties will meet during the second quarter of each year to review and adjust the Baseline Cost to reflect current information about Link operation and maintenance.

C. Annual Review of Cost-Containment Measures

The Parties expect that Link will be operated at a cost and performance consistent with that of comparable light rail systems. Therefore, a Joint Leadership Team, will review cost-containment measures annually or more frequently if issues arise. The Joint Leadership Team may ask County staff to recommend further cost containment measures, and the County will do so.

22.1.3 “Not to Exceed” Cost

Once the Baseline Cost is established for the upcoming calendar year, it will be interpreted as a “not to exceed” cost. The County will not exceed the Baseline Cost without written permission from Sound Transit as provided for in Subsections 22.1.4, 22.1.5, or 22.1.6. Notwithstanding the preceding sentence, the County is not required to subsidize Sound Transit for the performance of the Work.

22.1.4 Compensation for Changes in the Operating Plan

Changes may need to be made to the Operating Plan, levels of staffing, unforeseen work or costs or Party responsibilities that were not anticipated when the Annual Baseline Cost was calculated. Such changes may alter the assumptions used in developing the Baseline Cost and may require expenditures by the County in excess of the Baseline Cost for the current year in order to provide the level of service Sound Transit desires. These additional expenditures may be allowed prior to the Annual Review if authorized by negotiated task order. Task orders may be proposed in writing and with appropriate business justification by either Party or must be approved by the Parties’ Designated Representatives. Such approval is not to be unreasonably withheld, conditioned, or delayed. A proposed task order will include a not-to-exceed estimated cost and written documentation of that estimate. If Sound Transit does not approve the task order, then Sound Transit will provide an explanation.

22.1.5 Increased Operating Costs Due to Link System Expansion

Before implementing track extensions, additional stations, or additional Link facilities, the Parties must agree to a start-up plan, including staffing and other costs in accordance with Section 5 of this Agreement. Such costs may represent an increase to the Baseline Cost.

22.1.6 Other Cost Adjustments

One-time costs may arise from events such as emergencies or other material matters such as legal services that are beyond the County’s control. In an emergency, the County will contact the Sound Transit Director of Light Rail, who may approve an expenditure via email; and then within twenty-four hours of the emergency, the County will provide Sound Transit with a written description of the Work, a proposed timeline for completing the Work and an estimated cost. Except in emergencies, the County will provide Sound Transit with a proposed task order, including written documentation of the proposed cost for Sound Transit’s review and approval.

22.1.7 Pro Rata Benefits

When the County charges Sound Transit for the cost of labor expense, the County will reduce its charge to Sound Transit by a pro rata amount to account for the fact that payout of accrued Vacation Pay and Sick Leave Pay for direct Link staff may include a payout for time accrued when those staff were not direct Link staff (i.e. they were working for King County outside of the Link organization). This reduction will be calculated once annually as part of the reconciliation process for the previous year. The calculation of the labor expense reduction will be based on several factors:

A. The number of hours of Vacation Pay and Sick Leave Pay paid out to qualified direct Link employees;

B. The multiplier factor for Vacation Pay (100%) and Sick Leave Pay (35%);

C. The percentage of employment time that each employee receiving a leave payout spent as a non-direct Link employee (working for King County, but outside the Link organization);

D. The wage rate that each employee was receiving in his or her position with King County directly prior to transferring into the Link organization;

E. The current federal Social Security/FICA rate (currently 7.65% below threshold, 1.45% above threshold) will be applied to the payout calculation.

F. When the County offers retirement incentives and the employee exercises these, the County will credit Sound Transit for 100% of the incentive amount, including the employer’s percentage of Social Security on the incentive.

22.1.8 The Parties also recognize that the County may pay out accrued Vacation Pay and Sick Leave Pay for King County employees who, at some point in their career, accrued time as direct Link employees but are now County employees outside of the Link organization. To the extent that King County can identify such employees and payouts in the future, the calculation of the labor expense reduction will be offset (i.e., the labor cost expense will be increased) by a pro rata amount of the accrued leave payout based on the following factors:

A. The number of hours of Vacation Pay and Sick Leave Pay paid out to the identified County employees;

B. The multiplier factor for Vacation Pay (100%) and Sick Leave Pay (35%);

C. The % of employment time that each employee receiving a leave payout spent as a direct Link employee (working in the Link organization);

D. The wage rate that each employee was receiving in his or her position with the Link organization directly prior to transferring out of it;

E. The current federal Social Security/FICA rate (currently 7.65% below threshold, 1.45% above threshold) will be applied to the payout calculation.

22.2 Paratransit Costs

Sound Transit will compensate the County for the provision of required paratransit services in the Link corridor (shown in Exhibit K) as provided in Subsection 14.4.5. The Parties will negotiate any proposed changes to the paratransit costs during the annual review under section 22.1.2.

22.3 Invoices and Payment

The County will submit a completed monthly invoice with the required reports to Sound Transit by the 25th day of each month, for Work provided during the previous month.

The amount invoiced should include:

A. One-twelfth of the annual Baseline Cost for the current year;

B. Actual monthly paratransit costs based on Sections 14.4.5 and 14.4.6; and

C. Any other costs that have been approved in advance on a task order basis by Sound Transit.

The invoice must be complete, or it will not be processed. Invoices must be accompanied by all required monthly reports as noted in Exhibit L. In addition, King County will provide a spreadsheet of detailed actual direct expenditures to allow comparison of budget versus actuals by unit and account. Sound Transit will notify the County within ten business days of receipt if the invoice is incomplete. The County will send invoices to:

Sound Transit Address for Payment and Reimbursement:

Accounts Payable

Central Puget Sound Regional Transit Authority

401 South Jackson Street

Seattle, Washington 98104-2826

Or such other address as Sound Transit may specify by giving notice as set forth elsewhere in this Agreement.

Sound Transit will pay the County within thirty days of receipt of a completed invoice. Sound Transit will send invoices to:

Accounts Receivable

King County Metro Transit Department

201 S. Jackson Street

Seattle, Washington 98104-2826

Or such other address as the County may specify by giving notice as set forth elsewhere in this Agreement.

22.4 Reconciliation

During the financial data review described in Section 18.1.2, the Parties will reconcile actual costs with estimated costs as follows:

22.4.1 For Baseline Costs, the County’s actual costs to perform the Work included in the Baseline Cost will be compared to Sound Transit’s payments for Baseline Costs under Section 22.1.

* + 1. If an overpayment or underpayment is found, the Parties will meet and confer on a timely resolution and determine appropriate refunds or payments so that each Party can incorporate the amount in the appropriate fiscal year as determined by generally accepted accounting principles.

22.5 Sound Transit Audit

Sound Transit may audit the County’s financial records, process, and methodology regarding its Work under this Agreement, including during the Annual Review. Sound Transit may, at its discretion, use an independent auditor to review the process and methodology used by the County in its Annual Review. The County will provide Sound Transit or its designated auditor access to documentation related to the Annual Review, including, but not limited to, reports, documents, spreadsheets, and electronic files to the extent permitted by law.

22.6 Government Taxes, Assessments and Fees Reimbursement

Sound Transit will pay all federal, state and local taxes, assessments and fees, including but not limited to sales taxes, that are required to be paid by Sound Transit or the County in connection with the Work (herein “Tax” or “Taxes”). The Parties anticipate that Taxes paid by the County in connection with its purchase of goods and services from Third Party contractors will be invoiced by the County and paid by Sound Transit in accordance with Section 22.2.2, “Invoices and Payments.” The Parties anticipate that any other Taxes that are required to be paid by Sound Transit or the County in connection with the Work, including any sales Taxes that may be due with regard to services performed by the County, will be paid directly by Sound Transit unless Sound Transit requests the County to collect a Tax via the monthly invoice and specifies the basis on which the Tax is to be calculated. Regarding Taxes directly paid by Sound Transit in the previous sentence, Sound Transit will defend, indemnify, and hold harmless the County from and against any liability if Taxes are not paid as required.

23.0 STATUTORY REQUIREMENTS

23.1 Federal Funding Requirements

23.1.1 General

If Sound Transit plans to utilize federal financial assistance to pay for any County Work under this Agreement, it must notify the County at least 120 days in advance and meet with the County to determine the cost and any other impacts of such utilization. To the extent federal funds are utilized, the County will comply with any applicable federal contract and funding requirements attached as Exhibit O. The Baseline Cost incorporates the Parties’ current understanding that Sound Transit intends to seek and apply federal capital assistance for preventative maintenance.

23.1.2 Third Party Contracts

If Sound Transit notifies the County, as provided in Subsection 3.1.3, that federal funds are to be utilized for a Third-Party contract to be entered into by the County in performing the work or services under this Agreement, the County must incorporate the contract provisions in Exhibit O.

23.1.3 13(c) Labor Relations

With respect to the County employees covered by Sound Transit’s 13(c) Agreement, the County will comply with the terms of Sound Transit’s 13(c) Agreement in the provision of services under this Agreement.

23.2 DBE Requirements

23.2.1 It is the policy of Sound Transit and the Federal Department of Transportation that disadvantaged businesses, which as defined in Sound Transit’s Disadvantaged Business Enterprise Program include businesses certified as minority, women, and disadvantaged business enterprises (M/W/DBEs) and other certified small businesses, will have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. This policy is stated in Sound Transit’s Guiding Principles and Implementation Policies for Employment and Contracting (Sound Transit Motion Nos. 17 and 29), RCW 39.19.120 and 49 CFR Part 26 and are hereby incorporated herein by this reference.

23.2.2 The County will ensure that disadvantaged and/or certified small businesses as defined above have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, the County will take all necessary and reasonable steps in accordance with said Sound Transit program and policies and said federal regulations to ensure that certified disadvantaged and small businesses have the maximum opportunity to compete for and perform subcontracted Work. The County will ensure its sub-consultants make affirmative efforts to utilize minority, women, and disadvantaged businesses in subcontracts. The County may not discriminate on the basis of race, color, religion, creed, sex, sexual orientation, gender identity or expression, age (except by minimum age and retirement requirements), nationality, marital status, veteran status, or the presence of any sensory, mental, or physical disability in the award and performance of any subcontracts.

23.3 Civil Rights

23.3.1 Nondiscrimination Generally.

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. § 12132, federal transit law at 49 U.S.C. § 5332, and King County Code Chapters 12.18 and 12.22, the County and Sound Transit will not discriminate against any customer, employee, or applicant for employment because of race, color, creed, national origin, sex, gender identity or expression, marital status, veteran status, parental status, age (except by minimum age or retirement requirements), disability, or use of a service or assistive animal by an individual with a disability. In addition, the County and Sound Transit will comply with applicable federal implementing regulations (particularly 49 C.F.R. Part 21 and 49 C.F.R., Part 37, Subpart G) and other implementing requirements FTA may issue, such as FTA C4702.1B.

23.3.2 Title VI Complaints.

A. The County will designate a responsible employee and adopt and implement a Title VI complaint process in accordance with FTA C 4702.1B. The County will provide a copy of its Title VI complaint process to Sound Transit upon the execution of this Agreement, and when amended.

1. In accordance with the 49 C.F.R. Part 21 (Nondiscrimination in Federally-Assisted Programs of the Department of Transportation---Effectuation of Title VI of the Civil Rights Act of 1964) and FTA C 4702.1B, the County will ensure that operators, customer service staff, and other pertinent public facing staff are proficiently trained to perform their duties with regard to Title VI requirements for public transit, and treating customers with respect and courtesy without regard to race, color, or national origin.
2. The County will comply with the Sound Transit Partner Agency Title VI Complaint Procedures when Title VI complaints are received, including, in particular the County will (i) notify Sound Transit via e-mail at stdiscriminationcomplaint@soundtransit.org regarding all Title VI complaints the County receives with regard to its responsibilities under this Agreement, and (ii) report all Title VI activity on the Transit Integration Group Monthly Report under the Title VI tab.
3. The County will transmit all Title VI complaints regarding Link service to Sound Transit’s Office of Business and Labor Compliance, which will be responsible for processing and responding to all Title VI complaints.

23.3.3 Title VI Training

A. By February 1 of each year, the County will provide Sound Transit’s Office of Business and Labor Compliance with written verification of training regarding implementing the provisions of Title VI for existing operators, customer service and any other public facing staff and will demonstrate training for new hire operators, customer service and any other pertinent public facing staff is conducted.

1. The County will provide copies of curricula and the opportunity for Sound Transit's Office of Business and Labor Compliance to comment on curricula.

C. At the County’s request, Sound Transit's Office of Business and Labor Compliance will assist the County in developing its training requirements.

23.3.4 Assistive Materials and Required Documentation.

A. Sound Transit will provide limited English proficiency passenger cards and make them available to the County. Each day the County will ensure that the cards are placed on the rail cars.

B. By February 1 of each year, the County will verify in writing to Sound Transit’s Office of Business and Labor Compliance that the Title VI Notice of Rights are posted on all Sound Transit vehicles in service out of Metro bases.

C. By February 1 of each year, the County will provide to Sound Transit’s Office of Business and Labor Compliance an electronic copy of its current FTA-approved Title VI Program.

D. The County will provide Sound Transit’s Office of Business and Labor Compliance with an electronic copy of its FTA final Triennial review report within 2 weeks of its receipt from the FTA and any letter from the FTA disclosing deficiencies within 2 weeks of their receipt from the FTA. The County will provide additional information at Sound Transit’s request.

E. The County will report to Sound Transit on Title VI performance related to complaints and changes to its program.

23.3.2 Equal Employment Opportunity

The following equal employment opportunity requirements apply to this Agreement:

1. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. §5332, the County and Sound Transit will comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Work, as well as King County Code chapter 12.18A, the County’s Priority Hire Program. The County will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, gender identity or expression, marital status, disability or use of a service or assistive animal by an individual with a disability, or age (except by minimum age or retirement requirements). Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
2. Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and federal transit law at 49 U.S.C. § 5332, the County and Sound Transit will refrain from discriminating against present and prospective employees for reason of age except by minimum age or retirement requirements.
3. Disabilities. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the County and Sound Transit will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.

23.4 Other Requirements

The County and Sound Transit will comply with all applicable federal and state regulations, including but not limited to, the following:

A. Rail System Safety – Ref: 49 CFR 659

B. National Transit Database reporting requirements – Ref.: 49 CFR 5335 and 49 USC 5335

C. WISHA Safety and Health Standards

D. Federal and state environmental regulations, including but not limited to: Toxic Substances Control Act (TSCA); 15 U.S.C. § 2601 et seq. (1976); Resource Conservation and Recovery Act (RCRA); 42 U.S.C. § 321 et seq. (1976); Pollution Prevention Act (PPA); 42 U.S.C. 13101 and 13102, § et seq. (1990); Chapter 173- 180 and 181 WAC, Facility Oil–handling Operations And Design Standards; chapter 173-340 WAC, Model Toxics Control Act; chapter 173-360 WAC, Underground Storage Tank Regulations; chapter 173-303 WAC, Dangerous Waste Regulations; chapter 173-400 WAC, General Regulations For Air Pollution Sources.

24.0 DESIGNATED REPRESENTATIVES

To ensure effective cooperation, each Party will designate representatives responsible for communications and coordination between the Parties. Designated Representatives are responsible for coordinating input and work of other staff members; annual review of the costs and Staffing Plan; revising or preparing exhibits and amendments to this Agreement; and for identifying and resolving issues. The contact information of the current Designated Representatives is provided in Exhibit M. Each Party may unilaterally update its contact information in Exhibit M as necessary by providing an amended copy of Exhibit M to the Designated Representative of the other Party in accordance with Section 32.7.

25.0 DISPUTE RESOLUTION

Sound Transit and the County will use their best efforts to resolve any disputes arising under this Agreement using good faith negotiations. Sound Transit’s Director of Light Rail Operations will communicate regularly with the County’s Rail Division Director to discuss the status of the tasks and services to be performed and to prevent disputes from arising. Except, as otherwise provided, in this Agreement, the Parties will use the following dispute escalation process.

25.1 Step One

Sound Transit’s Director, Light Rail Operations and the County’s Rail Division Director will confer and attempt to resolve the dispute within ten business days of written notification by either Party.

25.2 Step Two

In the event Sound Transit’s Director, Light Rail Operations and the County’s Rail Division Director are unable to resolve the dispute within ten business days as provided in Step One, either Party may refer the dispute to Sound Transit’s Executive Director, Operations and the County’s Deputy Transit General Manager. They will confer and attempt to resolve the dispute within five business days of receiving the referral.

25.3 Step Three

In the event Sound Transit’s Operations Executive Director or designee and the County’s Deputy Transit General Manager are unable to resolve the dispute within five business days as provided in Step Two, either Party may refer the dispute to the Chief Executive Officer of Sound Transit and the County’s Transit General Manager. They will confer and attempt to resolve the dispute within five business days after receiving the referral.

25.4 Mediation

In the event the Parties are unable to resolve the dispute utilizing the process set forth in Sections 25.1-25.3, the Parties may, by agreement, choose to submit the matter to a non- binding mediator. The Parties will share equally in the cost of the mediator.

25.5 Prerequisite to Litigation

Neither Party may seek relief in a court of law until and unless these procedural steps in Sections 25.1-25.3 are exhausted.

25.6 Continued Performance

At all times during the conflict or dispute resolution efforts, the Parties will continue to perform their respective responsibilities under this Agreement with due diligence.

26.0 WORKERS’ COMPENSATION CLAIMS AND EMPLOYMENT PRACTICE LIABILITY

26.1 Assumption of Coverage

This Section applies to Workers’ Compensation Claims and Employment Practice Claims. It is the Parties’ understanding that the Federal Employers Liability Act (“FELA”) does not apply to any County employees performing Link Functions. In the event it is determined that County employees engaged in Link Functions are not covered by Title 51 RCW, or it is determined that the Claim is not an Employment Practices Claim, the County will process such Claims under the provisions of Section 28 below.

26.2 Inclusion in County Program

26.2.1 Workers’ Compensation

The County employees assigned to the Rail Division will be included in the County's workers' compensation program. Commencing with the month in which the County hires the first employee assigned to the Rail Division, Sound Transit will pay, for each employee in the Rail Division, a pro rata share of the charges assessed that year by the County's Office of Safety and Claims for comparable employees in the Metro Transit Department. Thereafter, Sound Transit will pay, for each employee in the Rail Division, the annual charges assessed in a given year by said Office for such comparable employees in the Transit Division.

26.2.2 Employment Practices

The County employees assigned to the Rail Division will be included in the County’s Employment Practices Claim program. Commencing on execution of this Agreement, Sound Transit will pay, for each employee in the Rail Division, a pro rata share of the charges assessed that year by the County's Office of Risk Management for comparable employees in the Metro Transit Department. Thereafter, Sound Transit will pay for each employee in the Rail Division, the annual charges assessed in a given year by the County’s Office of Risk Management for such comparable employees in the Metro Transit Department.

26.2.3 County’s Workers’ Compensation and Employment Practices Program

The County’s workers’ compensation program and employment practices program includes the following functions and responsibilities:

1. respond to, tender responsibility to contractors and/or insurance carriers, if appropriate, and attempt to settle Claims;
2. utilize the Office of the Prosecuting Attorney and/or private law firms to obtain any necessary legal advice and representation in the investigation, defense or settlement of Claims;
3. include Link Functions as part of any excess workers’ compensation insurance and employment practices insurance purchased by the County; and
4. pay any benefits, settlement or adjudicated amounts to Rail Division employees for Worker’s Compensation Claims and Employment Practices Claims made by its employees except as provided under Section 26.5.

26.3 Treatment of Claims by Other Party’s Employees

Except as provided in Subsection 26.2.3, in the event an employee of either Party makes a Claim against the other Party, that Claim will be treated as a Third-Party Claim under Section 28 below. For this purpose, each Party, through negotiation and agreement, hereby waives, with respect to the other Party only, any immunity against Claims made by the waiving Party’s employees that would otherwise be available to it under the industrial insurance provisions of Title 51 RCW.

26.4 Exclusion of Sound Transit Workers’ Compensation and Employment Practices Liability

Notwithstanding any provisions to the contrary, Sound Transit is solely responsible, at its sole expense, for investigating, responding to, settling, defending and paying any benefits, settlements or adjudicated amount for Worker’s Compensation Claims and Employment Practices Claims made by its employees.

26.5 Survival

The provisions of this Section 26 will survive any expiration or termination of this Agreement. Provided, however, following the effective date of any expiration or termination, Sound Transit will reimburse the County for its costs of investigating, responding to, and tendering responsibility to contractors and/or insurance carriers, if appropriate, defending and settling Workers’ Compensation Claims and Employment Practices Claims that were incurred during the term of this Agreement, whether reported on, before or after the expiration or termination date. However, from and after the effective date of any expiration or termination, any amount paid to a claimant will not be drawn from the Link Risk Fund and will instead be drawn from the risk fund of the Party that employed the claimant as of the date that the claim accrued.

27.0 RISK MANAGEMENT AND CLAIMS

27.1 Link Risk Fund

27.1.1 Creation

The County will maintain the existing Link Risk Fund as a separate fund from which the County will make payments and reimbursements as specified in this Section 27.0, but only for that portion of any settlement or judgment for which Sound Transit is responsible, as prescribed in the claims manual, as amended. The Parties’ Risk Managers shall periodically meet and confer to determine the level of funding for the Link Risk Fund. Sound Transit will make payments as are necessary to maintain the Link Risk Fund. If one Party proposes an alternative amount, and the other Party does not agree to the alternative, the matter may be submitted to the Dispute Resolution process in Section 25. The County will not be required to make any payments into the Link Risk Fund. Any money, including interest earned on money, held in the Link Risk Fund that is in excess of the amount determined to be necessary by the Parties will be returned to Sound Transit.

27.1.2 Link Risk Fund Administration

The Parties agree that the primary duties for the administration of the Link Risk Fund include, at a minimum:

A. Establishing reserves for potential payments and transfers from the Link Risk Fund;

B. Making payments and transfers from the Link Risk Fund;

C. Accounting, reporting and auditing on the Link Risk Fund;

D. Determining the timing and amount of Sound Transit’s initial deposit into the Link Risk Fund and the requirements for additional funding from Sound Transit as needed to enable the County to make the payments and transfers required herein; and

E. Continuation of the Link Risk Fund and these procedures during a “run-off period” after expiration or termination of this Agreement in order to administer Claims that relate to acts or omissions occurring prior to the expiration or termination.

27.2 Third Party Claims

27.2.1 County Responsibilities

The County will investigate, respond to, tender responsibility to contractors and/or insurance carriers, if appropriate, and attempt to settle Third Party Claims. Consistent with the claims manual developed by the Parties, the County’s Claims management process must include, at a minimum, the following provisions:

A. Processes for administering Third Party Claims and seeking Sound Transit guidance and approval in the handling of such Claims with a reserve value of at least $50,000;

B. Process for retaining additional staff or staff with expertise for certain Third-Party Claims that are reasonably likely to require extraordinary efforts to investigate, settle or litigate;

C. Process for administering Third Party Claims and sharing the cost with the County’s Risk Fund for matters in which the County’s acts or omissions unrelated to Link are alleged to be a contributing cause;

D. Process for administering Third Party Claims and sharing the cost with Sound Transit for matters in which Sound Transit’s acts or omissions unrelated to Link are alleged to be a contributing cause;

E. Process for administering Third Party Claims that are Claims made against the Link Risk Fund by either Party for injuries to persons and/or damages to property sustained by that Party's personnel and property when not engaged in Link Functions;

F. Standards and process for seeking payments from contributory Third Parties, either before or after payment from the Link Risk Fund, including the joining of Third Parties in litigation, collection efforts and filing subrogation actions; and

G. Process for tendering defense to and seeking payments from the County’s or Sound Transit’s contractors and/or insurance carriers.

27.2.2 Use of Attorneys and Experts

The County will primarily use the Office of the Prosecuting Attorney to obtain any necessary legal advice and representation in the investigation, defense or settlement of Claims. To the extent such costs exceed the amount budgeted for such purposes in a given year’s Baseline Cost, the County will request written approval for further funding from Sound Transit in accordance with Subsection 22.1.6.

27.2.3 Payment of Claims – Pre-DSTT Transfer to Sound Transit

If the DSTT is transferred to Sound Transit, the County will use the Link Risk Fund to pay Sound Transit’s proportionate share of any settlement or adjudicated amount due for Third Party Claims arising prior to the effective date that the DSTT is transferred from the County to Sound Transit. If the Link Risk Fund is inadequate to make such payment, Sound Transit will deposit additional funds into the Link Risk Fund as necessary to enable the County to make such payment and to replenish the Link Risk Fund to the level as provided in Section 27.1.1. Provided, however, the Parties acknowledge that Third Parties may allegedly incur damages in the DSTT under circumstances other than boarding, deboarding, riding in or being struck by a Link train. The County will allocate all costs related to such an incident that is not clearly attributable to Link service between the County Risk Fund and the Link Risk Fund according to the percentage shares for DSTT Common Elements operation and maintenance costs in effect at the time of the incident, including but not limited to the costs of investigation, handling, settlement, litigation, and payment of any settlements or adjudicated amounts. If the DSTT is not transferred to Sound Transit, then the County will continue to manage Third Party Claims as provided in Section 27.2.1 and pay for such claims as provided in this Section 27.2.3.

27.2.4 Payment of DSTT Premises Liability Claims – Post Transfer to Sound Transit

Sound Transit currently manages premises liability Claims for the Link system except in the DSTT. If the DSTT is transferred to Sound Transit, then from and after the date of transfer Sound Transit will investigate, respond to, administer, tender responsibility to contractors and/or insurance carriers, if appropriate, and attempt to settle Third Party Claims regarding premises liability in the DSTT as well as the rest of the Link system. The claims manual developed by the Parties will be amended to reflect this change. Sound Transit will defend, indemnify and hold harmless the County and its officers and employees, except to the extent the conduct of a County officer or employee is found to be intentional or grossly negligent. Sound Transit will administer such claims in accordance with sound business practices and in accordance with the Parties’ claims manual.

27.2.5 Contract Provisions for Third Party Contracts

If the County or Sound Transit enters into a contract with a Third Party to perform Link Functions, then the contract must require:

A. That the contractor defend, indemnify, and hold harmless (i) Sound Transit, and (ii) the County, and (iii) their respective officials and employees against any liability arising out of the contractor’s acts and omissions; and

B. That the contractor be required to obtain insurance coverage, as typically required by the Party for such contracts, naming (i) Sound Transit and (ii) the County as additional insured.

27.3 Waiver of Contribution and Subrogation

27.3.1 Waiver of Claims and Contribution

The Parties hereby release and waive any Claims and rights of contribution for Claims each may have against the other arising out of the acts or omissions of the other and its employees, agents, or contractors engaged in Link Functions. For clarification, the release and waiver under this Subsection 27.3.1 does not apply to each Party’s right under contract law to enforce the provisions of this Agreement.

27.3.2 Waiver by Insurance Carriers

The Parties will require their respective insurers to waive subrogation rights against the other Party and such other Party’s insurers. This Subsection 27.3.2 shall be inapplicable to the extent it would have the effect of invalidating any insurance provided to the Parties.

27.4 Insurance Coverage

27.4.1 Purchase

Six months before the annual policy renewal date thereafter, and if requested by either Party, the County’s Risk Committee and Sound Transit’s Risk Manager will meet to plan for the purchase of insurance for the coming one-year period of passenger service. Before each annual policy renewal date, Sound Transit or the County, as the case may be, will procure insurance policies for the coming year. The minimum coverage, limits, endorsements and other terms specified in Subsections 27.4.2 and 27.4.3 are considered prudent at the time of execution of this Agreement. However, the Parties also acknowledge that these policies or their equivalents may not be available as specified or may not accurately reflect the needs considering economic conditions, changes in the law, or the financial capacity of the insurance markets. Accordingly, the coverage levels and specifications in Subsection 27.4.2 will be used by the Parties’ risk managers as a guide for the appropriate level of insurance coverage. Annually, the Parties will execute a memorandum of understanding regarding annual coverage. The memorandum of understanding will outline the coverage levels, limits, and program structure specifications for the upcoming year. In addition to its obligations to fully fund the Link Risk Fund, Sound Transit will pay for the cost of the insurance premiums for each year’s insurance policies, as respects the operations and maintenance of the Link system.

27.4.2 Coverage

As of the date of execution of this Agreement, the purchase of the following coverage’s limits, endorsements, and other terms is deemed prudent regarding operation of Link as contemplated by this Agreement during the O&M Period. If Sound Transit proposes to purchase an alternative to the following insurances, and the County does not agree to the alternative, the matter may be submitted to the Dispute Resolution process in Section 25.

1. Railroad General Liability (Coverage Form/Edition: STF-RRP-D100-A 2000 or equivalent) $100-million / occurrence limits endorsed to include coverage for:
2. maintenance and operation of Sound Transit light rail power units and passenger cars;
3. Third-Party bodily injury & property damage liability;
4. deletion of Passenger Exclusion;
5. railroad Pollution to include collision and upset; and
6. blanket Waiver of Subrogation Endorsement;
7. Primary & Umbrella Excess Commercial General Liability (ISO form number CGL 0001 Ed. 11-88 or equivalent) $25-million / occurrence limits endorsed to include coverage for the following:
8. third-Party bodily injury and property damage liability;
9. premises and operations liability;
10. personal injury and advertiser’s liability;
11. contractual liability;
12. independent contractors’ liability;
13. Washington stop-gap / employers’ liability of $1 million; and
14. King County and Sound Transit as named insured
15. Commercial Vehicle or Business Automobile Liability (Standard form CA 00 01 or equivalent) $2-million / occurrence limits covering bodily injury & property damage liability endorsed to include coverage for all owned, non-owned, hired, leased, or rented vehicles.
16. Commercial Inland Marine Railroad / Light Rail Vehicle Rolling Stock Minimum $25- million / occurrence “all risk” of physical damage or loss endorsed to include:
17. Sound Transit as loss payee;
18. actual repair or replacement cost;
19. earthquake sub-limits minimum $10-million;
20. flood sub-limits minimum $100,000;
21. derailment, collision, upset or overturn;
22. debris removal - 180 days reporting;
23. pollutant clean-up - 180 days reporting;
24. Fire Department charges; and
25. waiver of subrogation to benefit King County.
26. Crime Coverage $5,000,000 occurrence limits and endorsed to include the following:
27. employee’s dishonesty;
28. theft, disappearance, and destruction;
29. forgery, alteration, or counterfeiting;
30. robbery inside and outside the premises;
31. computer fraud and funds transfer fraud coverage;

F. Fiduciary Liability for a limit no less than $5,000,000 per claim and must be written to protect King County, its officers, employees, and officials in their capacity as operators of Link.

G. Pollution Legal Liability for an amount not less than $10,000,000 (Subject to generally accepted risk management practices and availability).

27.4.3 Common Endorsements and Other Requirements

Except for Workers’ Compensation and Employment Practices Liability, such insurance policies must contain, or be endorsed to contain the following provisions, except as provided in Subsection 27.4.1 and the referenced memorandum of understanding regarding annual coverage:

A. the County and Sound Transit, their officers, officials, employees and agents are to be covered as named insured as respects liability arising out of activities performed by or on behalf of the County in connection with operation and maintenance of Link;

B. insurance coverage must be primary insurance as respects the County, Sound Transit and their officers, officials, employees and agents. Any insurance and/or self-insurance maintained by King County, its officers, officials, employees, and agents shall not contribute with Sound Transit insurance or benefit Sound Transit in any way;

C. such insurance must apply separately to each insured against whom a Claim is made and/or lawsuit is brought, except with respect to the limits of the insurer’s liability;

D. insurance policies may not be suspended, voided, cancelled, or substantially reduced in coverage or in limits while this Agreement is active unless forty-five days prior written notice has been given to the County;

E. unless otherwise approved by the County, all policies of insurance are to be placed with insurers with a Bests’ rating of no less than A- VII, or, if not rated with Bests’, with minimum surpluses the equivalent of Bests’ surplus size VII; and

F. both Parties shall maintain copies of their respective policies and provide them to the other Party upon request.

27.4.4 Limitations

These insurance requirements do not limit and may not be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policies. Nothing contained within this Section 26.4.4 affects or alters (or both) the application of any other provision contained within this Agreement.

27.4.5 Property Coverage for DSTT, the DSTT Annex, Merge Zone, and DSTT Operations Control Center

1. Unless and until the DSTT is transferred to Sound Transit, the County will maintain property insurance on the DSTT, Tunnel Annex, DSTT Merge Zone, and DSTT Operations Control Center endorsed to include:
2. Insured to Full Replacement Cost Values as revised by the County on an annual basis. Any values of Sound Transit improvements within the DSTT, Tunnel Annex, DSTT Merge Zone and DSTT Operations Control Center will be revised annually by Sound Transit and County.
3. Coverage written on an “All Risk” basis;
4. Earthquake sublimit of $ 50,000,000 or another amount determined by County;
5. Flood sublimit of $ 50,000,000 or another amount determined by County;
6. mutual waiver of subrogation only to the extent of insurable loss and may not be interpreted to include any amount in excess of insurable limit or within the deductible/SIR, provided, that this provision will be inapplicable to the extent it would have the effect of invalidating the insurance;
7. King County and Sound Transit, as Loss Payee, as their interests may appear; and
8. Terrorism (subject to generally accepted public transit industry standards).
9. Sound Transit will pay a percentage share of such insurance costs based on the percentage applicable to operation and maintenance of Common Elements as provided in the DSTT Agreement.
10. The Parties agree that if the DSTT is transferred to Sound Transit then from and after the effective date of such transfer (i) Sound Transit will acquire and maintain all property insurance coverage and endorsements for the DSTT and (ii) the County will have no further duty or obligation to insure the DSTT or any portion of it under this Section 27.4.5.

27.4.6 All Other Property Coverage

Sound Transit is responsible for the repair and replacement in the event of casualty losses of the Link vehicles and all Link systems, equipment, inventory, right-of-way fixtures, facilities, and other improvements located (i) south of the Merge Zone and (ii) northerly or easterly of the DSTT Annex. Accordingly, Sound Transit will, at its sole expense and discretion: (i) purchase and maintain its own property insurance, if any, on all said properties; and (ii) seek recovery from Third Parties for damages to the property.

27.5 Survival of Terms and Procedures for Payment of Post-Termination Claims

Section 27 shall survive any termination or expiration of this Agreement for Claims incurred before, on or after the effective date of termination or expiration. By way of clarification and not limitation, Sound Transit shall continue to maintain the Link Risk Fund at levels, and for such time period, as are determined by the Parties. All claim handling and procedures for said Claims, in place at the time of termination or expiration of this Agreement, shall also remain in effect through such time period as the Link Risk Fund is maintained.

28.0 INDEMNIFICATION OF CERTAIN CLAIMS

28.1 Generally

Section 27 does not apply to Claims covered by the following defense and indemnity obligations:

28.2 Nuisance, Trespass, Inverse Condemnation and Related Claims

Sound Transit will, at its sole expense, obtain all licenses, franchises, easements, property interests, permits, and other authorizations necessary for the operation and maintenance of Link. Sound Transit will respond directly to Claims that alleges that Link Functions (A) were not authorized in or on a given property, right-of-way , jurisdiction or other location or otherwise impaired, negated or violated an easement, agreement, lease, license, permit or other authorization related to the real property underlying or affected by Link or (B) created a nuisance, trespass, inverse condemnation, waste or other impact on property or a property interest, requiring compensation or other payment. Sound Transit will, at its sole expense, defend, indemnify and hold harmless the County and its elected officials, employees, agents, and contractors against all such Claims.

28.3 Hazardous Substances

Sound Transit will, at its sole expense, defend, indemnify and hold harmless the County and its elected officials, employees, agents and contractors against Claims relating to or arising out of Hazardous Substances existing, prior to the commencement of the Start-Up Period, in or on a site used for a Link Function.

28.4 Workers’ Compensation and Employment Practice Claims

Subject to section 27.2, each Party shall defend, indemnify and hold harmless the other Party and its elected officials, employees, agents and contractors against all Workers’ Compensation Claims and Employment Practices Claims made by their respective employees. For this purpose, both Parties expressly waive and mutually agree, 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.

28.5 Other Agreements Not Superseded

Sound Transit’s defense and indemnity obligations under the DSTT Agreement remain in effect and are not superseded by any provision of this Agreement.

28.6 Survival of Terms

The provisions of this Section 28 will survive any termination or expiration of this Agreement.

29.0 TERMINATION

29.1 Default

29.1.1 Default by the County

The County will be in default under this Agreement upon the occurrence of any one or more of the following events or conditions:

A. The County fails to timely begin the Work as required under this Agreement;

B. The County fails to timely observe or perform or cause to be observed or performed any material obligation, term or condition required to be observed or performed by the County under this Agreement;

C. Any material representation made by the County in this Agreement is intentionally false or materially misleading when made;

D. The County fails to resume performance of Work which has been suspended or stopped within a reasonable time after receipt of notice from Sound Transit to do so or (if applicable) after cessation of the event preventing performance;

E. The County (1) commences a voluntary case seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or seeking the appointment of a trustee, receiver, liquidator, or custodian of any substantial part of the County’s assets; (2) files an answer admitting the material allegations of a petition filed against the County in any involuntary case commenced against the County seeking such actions; or consents to any such relief or to the appointment of or taking possession by any such official in any involuntary case commenced against the County; (3) makes an assignment for the benefit of creditors; (4) fails, is unable, or admits in writing, its inability to pay the County’s debts as they become due; or (5) takes any action to authorize any of the foregoing; or

F. The County’s failure to comply with Section 29.4 after the County issues notice of termination for convenience.

29.1.2 Default by Sound Transit

Sound Transit will be in default under this Agreement upon the occurrence of any one or more of the following events or conditions:

A. Sound Transit fails to timely make payments to the County and the Link Risk Fund as required under this Agreement;

B. Sound Transit fails to timely observe or perform or cause to be observed or performed any material obligation, term or condition required to be observed or performed by Sound Transit under this Agreement;

C. Any material representation made by Sound Transit in this Agreement is intentionally false or materially misleading when made;

D. Sound Transit fails to repair or replace (or provide the County with the necessary parts, materials and funding to repair and replace) damaged facilities, systems, equipment and vehicles as necessary for the County to resume or continue performing the Work; or

E. Sound Transit (1) commences a voluntary case seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or seeking the appointment of a trustee, receiver, liquidator, or custodian of any substantial part of Sound Transit’s assets; (2) files an answer admitting the material allegations of a petition filed against Sound Transit in any involuntary case commenced against Sound Transit seeking such actions; or consents to any such relief or to the appointment of or taking possession by any such official in any voluntary case commenced against Sound Transit; (3) makes an assignment for the benefit of creditors; (4) fails, is unable, or admits in writing, its inability to pay Sound Transit’s debts as they become due; or (5) takes any action to authorize any of the foregoing.

29.2 Declaration of an Event of Default and Termination

29.2.1 Generally

A breach of the Agreement as described above will become an “Event of Default” upon delivery of written notice to that effect by one Party to the other in accordance with Section 32.7. Before either Party is entitled to declare an Event of Default, it must first invoke the dispute resolution process specified in Section 25. The Parties will exercise good faith efforts to resolve their differences (including but not limited to differences as to whether a default occurred, the nature of a cure and the period for a cure) to avoid a declaration of an Event of Default. If, after engaging in said process, a Party still desires to declare an Event of Default and terminate this Agreement, the Party must deliver written notice as specified above to the other Party and provide in said notice an effective date of termination at least six (6) months after the written notice in order to allow for a coordinated termination as provided in Section 31.4.

29.2.2 Exceptions

Notwithstanding the provisions of Subsection 29.2.1 to the contrary, either Party may declare an Event of Default without engaging in the dispute resolution process and terminate this Agreement by delivering to the other Party a written notice of termination at least thirty days in advance of the effective date, in the event of one of the following Events of Default:

A. A default that by its nature cannot be cured;

B. A default that by its nature would cause a severe hardship to the public interest if the Parties engaged in the Dispute Resolution process under Section 25 and the coordinated termination process as provided under Section 29.4; or

C. A failure of Sound Transit to make payment to the County and the Link Risk Fund as required under this Agreement. Provided, however, if the County declares an Event of Default for Sound Transit’s failure to make a payment as provided in this subsection, Sound Transit may effect a cure of the default and preclude the termination from taking effect by: (i) delivering to the County, within five (5) business days of receipt of the termination notice, a written certification from its chief financial officer that the necessary funds are available for payment; and (ii) delivering to the County, within twenty (20) days of receipt of the termination notice, the full payment due.

If a Party terminates this Agreement for such an event of default, as specified in this Subsection 29.2.2, the County will exercise its best efforts to affect the cessation activities contemplated under Section 29.4 as soon as possible and within the thirty days or longer advance notice period specified in the termination notice.

29.3 Termination for Convenience

29.3.1 Notice

Either Party may terminate this Agreement without cause and for its convenience by providing the other Party with written notice twelve (12) months in advance of the effective date of termination. Upon issuance of a notice of Termination for Convenience, the Parties will implement the Coordinated Termination provisions of Section 29.4.

29.3.2 Payments

In the event Sound Transit terminates for its convenience, it will make payments to the County as specified in Section 29.6. In the event the County terminates for its convenience, it will reimburse Sound Transit for the following costs:

A. The reasonable costs incurred by Sound Transit in taking possession and control of Link property owned by Sound Transit but in the County’s possession; and

B. The undepreciated remaining value, based on a useful life of five years, of any Sound Transit “lump sum” payment made under Subsection 32.4.1 as Sound Transit’s share of the cost to upgrade or replace a County information system.

29.4 Coordinated Termination

29.4.1 Procedure

After a Party has delivered a notice of termination for convenience or for an Event of Default (except as provided in Subsection 29.2.2), the Parties will meet and cooperate in good faith to agree upon the date(s) upon which the County will:

A. Cease to perform, and Sound Transit will assume, the various elements of the Work;

B. Cease to enter into new subcontracts utilized by the County to perform the Work;

C. Terminate or assign to Sound Transit all of the right, title and interest of the County in existing subcontracts utilized by the County to perform the Work;

D. Transfer title to Sound Transit of all Work in process, completed Work, supplies, equipment, and other material that Sound Transit has supplied to the County or that is wholly devoted to Link as provided in Subsection 29.5.1; and

E. Provide to Sound Transit copies of any documents or information related to Link not previously provided to Sound Transit during performing the Work as provided in Subsection 29.5.1.

29.4.2 Continued Performance

The County will continue to perform the Work until the agreed upon date(s) of cessation and will take such action as may be necessary, or as Sound Transit may reasonably direct, for the protection and preservation of the property related to the Agreement that is in the possession of the County and in which Sound Transit has or may acquire an interest. The termination actions will be completed by the specified effective date of termination unless extended by mutual agreement. The County will not be required to continue performing all or a portion of the Work for more than six months after a notice of termination for an Event of Default, or more than twelve months after a notice of termination for convenience.

29.5 Sound Transit’s Remedies

29.5.1 Return of Property

Upon the effective date of termination for convenience or for an event of default, Sound Transit shall take possession of any or all specifications, records, information, plans, schedules, samples, shop drawings, and other documents it may request and the equipment, systems, vehicles and facilities owned by Sound Transit and may complete the Work itself or enter into an agreement for the completion of Work.

29.5.2 Damages for Termination based on County Default

In consideration of the benefits to Sound Transit of the County agreeing to perform the Work for its costs (with no profits or premiums) and provided the County performs its obligations under the coordinated termination provisions of Section 29.4, Sound Transit’s damages arising out of or related to an Event of Default by the County shall be limited to the following:

A. The reasonable costs incurred by Sound Transit in taking possession and control of Link property owned by Sound Transit but in the County’s possession;

B. The undepreciated remaining value, based on a useful life of five (5) years, of any Sound Transit “lump sum” payment made under Subsection 31.4.1 as Sound Transit’s share of the cost to upgrade or replace a County information system;

C. The reasonable costs incurred in recruiting or procuring replacement(s) to perform the Work (but excluding the costs of performing the Work); and

D. The reasonable cost of performing a portion of the Work that may be transferred to Sound Transit or its contractor, by agreement of both Parties, for the time remaining until the effective date of termination but only to the extent such cost exceeds the sum which would have been payable to the County for that portion of the Work.

29.5.3 Sound Transit Damages for Termination Based on County Default and County Fails to Perform Coordinated Termination

If the County does not perform its obligations under the coordinated termination provisions of Section 29.4, Sound Transit’s damages arising out of or related to an Event of Default by the County shall be limited to the following:

1. The reasonable costs incurred by Sound Transit in taking possession and control of Link property owned by Sound Transit but in the County’s possession;
2. The undepreciated remaining value, based on a useful life of five years, of any Sound Transit “lump sum” payment made under Subsection 31.4.1 as Sound Transit’s share of the cost to upgrade or replace a County information system; and
3. The reasonable costs incurred by Sound Transit to perform or contract for the performance of the Work included in the Baseline Cost, whichever is applicable, for twelve months after the effective date of termination, to the extent such costs exceed the sum which would have been payable to the County under this Agreement for said time period.

29.6 Payments Due County

29.6.1 Payments Upon Any Termination

The following amounts will be paid by Sound Transit to the County within thirty (30) days after the effective date of any termination, or the date(s) when such amounts are known, whichever is earlier:

A. The amounts due under the terms of this Agreement for the County’s costs incurred in performing the Work prior to the effective date of the termination (including Work in progress);

B. The County’s costs incurred in terminating the Work, including but not limited to:

1. Payments due to, or on behalf of, employees who had been performing any of the Work, including any wages, accrued paid leave, benefit costs, severance payments, or any other amounts due under applicable collective bargaining and other agreements and federal, state and local laws, regulations, and ordinances; and

2. Outstanding liabilities and costs owed by the County to Third Parties under subcontracts or other agreements utilized to perform the Work, including but not limited to termination and close-out costs and profits, unrecoverable prepayments, penalties, and cancellation charges.

C. The amounts due to the County for processing and payment of Workers’ Compensation Claims and other Claims under Section 26.5 and Subsection 27.5, through the effective date of termination and thereafter, and any costs incurred by the County in providing services or activities to assist in the transition of Link operations following the effective date of termination.

29.6.2 Disputes

If the County disputes the adequacy of the amount of the compensation offered by Sound Transit, the County may proceed under this Agreement to resolve the dispute as to the proper amount of compensation owing to the County as provided in the dispute resolution section of this Agreement.

29.7 No Personal Liability

Neither Party, nor any of its officers, agents, or employees, may be charged personally by the other Party with any liability or held liable to the other Party under any term or provision of this Agreement, or because of its execution, or because of any breach of this Agreement.

30.0 FINANCING

30.1 Tax Exempt Bonds

Construction of portions of the light rail system will be financed by issuance by Sound Transit of tax-exempt bonds. The County may not take, or permit to be taken on its behalf, any action that it has been informed by Sound Transit in advance would adversely affect the exemption from federal taxation of the interest on the bonds. To the extent permitted by law, the County will take or require to be taken such acts as may reasonably be within its ability and as may from time to time be required under applicable law to continue the exemption from federal income taxation of the interest on the bonds as requested by Sound Transit.

30.2 Financing Transactions

Sound Transit may from time to time undertake certain financing transactions, such as lease- leaseback agreements, related to the rolling stock or other fixed assets of the light rail system. The County will cooperate in the execution and any ongoing management of such transactions.

30.3 Reimbursement

Sound Transit will reimburse the County for any costs it incurs to comply with the terms of this Section.

31.0 INTELLECTUAL PROPERTY (IP)

31.1 Work Product and Intellectual Property

If in performing the Work the County develops a work of authorship or any materials, which may be protectable under intellectual property laws (“Work Product”), the following terms and conditions shall apply:

31.2 Work Made for Hire

To the extent that Work Product includes material subject to copyright, the County agrees that the Work Product is done as a “work made for hire” for copyright purposes, and as a result, Sound Transit will own all copyrights in the Work Product.

31.3 Assignment

To the extent that the Work Product does not qualify as a work made for hire under applicable law, the County hereby assigns to Sound Transit all right, title, and interest in and to the Work Product, including but not limited to (A) all copyrights in the same, and in all renewals and extensions of the copyrights that may be secured under applicable laws; and (B) all rights in and to any inventions and designs embodied in the Work Product or developed in the course of the County’s creation of the Work Product.

31.4 Moral Rights

The County hereby forever waives any and all “moral rights” it may have in the Work

Product.

31.5 Assistance

At Sound Transit’s expense, the County will execute and deliver such instruments and take such other action as may be requested by Sound Transit to perfect or protect Sound Transit’s rights in the Work Product and to perfect the assignments contemplated by this Section.

31.6 No Third-Party Licenses Included

Sound Transit will, at its expense, obtain any Third-Party software and other intellectual property licenses needed to read, use, apply, copy, modify, or otherwise exercise its rights in the Work Product.

31.7 County License Rights

Sound Transit hereby grants to the County a perpetual, non-exclusive, transferable, sublicensable, and royalty-free license to use, reproduce, maintain, create derivative works from, modify, and upgrade any Work Product and any other Work, material, or item provided to the County in accordance with this Agreement for which Sound Transit is the owner of the intellectual property rights.

31.8 Intellectual Property Owned by Third Parties

31.8.1 Common Third-Party IP Licensed to County

The County may, at its discretion, use Third Party intellectual property that is not specific to Link purposes (“Common Third-Party IP”) to also perform the Work. To the extent such Work is not allowed under the applicable IP licenses from Third Parties, the County must obtain all necessary license rights to permit use of the Common Third-Party IP to perform Work.

31.8.2 County Modifications to Common Third-Party IP

If the County has to modify any Common Third Party IP and/or obtain additional license rights from the Third Party licensor to use such IP for the Work, Sound Transit will reimburse the County for its costs of making and maintaining the modification and the incremental costs for obtaining any additional license rights.

31.8.3 County Upgrades to Common Third-Party IP

At such time as the County undertakes an upgrade or replacement of Common Third-Party IP that is used in the performance of the Work, Sound Transit will reimburse the County for a proportionate share of the cost incurred by the County. The Parties will meet in advance to discuss the County’s upgrade or replacement project and determine Sound Transit’s share of the cost based on the projected use of said IP for Work as compared to other County purposes.

31.8.4 Link-Specific Third-Party IP

To the extent Sound Transit provides software, hardware or other Third-Party IP for the County’s use in performing the Work, Sound Transit will obtain all necessary license rights such that County Rail Division staff and/or its applicable contractors are licensed users. To the extent the County is required to purchase software, hardware or other Third-Party IP to perform Work (“Link-Specific Third-Party IP”), the County will exercise its best efforts to obtain license rights in the names of both the County and Sound Transit. Sound Transit will reimburse the County for all its costs incurred in purchasing such Link-Specific Third-Party IP.

32.0 GENERAL PROVISIONS

32.1 Rights and Remedies

The rights and remedies of the Parties to the Agreement are in addition to any other rights and remedies provided by law, except as otherwise provided in this Agreement.

32.2 No Joint Venture or Partnership

No joint venture or partnership is formed as a result of this Agreement.

32.3 No Third-Party Rights

This Agreement is solely for the benefit of the Parties and gives no right to any other party. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties.

32.4 Compliance with Laws

32.4.1 In General

Each Party will comply, and to the best of its ability, will strive for, its employees, agents, consultants, contractors, and representatives to comply with all federal, state, and local law, regulations, and ordinances, including, but not limited to, applicable public works and procurements laws and regulations, bonding, prevailing wage, nondiscrimination, retainage, insurance, and workers’ compensation requirements.

32.4.2 Licensing and Certification of Employees

Each Party will comply, and to the best of its ability will strive for, its employees, agents, consultants, contractors, and representatives to comply with all federal, state and local licensing, registration, filing and/or certification standards, all applicable accrediting standards, and any other standards or criteria (i) established by any agency (a) of the State of Washington or (b) of the federal government and (ii) applicable to the work or services for which it is responsible under this Agreement.

32.5 Venue

Any legal action between the Parties regarding this Agreement will be brought in the Superior Court of King County.

32.6 No Employee Relationship

Each Party and its employees, agents, consultants, and representatives may not be deemed or construed to be employees or agents of the other Party. No employee, agent, consultant, or representative of the County may make any Claim, demand, or application to or for any right or privilege applicable to an officer or employee of the other Party. Except for Employment Practice Claims as provided for in Section 28.3, each Party will be solely responsible for any Claims for wages or compensation by its employees, agents, and representatives, including consultants and will indemnify and hold the other Party harmless from any such Claims.

32.7 Notice

All written notices required in this Agreement must be either (i) personally delivered; sent by certified U.S. mail, return receipt requested, postage prepaid; or (iii) sent by facsimile transmission (with confirmation receipt printed). Notice will be deemed received (i) upon personal delivery, or (ii) two (2) days after mailing as described in the preceding sentence, or (iii) upon facsimile transmission with printed confirmation receipt. If notice is delivered by any other means, then the sender will bear the burden to prove receipt. All notices or requests shall be sent to the County and Sound Transit addressed as follows:

King County: Transit General Manager

King County Metro Transit

201 South Jackson Street, Mailstop KSC-TR-0415

Seattle, Washington 98104-3856

Sound Transit: Executive Director, Operations

Sound Transit

401 South Jackson Street

Seattle, Washington 98104-2826

32.8 Waiver of Default

Waiver of any default under any provision of this Agreement will not be deemed to be a waiver of any subsequent default and will not be construed to be a modification of the terms of this Agreement.

32.9 Force Majeure

If any Party is rendered unable, wholly or in part, by a Force Majeure event, to perform or comply with any obligation or condition of this Agreement then, upon giving notice and reasonably full particulars to the other Party, such obligation or condition will be suspended only for the time and to the extent reasonably necessary to allow for performance and compliance and restore normal operations.

32.10 Non-Exclusivity of Agreement

The Agreement is not, and will not be construed to be, Sound Transit's sole contract for operations, maintenance, or repairs of Link. Sound Transit reserves the right to contract with other parties, or perform “in-house,” work or services related to the operation or maintenance of Link that has not been specifically contracted to the County in this Agreement.

32.11 Assignment

Neither Party may assign any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent by the other Party.

32.12 Binding on Successors and Assigns

This Agreement, together with all exhibits and attachments now or hereafter made a part, is binding on the Parties and their respective heirs, executors, administrators, successors and assigns.

32.13 Severability

If any of the terms and conditions of this Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and conditions unaffected thereby will remain in full force and effect. The Parties will negotiate in good faith to reform the Agreement to replace any invalid or unenforceable term and/or condition with a valid and enforceable term and/or condition that comes as close as possible to the intention of the stricken term and/or condition.

32.14 Warranty of Right to Enter into Agreement

The Parties each warrant they have the authority to enter into this Agreement and that the persons signing this Agreement on behalf of each Party have the authority to bind that Party.

32.15 Exhibits

All exhibits referenced in and attached to this Agreement are incorporated by this reference.

32.16 Amendments and Modifications

32.16.1 This Agreement and its exhibits may only be amended or modified by written agreement of the Parties.

32.16.2 Amendments and revisions to the exhibits can be authorized and executed on behalf of Sound Transit by the Director of Link Light Rail and on behalf of the County by its Metro Transit General Manager or their respective delegates.

32.16.3 Amendments that materially affect the policies and intent of this Agreement are subject to the approval of the Sound Transit Board of Directors and the County Council.

32.17 Annual Meeting

The Parties’ Designated Representatives will review this Agreement annually to discuss necessary changes or adjustments to the Agreement’s scope of work or formulas as new information, circumstances, or technology become available.

32.18 Relation to DSTT Agreement

This Agreement and the subsequent agreements, plans and changes provided for herein, are intended to satisfy the provisions of Sections 16.3, 16.4, 16.5, and 16.6 of the DSTT Agreement, the other provisions of which remain in effect. Provided, that if the DSTT is transferred to Sound Transit then the provisions of the transfer agreement shall govern as to the effectiveness of the DSTT Agreement.

32.19 Survival of Certain Provisions

The following sections will survive any termination or expiration of this Agreement:

Section 13 Downtown Seattle Transit Tunnel

Section 15.9 Labor Relations

Section 16 Audits, Inspections and Reports

Section 25 Dispute Resolution

Section 26 Workers’ Compensation

Section 27 Risk Management and Claims

Section 28 Indemnification of Certain Claims

Section 29 Termination

Section 31 Intellectual Property (IP)

Section 33 Effective Date and Term

Exhibit A Definitions

33.0 EFFECTIVE DATE AND TERM

33.1 Effective Date and Term; Optional Extensions

This Agreement will take effect at 12:01 AM on July 18, 2019 following (i) Sound Transit Board ratification and (ii) approval of the Metropolitan King County Council. The base term of this Agreement will be from July 18, 2019 through the balance of calendar year 2019 and all of calendar years 2020, 2021, 2022, and 2023. The base term of this Agreement expires at 11:59 PM on December 31, 2023. The Parties may by mutual agreement of their Designated Representatives extend the term of this Agreement for up to three (3) additional 2-year periods for a total of not more than 6 additional calendar years beyond the base term. Any such extension will be in writing and executed by the Parties.

33.2 Agreement Review

Not later than July 1, 2022, which is eighteen months prior to the end of the base term, or 18 months prior to the end of an extension term, the Sound Transit Chief Executive Officer and Metro Transit Department General Manager will jointly select one of the following three options:

1. Commence negotiations for a new successor agreement with the intent to execute such agreement prior to the expiration of this Agreement on December 31, 2023; or
2. Exercise one of up to three 2-year extensions of this Agreement; or
3. Confirm that this Agreement will expire on December 31, 2023 with no extensions of the base term and commence planning for the transition of Link operations and maintenance to a third party effective at 12:01 A.M. on January 1, 2024.

33.3 Expiration

If the Parties select option (C) or do not make a selection under Section 33.2 then the Parties will commence and thereafter comply with the Coordinated Termination provisions of Section 29.4 and 29.6, which are incorporated herein by this reference and apply in the context of the expiration.

34.0 EXECUTION OF AGREEMENT

This Agreement may be executed in counterparts, any one of which is for all purposes an original, but both of which together constitute one and the same instrument. It will not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, appear on each counterpart. It will not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each Party. Any executed signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter may be attached to another counterpart identical thereto except having attached to it such additional executed signature pages.

The Parties have executed this Agreement as of the day and year set forth below their signatures.

KING COUNTY CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

(“The County”) (“Sound Transit”)

Rob Gannon Peter Rogoff

General Manager, King County Metro Executive Director, Sound Transit

Date: Date:

Approved as to form: Approved as to form:

Deputy Prosecuting Attorney Sound Transit Legal Counsel