

WSDOT Lease No. AA-01-13749  
Inventory Control No. 1-17-15211

**SR 520 Transit Stops at  
Montlake Lid**

**A I R S P A C E   L E A S E**

THIS IS AN AIRSPACE LEASE (Lease) made and entered into between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, (hereinafter WSDOT), and KING COUNTY DEPARTMENT OF TRANSPORTATION, (hereinafter TENANT), a political subdivision of the state of Washington. WSDOT and TENANT are sometimes referred to herein together as the “Parties” and individually as a “Party”.

**RECITALS**

A. WSDOT is designing and constructing the SR 520/Montlake to Lake Washington – Interchange and Bridge Replacement Project (Project) on real property owned by the State of Washington. The Project includes a lid and ramp improvements at the Montlake Boulevard interchange with SR 520.

B. TENANT provides regional public transportation within the Seattle-King County metropolitan area and desires to operate transit facilities, including transit stops, on and within the vicinity of the Project.

C. TENANT currently operates and maintains eastbound and westbound SR 520 transit flyer stops in the vicinity of Montlake Blvd. under Transit Stop Permit No. 51120. During WSDOT’s construction of the Project, the permit will be terminated and the transit stops will be relocated on top of the lid. The existence of the transit stops on the SR 520 lid was an outcome of processes including, but not limited to, (1) a Seattle Community Design Process in 2011 focusing on transit, bicycle, and pedestrian facilities; (2) environmental processes identified in the 2011 Record of Decision; (3) legislative direction in 2014 to work with the city of Seattle on an “effective network of transit connections”; and (4) a Final Concept Design in 2016 that referenced bus stops and a multipurpose shelter.

D. The Project includes construction of a westbound in-line transit stop, an eastbound pull out transit stop, a northbound SR 513 transit stop, and TENANT's related transit facilities in the vicinity of the lid. The real property to be leased and improvements thereon are collectively depicted in **Exhibit A**, attached hereto and by this reference incorporated herein.

E. TENANT desires to lease a portion of the SR 520 right of way after transit related improvements are constructed by WSDOT, to provide public transportation services and facilities.

F. WSDOT will hire a design-build contractor to complete the design and construction of the Project. The Parties desire to define their roles and responsibilities related to design reviews and construction acceptance processes for the transit-related improvements, as well as to establish the terms and conditions under which TENANT will lease the real property from WSDOT.

G. WSDOT has determined that the real property is presently not needed for highway purposes and the TENANT's use of the real property is compatible with WSDOT's highway operation, safety and maintenance activities.

H. WSDOT is granted authority to lease real property under RCW 47.12.120.

I. TENANT is authorized to operate a comprehensive system of public transportation and to acquire property for that purpose through various means, including leasing, under RCW 35.58, RCW 36.56, King County Code §2.16.140 and §4.56.060(C), and other authorities, and as such TENANT uses local, state and federal funds to own, operate and maintain public transit vehicles, equipment and improvements such as buses, vans, non-revenue support vehicles, communications equipment, signage, and bus shelters, all of which provide valuable public transportation improvements and service (collectively, "**Transit Uses**").

## **AGREEMENT**

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, IT IS MUTUALLY AGREED THAT:

### **1. PREMISES; DESIGN AND CONSTRUCTION OF IMPROVEMENTS; NOTICE OF COMPLETION.**

A. WSDOT does hereby lease to TENANT, and TENANT does hereby lease from WSDOT, the real property located in the SE ¼ NW ¼ and Government Lot 1, Section 21,

Township 25 North, Range 4 East, W.M., and known to be portions of the highway right of way of SR 520, and as depicted in **Exhibit A** (Premises).

B. The Premises consist of an area with a total of approximately 2,935 square feet in size, as depicted in **Exhibit A**. The Premises contains or will contain TENANT-owned improvements including SR 520 transit stops both eastbound and westbound, and a SR 513 northbound transit stop (collectively “transit stops”), benches, trash receptacles, signage, fare-media vending machines, fare card readers, and associated electrical/mechanical equipment.

C. Portions of the Premises are located in the same area for which the City of Seattle will be responsible to maintain certain paths and trails. In the area of overlap, the TENANT is responsible for maintaining the transit facility structures and hardscape within the drip line of the transit stop canopies. The City of Seattle will be responsible to maintain the plaza hardscape outside the drip line of the transit stop canopies under terms of General Maintenance Agreement GBM 1094, which is for reference only and not part of this transaction.

D. In the event that the design and associated boundary of the Premises is refined by WSDOT’s design-build contractor through the design/build process for the Project and/or the westbound transit stop on the Premises is revised after the Commencement Date of this Lease, WSDOT shall provide an update of **Exhibit A** for approval per **Section 29** of this Lease, to reflect any revisions to the boundary of the Premises.

E. During the design review and construction acceptance process for the Premises, WSDOT will provide the TENANT with the following review and acceptance opportunities:

(1) Reviews of the design as it progresses, and opportunities for TENANT to provide informal comments and feedback on the transit stop shelters and canopies and plaza paving design.

(i) WSDOT will facilitate TENANT’s timely communication with WSDOT’s design/build contractor so that the contractor may incorporate design and construction considerations that materially affect TENANT’s obligation to operate and maintain the transit stop shelter and canopy, including but not limited to: specifications for materials such as tamper-resistant fasteners, paint type, construction/assembly methods; paving methods and materials; and design considerations such as minimizing large flat surfaces that may become graffiti

targets; and using standard component parts. A current depiction of the conceptual transit stop shelter and canopy is attached as **Exhibit B**, attached hereto and by this reference incorporated herein.

(ii) To the extent that any of TENANT's requests regarding the design, construction, or materials for the shelters, canopies, or plaza paving may increase WSDOT's cost of the Project beyond the then-existing scope of WSDOT's Project budget then WSDOT shall notify TENANT of the potential cost increase and provide TENANT 30 calendar days to determine whether TENANT will pay for the increased cost. If TENANT declines to pay for such increased cost or fails to respond within the designated time period then WSDOT will not incorporate the subject changes into the Project design and construction.

(iii) The Parties will work with the design/build contractor to take into account additional feedback from the Seattle Design Commission, and the Parties will further collaborate with each other, the design/build contractor, and the City of Seattle to finalize a design and plan for the shelter improvements that meets the needs of the Parties and the public.

(2) Participation in Task Force meetings – Once scheduled by the design-build contractor, TENANT will have the opportunity to participate in regularly scheduled Task Force meetings.

(3) Preliminary and Final Design documents will be provided to TENANT for review and comment. The review period for the Preliminary Design documents and Final Design documents shall be fourteen (14) calendar days after TENANT's receipt. TENANT shall submit review comments no later than the end of the fourteen (14) calendar day review period, in such form or format as may be mutually agreed to by the Parties. If the TENANT does not submit review comments within such time period, the Parties agree that WSDOT will move forward without TENANT comments. Once Final Design documents are resolved, the documents will be released for construction. The Released for Construction documents will be the basis for inspection and acceptance.

(4) Final Inspection and Acceptance: WSDOT will provide TENANT the opportunity to jointly inspect construction of the Premises prior to accepting the work. Once construction of the Premises is physically complete, WSDOT will invite TENANT

to a joint pre-final inspection. Within 3 business days, TENANT will participate in pre-final inspection of the Premises. Within 5 business days, TENANT will provide WSDOT with written notice of any construction or materials TENANT believes do not conform to the Release for Construction documents.

(5) Once pre-final inspection items are addressed, WSDOT will invite TENANT to a joint final inspection. Within 3 business days, TENANT will participate in final inspection of the Premises. Within 5 business days, TENANT will provide WSDOT with written notice of any construction or materials TENANT believes do not conform to the Release for Construction documents.

(6) Once final inspection items are addressed, and the westbound, eastbound and northbound transit stops portions of the Premises are open and available for use by TENANT to provide transit service along SR 520, WSDOT will issue a Notice of Completion to TENANT as described in **Section 3**, Term/Renewals.

(7) WSDOT understands, acknowledges, and agrees that TENANT's review, comment, disapproval, approval, or acceptance of any designs, plan specifications, work plans, construction, equipment, or installation of improvements relating to the Project or the Premises, or any of them:

- (i) Exist solely for the benefit and protection of TENANT and its employees and agents;
- (ii) Do not create or impose on TENANT or its employees and agents any standard or duty of care towards WSDOT, all of which are hereby disclaimed;
- (iii) May not be relied on by WSDOT in determining whether WSDOT has satisfied all applicable standards and requirements; and
- (iv) May not be asserted, nor may the exercise or failure to exercise any such rights by TENANT and its employees and agents be asserted against TENANT or its employees and agents by WSDOT as a defense, legal or equitable, to WSDOT's obligation to fulfill such standards and requirements, notwithstanding any approval of plans or construction by TENANT or its employees or agents.

(8) Warranties and Claims:

- (i) WSDOT shall provide to the TENANT copies of all guarantees and warranties for the Premises that WSDOT's Design-Builder is obligated to provide to the TENANT through the Design-Build Contract. WSDOT will act on the TENANT's behalf to enforce all guarantees and warranties for the Premises. When WSDOT has identified the applicable guarantees and warranties, it shall prepare an exhibit and thereafter the Parties shall add the exhibit to this lease through an amendment in accordance with **Section 29** below.
- (ii) If, during the warranty period, either Party encounters a situation that does not conform to the Release for Construction or As-Built Documents, as applicable, the Parties must immediately notify each other. WSDOT will take prompt corrective action. In the event WSDOT cannot take prompt action, it will request the TENANT take corrective action. If the TENANT takes the corrective action, the direct and indirect costs incurred by the TENANT, attributable to work that does not conform, shall be paid by WSDOT to the TENANT.
- (iii) If, during construction, the TENANT encounters an emergency situation caused by work that does not conform to the Release for Construction or As-Built documents, as applicable, it must immediately notify WSDOT. WSDOT will take immediate corrective action. Direct and indirect costs incurred by the TENANT, attributable to correcting an emergency situation associated with work that does not conform, shall be paid by WSDOT to the TENANT.
- (iv) WSDOT shall warrant good and merchantable title to all materials, supplies, equipment and items installed or incorporated into the accepted Premises. WSDOT shall further warrant that the Premises transferred to, and accepted by, the TENANT is free from claims, liens and charges.

- (v) WSDOT will enforce on the TENANT's behalf, claims back against the Design-Builder for the Design-Builder's failure to perform the work on the Premises in compliance with the Release for Construction or As-Built Documents, as applicable.

(9) Transit Stop Shelter Parts – The Parties shall coordinate with each other, and the Design-Builder, to identify and create a list of a kit of parts needed by the TENANT to maintain and repair the transit stop shelter improvements that WSDOT will construct on the Premises as contemplated in Recitals C and F. WSDOT shall provide the kit of parts to TENANT not later than the Commencement Date as defined in **Section 3.A.** below.

## 2. USE OF PREMISES.

A. TENANT's use of the Premises is limited to public transportation purposes and specifically for TENANT's Transit Uses and related transit purposes. TENANT's occupancy or use of the Premises and improvements, if any, shall not interfere with the use, safety, appearance, nor the enjoyment of the highway facility, nor produce fumes, vapors, odors, drippings, droppings, or discharge of any kind, other than those that are incidental to the ordinary operation of TENANT's Transit Uses and other allowed uses.

B. In using the Premises, TENANT shall comply with all policies and regulations, including, but not limited to RCW 47.42 et seq. and WAC 468-66 et seq., heretofore adopted or hereafter promulgated by WSDOT relative to the location, operation, and maintenance of improvements located on the Premises.

C. In using the Premises, it is expressly agreed that TENANT shall:

(1) Comply with all applicable federal, state, and local laws, ordinances, and regulations, including environmental requirements that are in force or which may hereafter be in force, and

(2) Secure all necessary permits and licenses for the uses of the Premises authorized in this Lease.

(3) Be responsible to maintain and operate the Premises as provided under **Section 9** of this Lease. TENANT is responsible for maintaining transit facilities and the transit stop structures and hardscape within the drip line of the transit stop canopies as

depicted in **Exhibit A** in accordance with TENANT's transit facilities maintenance manuals and guidelines as now existing or hereafter amended or revised. The City of Seattle is responsible for maintaining the plaza hardscape outside the drip line of the transit stop canopies under terms of General Maintenance Agreement GBM 1094 (for reference only).

D. Access to the Premises shall be as follows:

(1) Pedestrian and bicycle access to and from the Premises will be by way of public trails and sidewalks.

(2) TENANT's and WSDOT-approved licensees' buses, vans, other public transportation vehicles, operations and maintenance vehicles, and emergency vehicles will be from the public roadway and subject to **Subsection 2.L**.

E. TENANT shall not commit or allow to be committed any waste upon the Premises nor allow any public or private nuisance.

F. No new construction by TENANT is permitted on the Premises for the duration of this Lease, without prior written permission from WSDOT.

G. WSDOT shall not interfere or cause, permit, or allow others to interfere with TENANT's use and enjoyment of the Premises except as authorized in **Subsection 2.L** and **Section 19** herein.

H. TENANT shall not alter any structure on the Premises other than its own property without WSDOT's specific written approval of detailed drawings. TENANT's property shall be installed within the Premises and understood to mean the SR 520 eastbound and westbound transit stops, SR 513 northbound transit stop, benches, trash receptacles, fare-media vending machines, ORCA readers, transit-related signage and equipment, and associated electrical/mechanical equipment.

I. TENANT shall at its own expense, and upon prior written approval of WSDOT make any provisions TENANT deems necessary to protect TENANT's customers while on the Premises from any hazards resulting from WSDOT's use and operation of the highway.



J. At all times during the term of this Lease, TENANT shall adhere to a WSDOT approved Traffic Control Plan or Plans for any testing, operation, repair, and maintenance activities that TENANT may undertake on or adjacent to the traveled lanes of SR 520. TENANT shall request and obtain WSDOT approval of TENANT's Traffic Control Plan prior to performing any of the activities. All Traffic Control Plans shall comply with the WSDOT Work Zone Traffic Control Guidelines and be prepared in accordance with the Manual on Uniform Traffic Control Devices (MUTCD). TENANT's initial Traffic Control Plan and any subsequent revisions shall be submitted to the Washington State Department of Transportation Northwest Region Traffic Control Office, 15700 Dayton Avenue North, PO Box 330310, Seattle, WA 98133-9710, at least thirty (30) calendar days prior to TENANT initiating any testing, operation, repair, or maintenance activities on or adjacent to the traveled lanes of SR 520. WSDOT shall provide TENANT any WSDOT-proposed Traffic Control Plan or Plans for TENANT's review and comment to the extent any WSDOT activities may disrupt TENANT's Transit Uses. Except in the event of any emergency, WSDOT shall submit its proposed Traffic Control Plan to TENANT for review and comment at least thirty (30) calendar days prior to WSDOT initiating any activities on or adjacent to the traveled lanes of SR 520.

K. Proposed westbound in-line transit stop depicted in **Exhibit A**: The Parties agree that they shall follow the provisions in this **Section 2.K** with respect to the funding, design and construction of an appropriately-sized pull-out stop if WSDOT determines that the westbound in-line transit stop is adversely impacting interchange operations as set forth in this **Section K**, or, alternatively, if TENANT unilaterally decides to implement the change to a pull-out stop. Adverse impact to interchange operations may include the following:

(1) When either the queueing of traffic down the direct access ramp extends past the deceleration (decel) length of the ramp (approximately 425 feet past the exit gore);  
or

(2) There are observed safety issues in the westbound transit stop area where motorists or buses are attempting to pass buses stopped at the curb by crossing over the double yellow line into eastbound direct access ramp traffic; or both (1) and (2) occur.

If either (1) or (2) or both occur, or if TENANT elects to change from an in-line to a pull-out stop configuration, then WSDOT and TENANT will work collaboratively to plan and develop a timeline to implement the change from a westbound in-line transit stop to an appropriately-sized pull-out stop. As between the Parties, TENANT shall be responsible to pay the cost to implement

the necessary change; PROVIDED, that nothing in this **Section 2.K** shall prevent the Parties from working cooperatively to seek third-party or other sources of funding (e.g. federal grants, or appropriation of additional funds from the State Legislature, etc.) for the cost to implement the westbound transit stop configuration changes contemplated in this **Section 2.K**; and PROVIDED FURTHER, that if TENANT determines that it cannot or will not fund the cost to implement a change to a pull-out stop then TENANT may instead elect to vacate the westbound in-line transit stop portion of the Premises and the Parties will cooperate to amend this Lease to exclude that portion of the Premises, and from and after the effective date of such amendment this **Section 2.K** will have no further effect.

L. Third Party Transportation Providers: If a third party transportation provider requests use of the Premises, such provider shall contact TENANT and obtain TENANT's approval of the proposed use of the Premises. Thereafter, TENANT shall contact WSDOT regarding such proposed use. The Parties agree that neither Party shall grant any franchise, permit, license, easement, lease, or other authorization to another transportation provider that intends to provide transportation services using the Premises, without the express written approval of the other Party. If the Parties cannot reach agreement then they shall follow the dispute resolution procedures set forth in **Section 36**.

### 3. TERM/RENEWALS.

A. The term of this Lease shall be Twenty (20) years commencing upon the **Commencement Date**, and terminating at 11:59 p.m. on the last day of the month in which the twentieth (20th) anniversary of the **Commencement Date** occurs. For purposes of this Lease "**Commencement Date**" means the date of the Notice of Completion issued by WSDOT to TENANT, which is the date the westbound, eastbound, and northbound transit stops portions of the Premises (or the last of them) are open to and available for use by TENANT to provide transit service along SR 520 and SR 513.

B. Term Extensions. Upon the mutual written agreement of the Parties, the term of this Lease may be extended for up to two (2) additional terms of twenty (20) years each; provided that at the time such extension is executed:

(1) TENANT is not in default under any term or condition of this Lease at the time of the renewal or, if TENANT has been in default during the term of this Lease then

TENANT has cured said default to the sole satisfaction of WSDOT or WSDOT has waived said default in writing;

(2) WSDOT has no highway need for the Premises;

(3) TENANT's continued use under this Lease does not impair the safety or operation of WSDOT's highway or facility, as solely determined by WSDOT;

(4) If the terms and conditions of this Lease do not conform to then existing WSDOT policies or practices, laws, regulations and contracts, WSDOT shall provide written notification of such noncompliance at least one hundred eight calendar days (180) calendar days prior to the expiration date of the then current term. If TENANT desires to renew, it shall agree to execute an amendment to this Lease to bring it into compliance with such policies, practices, laws, regulations, and contracts prior to the expiration of the then current Term; and

(5) TENANT must give notice of its intent to renew the Lease at least one (1) year prior to the expiration of this Lease, but not more than two (2) years prior to the expiration of this Lease, or any extension thereof.

C. The renewal period shall be on the same terms and conditions as set forth herein, except as modified by any changes in policies, practices, laws, regulations or contracts and as reflected in a written amendment signed by both Parties.

#### **4. TERMINATION BY WSDOT.**

A. WSDOT may terminate this Lease in whole or in part without penalty or further liability as provided in this **Section 4**. The termination of a specific portion of the Premises, but not the entire Premises, shall constitute a termination in part. Termination in whole or in part may occur:

(1) Upon not less than thirty (30) calendar days prior written notice to TENANT, if by the end of that thirty (30) day period TENANT has failed to cure a default for nonpayment of amounts due under this Lease;

(2) Upon not less than sixty (60) calendar days prior written notice to TENANT, if TENANT defaults on a material duty under this Lease, other than for

nonpayment of rent, and fails to cure such default within that sixty (60) calendar day period, or such longer period as may be reasonably determined solely by WSDOT, so long as TENANT is diligently working to cure the default during that period;

(3) Immediately, upon written notice, if WSDOT is required by court order, by legislative action, or by a governmental agency having jurisdiction to take some action, which would effectively prohibit TENANT's use of the Premises;

(4) Immediately, upon written notice, if a receiver is appointed to take possession of TENANT's assets, the TENANT makes a general assignment for the benefit of creditors, or the TENANT becomes insolvent or voluntarily takes or suffers action under the Bankruptcy Act; provided that WSDOT may not terminate the Lease under this **Section 4.A.(4)** if TENANT is actively disputing or resisting an action instituted under the Bankruptcy Act by a third party;

(5) Upon not less than three hundred sixty-five (365) calendar days prior written notice, unless an emergency exists, if WSDOT needs the Premises for a highway purpose that conflicts with TENANT's use, operation, and maintenance of the Premises;

(6) Upon not less than thirty (30) calendar days prior written notice if the Premises has been abandoned, in WSDOT's sole reasonable judgment, for a continuous period of ninety (90) calendar days; unless TENANT's apparent abandonment of the Premises is excused by Force Majeure under **Section 37**; or

(7) Immediately, if an emergency exists as determined by WSDOT in its sole and reasonable discretion. For purposes of this **Section 4.A(7)** an emergency includes but is not limited to a Force Majeure Event (as defined in **Section 37**), a significant and continuing endangerment of life or the Premises or of the SR 520 highway facility or its ancillary structures, including but not limited to discovery of a severe structural deficiency that impacts use of the highway facility by motorists or which irreconcilably precludes TENANT's uses of the Premises due to reasons of safety and that cannot be accommodated or managed through revisions to or temporary interruption of those uses.

B. Waiver or acceptance of any default of the terms of this Lease by WSDOT shall not operate as a release of the TENANT's responsibility for any prior or subsequent default.

C. WSDOT agrees that if WSDOT terminates this Lease under **Section 4.A.** as to one or more portions of the Premises, but less than all of them, then this Lease shall not terminate as to the remaining portions depicted in **Exhibit A** and this Lease shall remain in full effect and force as to those remaining portions of the Premises. The Parties' Designated Representatives shall update **Exhibit A** via amendment of this Lease to delete any individual portions of the Premises as to which WSDOT exercises its termination rights under **Section 4.A.**

D. Except as otherwise provided in **Section 2.K**, if TENANT's use of any of portion of the Premises create conflict with the motoring public or impact operations of SR 520, including but not limited to any WSDOT Plans to construct or maintain other highway facilities, then at WSDOT's sole discretion, this Lease may be terminated as to that portion by WSDOT. Except in the event of an emergency, not less than one hundred eighty (180) calendar days prior to potential closure of a portion of the Premises under this **Subsection D**, WSDOT will provide TENANT with notice of the date by which the closure will occur. TENANT will cease operations of the portion(s) of the Premises on the date indicated in said notice. If TENANT's Transit Uses may be accommodated elsewhere within the Premises, then TENANT may be given the ability to move or modify the Premises, at WSDOT's sole discretion and at TENANT's sole expense, in such a manner as agreed to by the Parties. WSDOT will not be liable to reimburse TENANT for any method TENANT chooses to use to provide transit service as a result of service disruptions resulting from such termination or accommodation.

## 5. TERMINATION BY TENANT.

A. TENANT may terminate this Lease in whole or in part without penalty or further liability as provided in this **Section 5**. The termination of a specific portion of the Premises, but not the entire Premises, depicted in **Exhibit A** shall constitute a termination in part. Termination in whole or in part may occur:

(1) Upon not less than thirty (30) calendar days prior written notice for any reason;

(2) Upon not less than thirty (30) calendar days prior written notice, if WSDOT defaults and fails to cure such default within that thirty (30) calendar day period, or such longer period, as may be reasonably determined by TENANT, if WSDOT is diligently working to cure the default;

(3) Immediately, upon written notice, if in TENANT's judgment the Premises is destroyed or damaged so as to substantially and adversely affect TENANT's authorized use of the Premises; or

(4) TENANT may terminate this Lease for lack of appropriation, and TENANT's costs associated with such a termination, if any, shall not exceed TENANT's appropriation for the work contemplated in this Lease for the biennium in which termination occurs.. Notwithstanding any contrary provision in this Lease, such termination for non-appropriation shall occur automatically upon the end of the last calendar year for which there was sufficient appropriation, and TENANT shall have no further obligations that extend beyond the end of such calendar year except as to matters that survive the expiration or termination of this Lease. As between the Parties, the sufficiency of any appropriation shall be determined by the General Manager of the Metro Transit Department in its sole and absolute discretion; or

(5) At the time the Premises transfers to a condemning authority, if there is a condemnation of all or part of the Premises, including a sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of the power. In such event, each Party shall be entitled to pursue their own separate awards with respect to such taking.

B. WSDOT agrees that if TENANT terminates this Lease as to one or more of the portions of the Premises, but less than the entire Premises, then this Lease shall not terminate as to the remaining portions of the Premises and this Lease shall remain in full effect and force as to those remaining portions. The Parties' Designated Representatives shall update **Exhibit A** to delete any individual portion or portions of the Premises as to which TENANT exercises its termination rights under this **Section 5**.

## **6. CONSIDERATION.**

A. Taking into account the history of the decision to relocate the existing flyer stops to the SR 520 lid, the consideration for this Lease is TENANT's acceptance of the transit stop improvements identified in **Section 7** and TENANT's maintenance of the Premises and the improvements thereon, as depicted in **Exhibit A**.

B. In further consideration of TENANT's execution of this Lease, and contingent upon execution of this Lease, WSDOT agrees to negotiate with TENANT regarding a GC Cooperative Agreement under which TENANT will perform all annual operation and maintenance of WSDOT's Northgate North and South Park and Pool lots (IC 1-17-08797 and IC-17-09367) (collectively, the "Northgate Park and Pool facilities"), except for such portion of those facilities as may be used by the Seattle Department of Transportation or others for a pedestrian bridge spanning Interstate 5. TENANT and WSDOT further agree that in lieu of WSDOT paying TENANT to perform such maintenance, WSDOT shall allow TENANT to use a portion of the SR 520 right of way for a bicycle parking area and related facilities (the "Bike Pad"). WSDOT has determined that TENANT's operation and maintenance of the Northgate Park and Pool facilities will serve a highway purpose and the Parties anticipate that the annual cost of that operation and maintenance will be at least equal in value to the annual rent for the Bike Pad that would otherwise be due for TENANT's use of the Bike Pad area. The specific portions of the Northgate Park and Pool facilities to be maintained by TENANT under the GC Cooperative Agreement and the timing, nature and extent of TENANT's operation and maintenance duties shall be described in that agreement. The specific location and terms for TENANT's use of the Bike Pad area shall be described in a separate agreement between the Parties regarding that area.

## 7. CONVEYANCE AND DISPOSITION OF IMPROVEMENTS.

A. For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, WSDOT does hereby absolutely and unconditionally give, grant, bargain, sell, transfer, set over, assign, convey, release, confirm and deliver to TENANT all of WSDOT's right, title and interest in and to all improvements owned by WSDOT that are attached to the Premises as depicted on **Exhibit A**, effective on the Commencement Date. WSDOT represents and warrants that as of the Commencement Date it is the sole owner of, and has good title to, such improvements, and has full right and authority to transfer and deliver the same, and will defend the sale hereby against each and every person claiming otherwise.

B. In the event WSDOT terminates this Lease under **Section 4.A.(5)**, the improvements identified in **Section 7.A.** shall become the property of WSDOT and may be disposed of at WSDOT's expense. In the event of expiration or earlier termination under any other provision of this Lease, the improvements identified in **Section 7.A.** shall become the property of WSDOT or, at the option of WSDOT, shall be removed by TENANT at TENANT's expense in a manner prescribed by WSDOT.

C. From and after the Commencement Date, TENANT shall be responsible to determine the operation, maintenance, and disposition of the improvements identified in **Section 7.A**, including but not limited to the responsibility to demolish or remove those improvements in whole or in part and within applicable laws and city code requirements. If those improvements are demolished or removed during the Term of this Lease then the Parties will negotiate an amendment to or termination of the Lease in light of such demolition or removal.

## **8. CHARGE FOR LATE PAYMENT, NSF CHECKS.**

A. If any sums payable to WSDOT under this Lease are not received by the fifth (5<sup>th</sup>) calendar day following its **Due Date**, TENANT shall pay WSDOT, in addition to the amount due, for the cost of collecting and handling such payment, an amount equal to the greater of One Hundred and no/100 Dollars (\$100.00) or Five Percent (5%) of the delinquent amount. In addition, all delinquent sums payable by TENANT to WSDOT and not paid within five (5) calendar days of the due date shall, at WSDOT's option, bear interest at the rate of Twelve Percent (12%) per annum, or the highest rate of interest allowable by law, whichever is greater; provided that if the highest rate allowable by law is less than Twelve Percent (12%), interest charged hereunder shall not exceed that amount. Interest on all delinquent amounts shall be calculated from the original Due Date to the date of payment. Also there shall be a charge for any check returned uncollectable in accordance with WAC 468-20-900. WSDOT and TENANT agree that such charges represent a fair and reasonable estimate of the costs incurred by WSDOT by reason of late payments and uncollectable checks.

B. WSDOT's acceptance of late payment charges and/or any portion of the overdue payment shall in no event constitute an accord and satisfaction, compromise of such payment, or a waiver of TENANT's default with respect to such overdue payment, nor prevent WSDOT from exercising any other rights and remedies granted in this Lease.

C. When a delinquency exists, any payments received will be applied first to the late payment charge and late payment fees, and then to any balance remaining if applicable.

## **9. MAINTENANCE OF PREMISES.**

A. The TENANT shall perform or cause to be performed at its expense, all maintenance arising out of or related to TENANT's uses of the Premises, including TENANT's improvements thereon, if any. Consistent with **Section C.3**, such maintenance will include, but



not be limited to, keeping the Premises in good condition, both as to safety and appearance, in accordance with standards then in effect at TENANT's other similar facilities and in a manner so as to assure TENANT's improvements and uses of the Premises do not adversely affect the highway safety and appearance and that TENANT's maintenance will cause no interference with the highway use or operations, all to the satisfaction of WSDOT.

B. WSDOT agrees that this **Section 9** imposes no duty on TENANT to maintain any portion of the highway infrastructure that may be located within the Premises but which does not solely serve TENANT's uses authorized under this Lease (e.g. highway deck, driving lanes, support columns or abutments, stormwater system, highway signage, paint striping, etc.). Except as provided in **Section 1.E.(8)**, and during the applicable warranty period, TENANT shall have no duty to enforce any warranty or to repair or replace defective work or materials or to address any other problem arising out of or relating to WSDOT's original design or construction of the Premises or the Project of which the Premises are a part.

C. WSDOT agrees that this **Section 9** imposes no duty on TENANT to maintain any portion of the Project area outside of the Premises, including without limitation, any obligation of the City of Seattle under terms of General Maintenance Agreement GMB 1094, which is for reference purposes only.

**10. SIGNS/DISPLAY/ADVERTISING DEVICES.** WSDOT acknowledges that TENANT in its governmental capacity intends to install and maintain at its own cost informational signs, displays, and communication devices relating to or in service of its public transportation system. Upon written approval from WSDOT, TENANT may erect signs on the Premises that comply with the Scenic Vistas Act, Chapter 47.42 RCW and Chapter 468-66 WAC, as they may be amended, and comply with the current edition of the MUTCD as adopted by WSDOT pursuant to 47.36 RCW. Advertising devices and signs are permitted to be placed upon high capacity transportation vehicles that pass through the Premises.

**11. PERSONAL PROPERTY.** WSDOT shall not be liable in any manner for, or on account of, any loss or damage sustained to any TENANT property of whatsoever kind stored, kept, or maintained on or about the Premises, except for such claims or losses that may be caused by WSDOT or its authorized agents or employees. Except as provided in **Section 7.B**, upon termination of this Lease, WSDOT or its agent may remove all TENANT property remaining on the Premises at TENANT's expense and dispose of it in any manner WSDOT deems appropriate.

TENANT agrees to reimburse WSDOT for the costs of such removal and disposal within thirty (30) calendar days of the date of WSDOT's invoice.

**12. FENCES.** Any fencing installed by WSDOT on the Premises to separate the Premises from the traveled roadway will be maintained by WSDOT for the duration of the Lease. WSDOT shall notify TENANT in writing of its intent to install fencing and afford TENANT the opportunity to review and comment on the plans prior to such installation. TENANT agrees that nothing is to be attached to WSDOT's fence without WSDOT's prior written approval. If any fence is damaged as a result of TENANT's activities, TENANT will immediately repair such damage at its cost and to WSDOT's satisfaction; provided that, if TENANT fails to complete said repair immediately WSDOT may complete the repair and TENANT agrees to reimburse WSDOT for the cost of said repair within thirty (30) calendar days of the date of WSDOT's invoice.

**13. WSDOT'S RIGHT OF ENTRY AND INSPECTION.**

A. WSDOT, for itself, its agents and contractors, and for the Federal Highway Administration (FHWA), reserves the right to enter upon the Premises at any time without notice to the TENANT for the purpose of inspection, maintenance, construction, or reconstruction of the highway facility or any element thereof, to perform security audits such as may be required by Homeland Security, or to perform environmental audits as provided for elsewhere in this Lease. Any loss of the use of the Premises due to WSDOT's exercise of such right will not entitle TENANT to any compensation, and WSDOT shall in no way be responsible for any incidental or consequential damages due to such loss of use, if any, by the TENANT.

B. WSDOT and FHWA may enter upon the Premises at any time without prior notice for the purpose of inspecting any excavation, construction, or maintenance work being done by TENANT. WSDOT shall provide written notice to TENANT of any maintenance concerns WSDOT may have, including details. The notice will set a reasonable period of time in which TENANT must take the requested corrective action; provided that if the notice states that an emergency exists, then TENANT shall take corrective action immediately. If TENANT does not complete corrective action within the time period specified in the notice, then WSDOT may either perform the necessary maintenance and TENANT shall reimburse WSDOT for its reasonable charges, or WSDOT may issue a notice of default as provided for elsewhere herein. In addition, WSDOT and FHWA may enter the improvements, if any, on the Premises at any time and without prior notice, for the purpose of inspection, maintenance, and repair of said improvements.

C. Entry upon the Premises and the improvements, if any, for any other purpose by WSDOT or FHWA (or both of them) other than those specified in paragraphs A and B of this **Section 13** shall be conducted with reasonable notice to the TENANT and during the hours of 8:00 a.m. to 5:00 p.m.

**14. DISPOSITION OF IMPROVEMENTS.** Except as provided in **Section 7.B**, upon expiration or earlier termination of this Lease under any provision hereof, any improvements constructed by TENANT on the Premises shall become the property of WSDOT or, at the option of WSDOT, shall be removed by TENANT at TENANT's expense in a manner prescribed by WSDOT. In the event TENANT fails to remove said improvements upon expiration or earlier termination, then from and after the effective date of such expiration or termination WSDOT may remove and dispose of said improvements as it deems appropriate and at TENANT's expense. TENANT shall reimburse WSDOT for all expenses incurred in such removal and disposal within thirty (30) calendar days of the date of WSDOT's invoice for such costs. WSDOT's rights under this **Section 14** are in addition to, and separate from WSDOT's rights under **Section 7** regarding the improvements illustrated in Exhibit A and WSDOT rights under **Section 11** regarding TENANT's personal property.

**15. VACATION OF PREMISES.** Upon expiration or earlier termination of this Lease, TENANT shall cease its operations on and/or use of the Premises. In the event TENANT fails to vacate the Premises on the date of expiration or earlier termination, TENANT shall be liable for any and all costs to WSDOT arising from such failure.

**16. WSDOT ACCESS TO REMOVE IMPROVEMENTS.** If, upon expiration or earlier termination of this Lease, TENANT fails to remove improvements or restore the Premises to WSDOT's satisfaction, then if necessary or desirable in WSDOT's judgment for reasons of safety or economy, WSDOT or its agents shall have the right to cross any lands owned or otherwise controlled by TENANT for the purpose of accomplishing said removal or restoration. Said right shall expire one hundred eighty (180) calendar days after the date of expiration or earlier termination of this Lease, or when removal and restoration is complete in WSDOT's judgment, whichever is the earlier.

**17. RESTORATION OF PREMISES.** Prior to expiration or earlier termination of this Lease, TENANT agrees, if so directed by WSDOT, to restore the Premises to its condition prior to TENANT's occupancy, reasonable wear and tear excepted. This work is to be done at TENANT's expense to the satisfaction of WSDOT. If WSDOT directs TENANT to restore the

Premises pursuant to this **Section 17**, then TENANT and WSDOT shall conduct a joint walk-through of the Premises to confirm TENANT's restoration work and upon conclusion of the joint walk-through WSDOT shall sign a document confirming that TENANT has complied with and fully satisfied this **Section 17**.

**18. NON-APPLICABILITY OF RELOCATION ASSISTANCE.** TENANT acknowledges that this Lease does not at any time entitle TENANT to assistance by or through WSDOT under the Relocation Assistance - Real Property Acquisition Policy (RCW 8.26).

**19. WSDOT'S RESERVATION OF RIGHT TO MAINTAIN AND GRANT UTILITY FRANCHISES AND PERMITS.**

A. WSDOT reserves the right for utility franchise and permit holders to enter upon the Premises to maintain, repair and enhance existing facilities and install new utilities and, for itself, to grant utility franchises and/or permits across the Premises. Such installation will be accomplished in such a manner as to minimize any disruption to the TENANT and without affecting or utilizing any TENANT-owned improvements. The franchise/permit holder will be required to restore paving and grading damaged by the installation. WSDOT also reserves the right to withdraw portions of the Premises for uses such as, but not limited to, telecommunications transmission sites, which WSDOT determines to be reasonably compatible with TENANT's authorized use of the Premises and without affecting or utilizing any TENANT-owned improvements located on the Premises. WSDOT may not authorize third-party use of any TENANT-owned improvements located on the Premises.

B. Prior to granting any new franchise or permit rights in or across the Premises, WSDOT shall direct the prospective utility franchise or permit holder to consult with the TENANT to ensure that such additional use will be reasonably compatible with TENANT's facilities or operations on the Premises. Thereafter, the Parties shall consult with each other to discuss maintenance, operations, cost allocation, and other considerations arising out of such new uses. If the Parties cannot reach agreement on the issuance of such franchise or permit, then they shall follow the dispute resolution procedures set forth in **Section 36**.

C. TENANT shall not disturb markers installed by a franchise/permit holder or owner of underground facilities without first making a reasonable, good faith effort to contact and provide notice to the franchise/permit holder or owner of an underground facility who can be identified from an installed marker. Prior to any excavation, TENANT shall contact WSDOT and call the

Underground Utility Locating Service, or its successor organization, as part of its efforts to ascertain any and all owners of underground utility facilities and to locate the utility. TENANT shall not damage legally installed underground utilities. TENANT shall comply with all applicable provisions of RCW 19.122 relating to underground facilities.

**20. TAXES/ASSESSMENTS/UTILITIES.** TENANT agrees to pay all assessments that benefit TENANT's uses of the Premises under this Lease and/or which may hereafter become a lien on the interest of TENANT in accordance with RCW 79.44.010. TENANT also agrees to pay all taxes that may hereafter be levied or imposed upon the interest of the TENANT or by reason of this Lease. TENANT is responsible for and agrees to pay the cost of utilities that serve TENANT's facilities on the Premises, including, but not limited to, electricity, surcharges, fuel adjustments, rate adjustments and taxes.

**21. LIENS AND ENCUMBRANCES.**

A. TENANT shall not encumber the Premises with any charge, mortgage, judgment, lien, sublease, or security interest.

B. Nothing in this Lease shall be deemed to make the TENANT the agent of WSDOT for purposes of construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on the Premises. The TENANT acknowledges that WSDOT may not, and shall not, be subject to claims or liens for labor or materials in connection with such activities by the TENANT.

C. The TENANT shall at all times indemnify and hold harmless WSDOT from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on or within the Premises performed by or at TENANT's direction, and from the cost of defending against such claims, including attorney fees.

D. In the event a lien is filed upon the Premises in connection with TENANT's uses under this Lease, the TENANT shall:

- (1) Record a valid Release of Lien;
- (2) Deposit sufficient cash with WSDOT to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent

judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim; or

(3) Procure and record a bond which releases the Premises from the claim of the lien and from any action brought to foreclose the lien.

E. Should the TENANT fail to accomplish D. 1, 2, or 3, above, within thirty (30) calendar days after receiving filing of such a lien, the Lease shall be in default.

## **22. ENVIRONMENTAL REQUIREMENTS.**

A. TENANT represents warrants and agrees that it will conduct its activities on the Premises in compliance with all applicable Environmental Laws. As used in this Lease, "Environmental Laws" means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., the Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., and Washington or any other comparable local, state, or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto.

B. Toxic or hazardous substances are not allowed to be brought on the Premises by TENANT, its agents, contractors and employees, without the express written permission of WSDOT and under such terms and conditions as may be specified by WSDOT. For the purposes of this Lease, "Hazardous Substances," shall include all those substances identified as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq., and the Washington Model Toxics Control Act, RCW 70.105.D et seq., and shall include gasoline and other petroleum products, provided, that TENANT is hereby authorized to bring on to the Premises gasoline and petroleum products, herbicides, pesticides, and cleaning agents appropriate for the intended application when necessary to carry out the maintenance and operation requirements set forth in this Lease. To the extent such permission is granted, the transport, use, and disposal of such materials must be done in a legal manner by the TENANT.

C. TENANT agrees to cooperate in any environmental investigations conducted by or at the direction of WSDOT or any state, federal, or local agency with jurisdiction where there is evidence of contamination on the Premises, or where WSDOT is directed to conduct such audit by an agency having jurisdiction. TENANT will reimburse WSDOT within thirty (30) calendar days of the date of WSDOT's invoice for the cost of such investigations, where the need for said investigation is determined to be caused by the TENANT's operations. WSDOT will reimburse TENANT for costs of environmental investigations on the Premises that are conducted by TENANT where the need for such investigation is determined to be caused by WSDOT's operations. TENANT will provide WSDOT with notice of any inspections of the Premises, notices of violations, and orders to clean up contamination. TENANT agrees that WSDOT may participate in all settlement, remediation or abatement discussions arising out of or relating to environmental conditions on the Premises. In the event that TENANT fails to take remedial measures as duly directed by a state, federal, or local regulatory agency within ninety (90) calendar days of such notice, WSDOT may elect to perform such work, and TENANT covenants and agrees to reimburse WSDOT for all direct and indirect costs associated with WSDOT's work where said contamination is determined to have resulted from TENANT's authorized use of the Premises.

D. For the purposes of this **Section 22**, Costs shall include, but not be limited to, all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorney fees and other litigation costs incurred in complying with any environmental laws, defined in 22.A.

E. TENANT agrees to defend, indemnify and hold harmless WSDOT from and against any and all claims, causes of action, demands and liability including, but not limited to, any Costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and attorneys' fees associated with the removal or remediation of any Hazardous Substances contingent on TENANT's written concurrence that the following requirements are met:

(1) The Hazardous Substances have been released or otherwise come to be located on the Premises, including Hazardous Substances that may have migrated from the Premises through water or soil to other properties; and

(2) The Hazardous Substances release was caused by or resulted from TENANT's activities on the Premises.

Contingent on TENANT's written concurrence that conditions (1) and (2) are met, TENANT further agrees to, defend, indemnify and hold WSDOT harmless from any and all liability arising from TENANT's offsite disposal, handling, treatment, storage, or transportation of any Hazardous Substances removed from the Premises by or on behalf of TENANT.

F. WSDOT agrees to indemnify, defend and hold TENANT harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and attorneys' fees associated with the existence of, and/or removal or remediation of any Hazardous Substances, contingent on WSDOT's written concurrence that the following requirements are met:

(1) The Hazardous Substances have been released or otherwise come to be located on the Premises, including but not limited to Hazardous Substances that may have migrated from SR 520 or the Premises through water or soil to other properties; and

(2) The Hazardous Substances release is determined to have been caused by or result from activities other than TENANT's.

Contingent on WSDOT's written concurrence that conditions (1) and (2) are met, WSDOT further agrees to indemnify, defend, and hold TENANT harmless from any and all liability arising from the offsite disposal, handling, treatment, storage or transportation of any such Hazardous Substances removed from SR 520 or the Premises by or on behalf of WSDOT.

G. The provisions of this **Section 22** shall survive the termination or expiration of this Lease.

### **23. INSURANCE (SELF INSURED).**

A. TENANT's insurance policy or self-insurance program must provide liability coverage at least equivalent to that provided by Insurance Services Office, Inc. Commercial General Liability Coverage Form CG 00 OJ 01 07(Coverages A & B) for not less than TWO MILLION (\$2,000,000.00) per occurrence, with a general aggregate amount of not less than FOUR MILLION (\$4,000,000.00) per policy period.

B. WSDOT acknowledges, agrees, and understands that TENANT maintains a fully funded Self-Insurance program consistent with King County Code chapter 2.21 for the protection and handling of TENANT's liabilities including injuries to persons and damage to property.



TENANT agrees, at its own expense, to maintain, through its Self-Insurance program, coverage for all of its liability exposures for this Lease. TENANT agrees to provide WSDOT with a certificate of self-insurance as adequate proof of coverage and provide WSDOT with at least thirty (30) calendar days prior written notice of any material change in TENANT'S Self-Insurance program.

C. If, after the Commencement Date of this Lease, TENANT elects to terminate its self-insured status and secure commercial liability coverage, then TENANT will promptly notify WSDOT and provide a certificate of insurance from an insurer licensed to conduct business in the State of Washington, in the amounts and types as set forth in **Section 23.A.** above. Further, TENANT shall provide to WSDOT a certificate of insurance within ten (10) calendar days of receiving a written notice from WSDOT for an increase in the coverage amounts as authorized in **Section 23.D.** below.

D. TENANT agrees that WSDOT may require increases in the insurance coverage required in this Lease no more often than every three (3) years or sooner by mutual written agreement; provided, any adjustments made shall be in accordance with reasonable prudent risk management practices and insurance industry standards. TENANT agrees to provide to WSDOT a certificate of self-insurance as adequate proof of coverage of insurance for the increased coverage amounts.

E. Coverage, if obtained by TENANT in compliance with this **Section 23**, shall not be deemed as having relieved TENANT of any liability.

F. WSDOT shall maintain insurance policy or self-insurance program providing liability coverage at least equivalent to that provided by Insurance Services Office, Inc. Commercial General Liability Coverage Form CG 00 01 01 07 (Coverages A & B) for not less than TWO MILLION (\$2,000,000.00) per occurrence, with a general aggregate amount of not less than FOUR MILLION (\$4,000,000.00) per policy period.

G. If WSDOT maintains a self-insurance program for any of WSDOT's liabilities, including injuries to persons and damage to property, then WSDOT agrees, at its own expense, to maintain, through its Self-Insurance program, coverage for its liability exposures for the Premises as set forth in this Lease and SR 520. WSDOT agrees to provide TENANT with a certificate of self-insurance as adequate proof of coverage and provide TENANT with at least thirty (30) calendar days prior written notice of any material change in WSDOT's Self-Insurance program.

H. If, after the Commencement Date of this Lease, WSDOT elects to terminate its self-insured status and secure commercial liability coverage, then WSDOT will promptly notify TENANT and provide a certificate of insurance from an insurer licensed to conduct business in the State of Washington, in the amounts and types as set forth in **Section 23.F** above, or such other larger amounts and types as may be warranted under the circumstances.

I. Coverage, if obtained by WSDOT in compliance with this **Section 23**, shall not be deemed as having relieved WSDOT of any liability.

J. By requiring such minimum insurance coverage as specified herein, the Parties shall not be deemed or construed to have assessed the risks that may apply to either Party under this Lease. The Parties shall each assess their own respective risks and, if either Party deems appropriate and/or prudent, may maintain greater limits and/or broader coverage.

K. Nothing contained within these insurance requirements shall 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 policy(s). Nothing contained within this **Section 23** shall affect and/or alter the application of any other provision contained within this Lease.

#### **24. HOLD HARMLESS/INDEMNIFICATION/WAIVER.**

A. TENANT and its successors and assigns shall protect, save, defend and hold harmless WSDOT, its authorized agents and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever arising out of or relating to the acts or omissions of TENANT, its agents, contractors, licensees, invitees or employees, on or in connection with the Premises. TENANT obligations under this **Section 24.A** shall not include any claims, costs, damages, or expenses arising out of or relating to the acts of WSDOT or its authorized agents or employees; PROVIDED that if claims, actions, costs, damages, or expenses arise out of or relate to the concurrent acts of (i) WSDOT, its agents, contractors, or employees and (ii) TENANT, its agents, contractors, licensees, invitees or employees, or (iii) involve actions covered by Ch. 4.24.115 RCW, then this **Section 24.A** shall be valid and enforceable only to the extent of the acts of TENANT and its agents contractors, licensees, invitees or employees.

B. WSDOT and its successors and assigns shall protect, save, defend and hold harmless TENANT, its authorized agents and employees, from all claims, actions, costs, damages,

or expenses of any nature whatsoever arising out of or relating to the acts or omissions of WSDOT, its agents, contractors, or employees in connection with the Premises or SR 520 to the extent SR 520 is addressed in this Lease. WSDOT's obligations under this **Section 24.B** shall not include such claims, costs, damages, or expense to the extent caused by the acts of TENANT or its agents, contractors, licensees, invitees or employees; PROVIDED that if the claims or damages are caused by or result from the concurrent acts of (i) TENANT, its agents, contractors, licensees, invitees or employees and (ii) WSDOT, its agents, contractors, or employees, or (iii) involves actions covered by Ch. 4.24.115 RCW, then this **Section 24.B** shall be valid and enforceable only to the extent of the acts of WSDOT and its agents, contractors, licensees, invitees or employees.

C. TENANT specifically assumes potential liability for actions brought by TENANT's own employees against WSDOT and, solely for the purpose of this indemnification and defense, TENANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW, which waiver has been mutually negotiated by the Parties.

D. WSDOT specifically assumes potential liability for actions brought by WSDOT's own employees against TENANT and, solely for the purpose of this indemnification and defense, WSDOT specifically waives any immunity under the state industrial insurance law, Title 51 RCW, which waiver has been mutually negotiated by the Parties.

E. The indemnification provisions in this **Section 24** shall survive the expiration or termination of this Lease.

**25. NONDISCRIMINATION.** TENANT, for itself, its successors, and assigns, as part of the consideration hereof, does hereby agree to comply with all applicable civil rights and antidiscrimination requirements, including, but not limited to, RCW 49.60. TENANT shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964.

**26. ASSIGNMENT.** Neither this Lease nor any rights created by it may be assigned, sublet, or transferred by TENANT, except as provided in **Subsection 2.L**. In the event that TENANT, without WSDOT's prior written approval, assigns, sublets, or transfers any portion of the Premises, then WSDOT may, in addition to or in lieu of terminating this Lease for default, and in addition to any damages it may experience, demand a share of any revenue generated by such unauthorized use. WSDOT shall set the amount of said share, and its decision shall be final and binding.

WSDOT may demand such share at any time during the term of this Lease. TENANT shall pay said share to WSDOT within thirty (30) calendar days of demand. TENANT agrees to pay said share retroactively to the date the unauthorized third party's use of the Premises commenced. Furthermore, such unauthorized assignment shall not relieve TENANT hereunder from all of its obligations under this Lease, including but not limited to, payment of rent and maintenance of insurance.

**27. BINDING CONTRACT.** This Lease shall not become binding upon WSDOT unless and until executed for WSDOT by the Secretary of Transportation or such Secretary's duly authorized representative.

**28. PERFORMANCE BY WSDOT.** If TENANT defaults in the performance or observation of any covenant or agreement contained in this Lease, WSDOT, without notice if deemed by WSDOT that an emergency exists, or if no emergency exists, with thirty (30) calendar days prior written notice, may direct TENANT to stop work and may itself perform or cause to be performed such covenant or agreement and may enter upon the Premises for such purpose. Such "emergency" shall include, but not be limited to, endangerment of life, the highway facility or failure of TENANT to maintain self-insurance or obtain in a timely manner the replacement insurance coverage specified in **Section 23**. TENANT shall reimburse WSDOT the entire cost and expense of such performance by WSDOT within thirty (30) calendar days of the date of WSDOT's invoice. Any act or thing done by WSDOT under the provisions of this **Section 28** shall not be construed as a waiver of any agreement or condition herein contained or the performance thereof.

**29. MODIFICATIONS; NONWAIVER.** This Lease contains all the agreements and conditions made between the Parties hereto and may not be modified orally or in any other manner other than by a written agreement signed by all Parties hereto. Failure of either Party to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect that Party's right to enforce the same as to any prior subsequent breach or default.

**30. INTERPRETATION; CONSTRUCTION.** This Lease shall be governed by and interpreted in accordance with the laws of the State of Washington, without reference to its conflicts of law rules or choice of law provisions. The titles to paragraphs or sections of this Lease are for convenience only and shall have no effect on the construction or interpretation of any part hereof. The Parties hereby acknowledge and agree that:

- A. Each Party hereto is of equal bargaining strength;
- B. Each Party has actively participated in the drafting, preparation, and negotiation of this Lease;
- C. Each Party has reviewed this Lease and has consulted with its legal counsel and such other professional advisors as such Party has deemed appropriate, or had the opportunity to do so in relation to any and all matters contemplated under this Lease;
- D. Each Party has agreed to enter into this Lease following such review and the rendering of such advice; and
- E. Any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Lease, or any portion hereof, or any amendments hereto.

**31. SEVERABILITY.** In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**32. VENUE; ATTORNEY'S FEES.** TENANT agrees that the venue of any action or suit concerning this Lease shall be in the Thurston County Superior Court and all actions or suits thereon shall be brought therein, unless the Parties agree otherwise or applicable law requires otherwise. In the event of any controversy, claim, or dispute between the Parties and arising out of this Lease, each Party shall be solely responsible for the payment of its own attorney fees and costs.

**33. INTEGRATION; TOTALITY OF AGREEMENT.** The recitals and the exhibits to this Lease are incorporated into this Lease. This Lease constitutes the entire agreement between the Parties with respect to the Premises and supersedes all contemporaneous agreements and understandings between the Parties, which include but are not limited to any prior leases or licenses, and any amendments thereto. It is understood that no guarantees, representations, promises, or statements, whether expressed or implied, have been made by WSDOT or by TENANT except to the extent that the same are expressed in this Lease.

**34. CONDEMNATION.** Without limiting TENANT's rights under **Section 5.A.5** of this Lease, the Premises shall not be considered as part of or contributing to the use of any adjoining or other properties owned, used, or controlled by TENANT in the event such other property or property rights of TENANT are subject to condemnation subsequent to the execution of this Lease.

**35. NOTICES.** Wherever in this Lease written notices are to be given or made, they will be served, personally delivered, or sent by certified or overnight mail, return receipt requested and addressed to the Parties at the address listed below, unless a different address has been designated in writing and delivered to the other Party. The Parties agree to accept service of process at said addresses; and TENANT further designates the Clerk of the Metropolitan King County Council as an agent for the purpose of service of process, regarding litigation, but for no other purpose. Such service shall be deemed personal service. Notice shall be deemed given on the date that process is served or notice is personally delivered, or if mailed, upon the date shown on the return receipt.

**WSDOT:** DEPARTMENT OF TRANSPORTATION (Mailing Address)  
Attn.: Property Management Program Manager  
P.O. Box 47338  
Olympia, WA 98504-7338

DEPARTMENT OF TRANSPORTATION (Physical Address)  
Real Estate Services  
Attn.: Property Management Program Manager  
7345 Linderson Way SW  
Tumwater, WA 98501-7384

**TENANT:** KING COUNTY METRO TRANSIT  
KSC-TR-0431  
201 South Jackson Street  
Seattle, WA 98104  
Attention: Real Estate and Environmental

**36. LEASE MANAGEMENT; DISPUTE RESOLUTION.**

A. Lease Management.

(1) Each party shall appoint a Lease Manager for this Lease who will provide oversight of their respective party's activities conducted under this Lease. The Lease Managers will be the principal point of contact for the parties concerning the day-day operations and performance under this Lease. Each party shall notify the other Lease Manager, in writing, when there is a new Lease Manager assigned to this Lease.

(2) The TENANT Lease Manager information is:

KING COUNTY METRO TRANSIT  
KSC-TR-0431  
201 South Jackson Street  
Seattle, WA 98104  
Attention: Real Estate and Environmental

(3) The WSDOT Lease Manager information is:

DEPARTMENT OF TRANSPORTATION (Physical Address)  
Real Estate Services  
Attn.: Property Management Program Manager  
7345 Linderson Way SW  
Tumwater, WA 98501-7384

B. Dispute Resolution.

(1) The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this Lease. Either Party may, by notice in writing to the other Party as provided under **Section 35** of this Lease, designate a different or additional person to serve as that Party's Lease Manager or Designated Representative. Dispute Resolution notices shall be sent to:

**WSDOT:** Headquarters Real Estate Services Program Administrator  
Washington State Department of Transportation  
P.O. Box 47338  
Olympia, WA 98504-7338

**TENANT:** Capital Division Director  
King County Metro Transit  
KSC-TR-0435  
201 South Jackson Street  
Seattle, WA 98104-0431

(2) The Parties' Designated Representatives shall confer to resolve disputes that arise under this Lease as requested by either Party. The Designated Representatives shall use their best efforts and exercise good faith to resolve such disputes.

(3) If the Designated Representatives are unable to resolve a dispute, then the appropriate WSDOT Regional Administrator or her/his designee and the General Manager of Metro Transit for TENANT or her/his designee shall confer and exercise good faith to resolve the dispute.

(4) If the WSDOT Regional Administrator and the General Manager of Metro Transit are unable to resolve the dispute, then the Parties may, if mutually agreed in writing, submit the matter to non-binding mediation. The Parties shall then seek to mutually agree upon the mediation process, who shall serve as the mediator, and the time frame the Parties are willing to discuss the disputed issue(s).

(5) Each Party shall bring to the mediation session, unless excused from doing so by the mediator, a representative from its side with full settlement authority. In addition, each Party shall bring counsel and such other persons as needed to contribute to a resolution of the dispute. The mediation process shall be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such negotiations from later discovery or use in evidence; provided, that any settlement agreement as may be executed by the Parties shall not be considered confidential and may be disclosed. Each Party shall pay its own costs for mediation and share equally in the cost of the mediator (TENANT – fifty percent; WSDOT – fifty percent). If other persons or entities also participate as independent parties to the mediation then the cost of the mediator shall be divided



equally among all of the participating parties. The venue for the mediation shall be in Olympia, Washington, unless the Parties mutually agree in writing to a different location.

(6) If the Parties cannot mutually agree as to the appropriateness of mediation, as to the mediation process, or as to who shall serve as mediator, or the mediation is not successful, then either Party may institute a legal action in the County of Thurston, State of Washington. The Parties agree that they shall have no right to seek relief in a court of law until and unless each of the above procedural steps in **Section 36.B(1) through 36.B(3)** inclusive has been exhausted.

### **37. FORCE MAJEURE.**

A. "Force Majeure Event" or "Event" means any act or event that prevents the affected Party from performing its obligations under this Lease, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party is unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing definition, Force Majeure Event may include natural phenomena, such as storms, hurricanes, floods, lightning or earthquakes; explosions or fires arising from causes unrelated to the acts or omissions of the Party seeking to be excused from performance; acts of war, civil unrest, public disorder, strikes or labor unrest that are not within the control of TENANT, sabotage, epidemic, rebellion, riot, or war or terrorism. Force Majeure Events shall not include equipment failures or acts or omissions of agents, suppliers, contractors or subcontractors, except to the extent that such acts or omissions arise from a Force Majeure Event as defined in this **Section 37.A**.

B. Except as otherwise specifically provided in this Lease, neither Party shall be considered in default or breach of this Lease or liable for any delay or failure to comply with this Lease, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event. Provided, that the Party claiming relief based on a Force Majeure Event shall: (i) notify the other Party in writing of the existence and nature of the Force Majeure Event within three (3) business days of the occurrence of such event, unless the Force Majeure Event renders it impossible to give notice within such timeframe, in which case the Party claiming relief shall give notice as soon as it is practicable to do so; (ii) exercise all reasonable efforts to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation of such

Force Majeure Event within three (3) business days of such cessation; and (iv) resume performance of its obligations under this Lease as soon as practicable thereafter.

C. Obligations to pay for services already provided shall not be excused by a Force Majeure Event. Provided, that if a Party's internal administrative operations are disrupted by a Force Majeure Event such that it is administratively unable to process a payment due to a Force Majeure Event, then the Party's duty to process and make such payment shall be suspended until such time as the Party is able to restore its administrative processes; and no penalty or interest shall attach to such suspension.

D. In the event of a Force Majeure Event that destroys all or a substantial portion of the Premises or SR 520 in the vicinity of the Premises, WSDOT shall, within sixty (60) calendar days following such event, communicate to TENANT WSDOT's anticipated process and timeline for determining whether to restore the Premises or such portion of SR 520. If WSDOT elects not to restore the Premises or such portion of SR 520, then this Lease shall terminate as to the affected portion of the Premises. If WSDOT anticipates that it will restore the Premises, or such portion of SR 520 then WSDOT shall so notify TENANT, and the Parties shall cooperate to implement such restoration, and the temporary or permanent relocation, if any, or reconfiguration, if any, of TENANT's improvements in the general vicinity of the Premises so that TENANT may continue its uses under this Lease in order to provide public transportation service, at TENANT's sole expense. TENANT shall determine, within sixty (60) calendar days of receiving WSDOT's notice, whether to continue its use of the Premises. If TENANT elects not to continue the Lease, then TENANT shall promptly remove its personal property consistent with **Section 11** regarding Personal Property.

E. If this Lease is terminated pursuant to **Section 37.D**, then: (i) the Parties shall not be released from any payment or other obligations arising under this Lease prior to the Force Majeure Event and remaining due and owing after such event; and (ii) all terms and conditions that expressly survive the expiration or termination of this Lease, or by their nature should survive the expiration or termination of this Lease, shall continue to apply.

F. Notwithstanding anything to the contrary in this **Section 37**, if nonperformance due to a Force Majeure Event (or multiple Force Majeure Events) continues beyond two (2) consecutive calendar years, then either Party may terminate this Lease upon thirty (30) calendar days' notice to the other Party. Upon such termination TENANT shall decommission and remove its personal property and TENANT's improvements from the Premises as required under **Section**

**11** of this Lease. If this Lease is terminated pursuant to this **Section 37.F**, then: (i) the Parties shall not be released from any payment or other obligation maturing under this Lease prior to the Force Majeure Event, and remain due and owing after such event; and (ii) all terms and conditions that expressly survive the expiration or termination of this Lease, or by their nature should survive the expiration or termination of this Lease, shall continue to apply.

**38. COOPERATION IN EXECUTING SUBSEQUENT DOCUMENTS.** WSDOT and TENANT agree to cooperate in executing any documents necessary to protect the rights of the Parties and not inconsistent with the rights granted by this Lease.

**39. APPROVALS.** Unless otherwise expressly stated herein, where a Party hereto has a right of approval hereunder, such approval shall not be unreasonably withheld, conditioned, or delayed.

**40. SURVIVAL.** Any terms and provisions of this Lease pertaining to rights, duties or obligations extending beyond the expiration or termination of this Lease, and all outstanding or remaining obligations accrued prior to the end of the Term, shall survive the end of the Term.

**41. POLICE POWERS UNAFFECTED.** Nothing contained in this Lease shall be considered or interpreted to diminish the governmental or police powers of King County or the State of Washington.

**42. LEGAL RELATIONS.** TENANT shall be deemed an independent contractor for all purposes, and the employees of TENANT or any of its contractors, subcontractors, and employees thereof shall not in any manner be deemed employees of WSDOT. WSDOT shall be deemed an independent contractor for all purposes, and the employees of WSDOT or any of its contractors, subcontractors, and employees thereof shall not in any manner be deemed employees of TENANT. This Lease creates no right, privilege, duty, obligation, cause of action, or other interest in any person or entity not a party to it.

**43. COUNTERPARTS.** This Lease may be executed in counterparts, each of which shall be deemed the original, but which together shall constitute one and the same instrument.

**44. AUTHORIZED SIGNATURES.** The undersigned acknowledge that they are authorized to execute this Lease and bind their respective agencies to the obligations set forth herein.

**45. EXHIBITS.** The following exhibits are attached to this Lease:

- A. Depiction of King County Metro Montlake Transit Stop Airspace Lease Areas
- B. Conceptual Transit Stop Shelter and Canopy

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date of WSDOT's execution written below.

Signatures:

Accepted and Approved by:

KING COUNTY METRO TRANSIT

WASHINGTON STATE DEPARTMENT OF  
TRANSPORTATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM

APPROVED AS TO FORM

By: \_\_\_\_\_  
Sr. Deputy Prosecuting Attorney

By: \_\_\_\_\_  
Senior Assistant Attorney General

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

AGENCY ACKNOWLEDGMENT

STATE OF WASHINGTON )

)ss

COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me personally appeared \_\_\_\_\_, to me known to be the duly appointed \_\_\_\_\_ and that he/she executed the within and foregoing instrument and acknowledged the said instrument to be his/her free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath Lessees that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print or type name)

Notary Public in and for the State of Washington  
residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

WSDOT ACKNOWLEDGMENT

STATE OF WASHINGTON )

)ss

COUNTY OF THURSTON )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me personally appeared \_\_\_\_\_, to me known to be the duly appointed \_\_\_\_\_, and that s/he executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath states that s/he was authorized to execute said instrument.

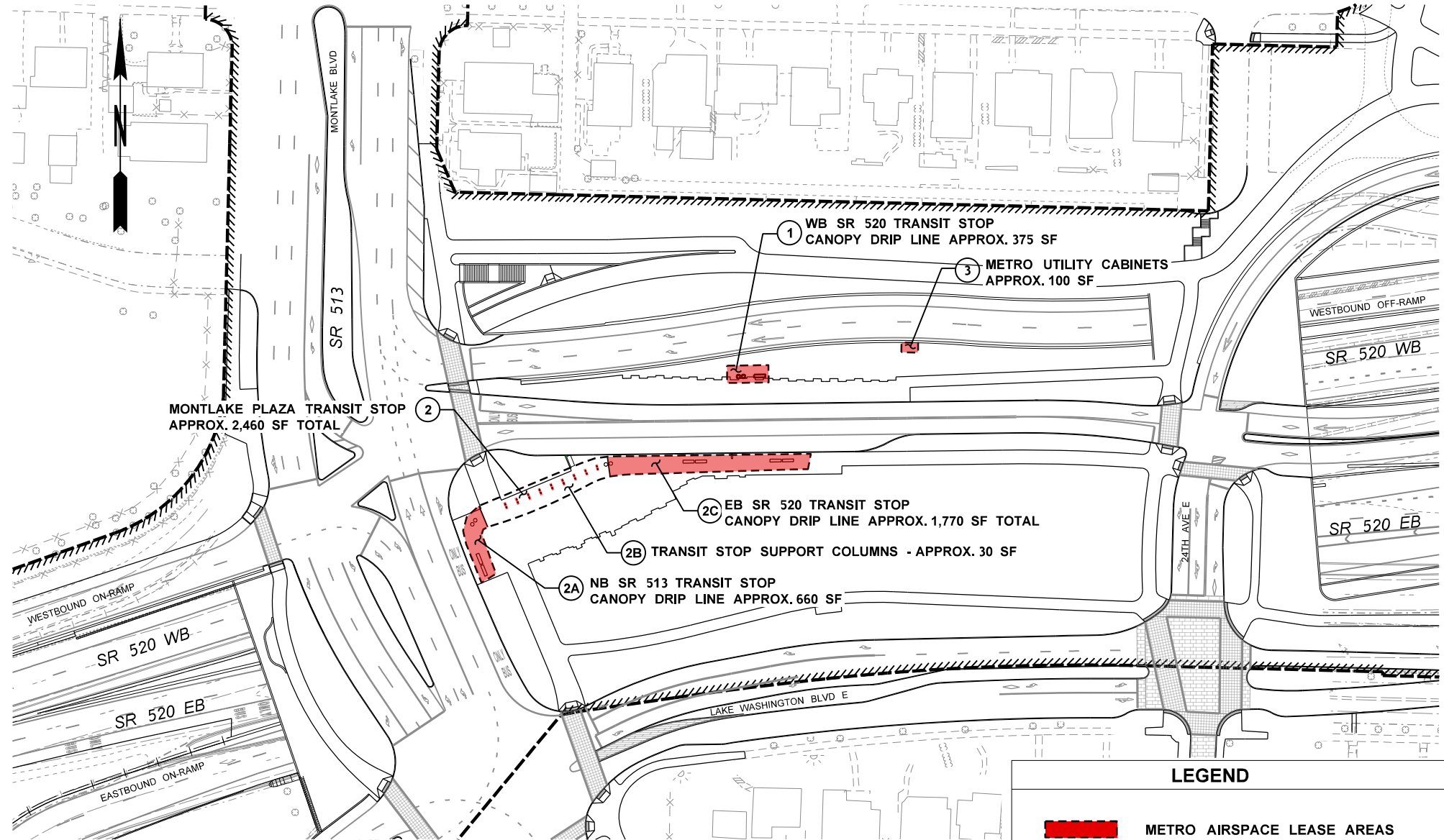
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print or type name)

Notary Public in and for the State of Washington  
residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

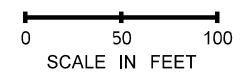


# KING COUNTY METRO MONTLAKE TRANSIT STOP AIRSPACE LEASE AREAS

**NOTE:**  
IMPROVEMENTS TO BE CONVEYED TO  
KING COUNTY METRO INCLUDE:  
TRANSIT STOP, BENCHES AND CABINETS

**LEGEND**

- METRO AIRSPACE LEASE AREAS
- WSDOT LIMITED ACCESS
- WSDOT RIGHT-OF-WAY

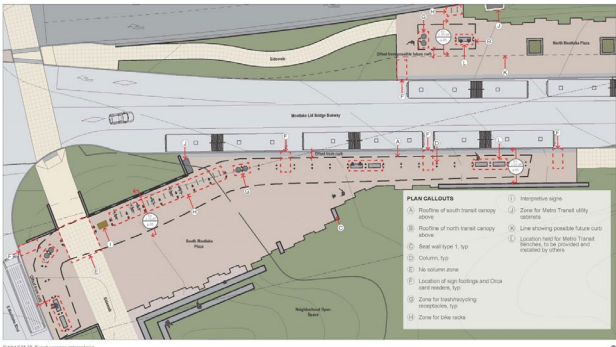
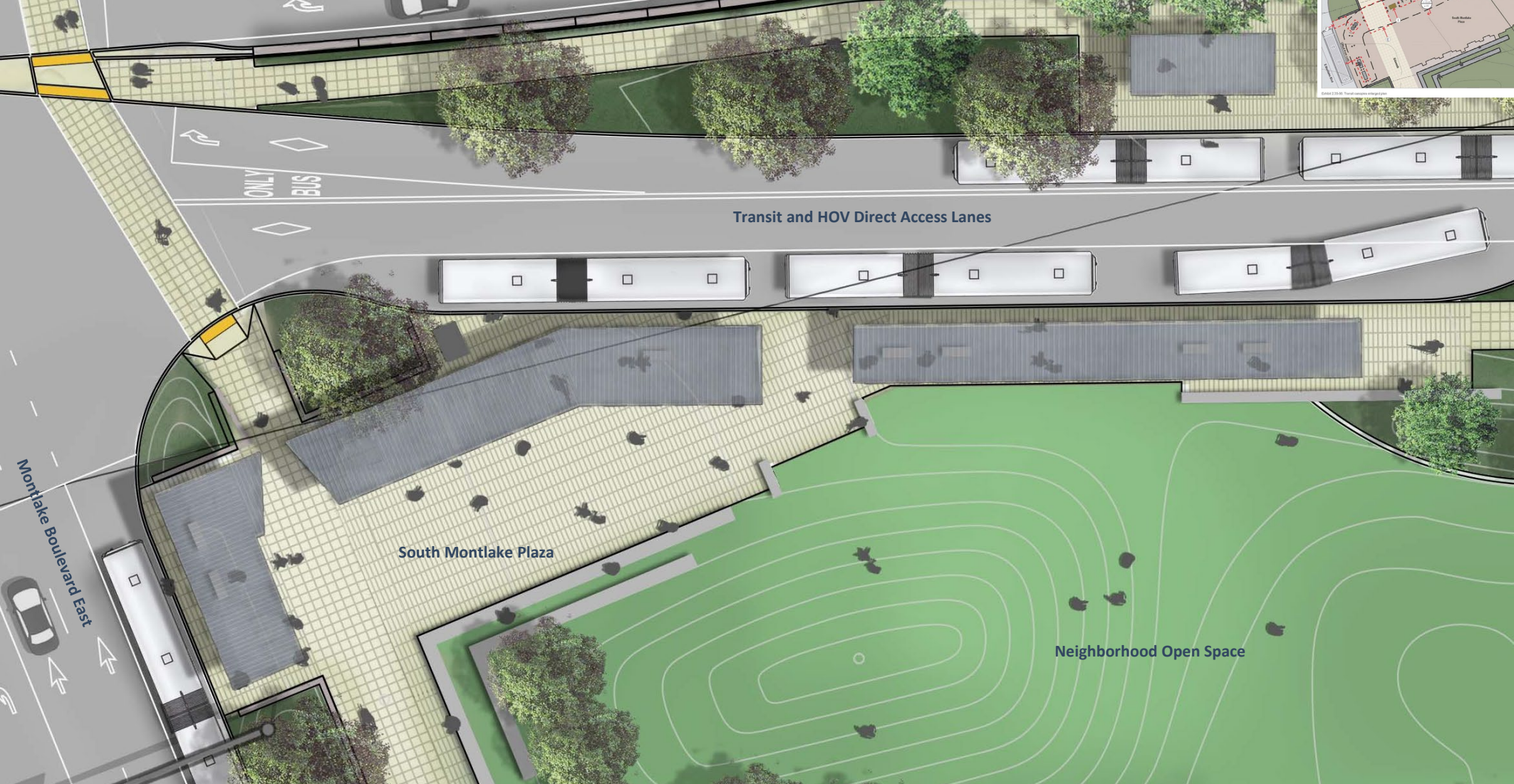


**Exhibit A**  
**Sheet 1 of 1**



# Conceptual Transit Stop Shelter and Canopy

**DRAFT** 9/5/19



**Exhibit B**  
**Sheet 1 of 1**