Ordinance No. 124674

Council Bill No. 118280

AN ORDINANCE relating to the Seattle Monorail; authorizing the Director of the Seattle Center to execute a concession agreement granting Seattle Monorail Services the right to operate and maintain the Monorail system for ten years, with an additional ten year extension by mutual agreement; authorizing the Director to enter into project agreements for Monorail capital improvements and major maintenance projects as provided for in the agreement; authorizing the Director to establish Monorail fares within the limitations provided in the agreement; and ratifying and confirming certain prior acts.

Related Legislation File:

Date Introduced and Referred: 12/1/14	To: (committee): Parks, Seattle Center, Libraries, and Gender Pay Equity
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: ~~12/15/16~~ 12/15/14	Date Presented to Mayor: 12/16/14
Date Signed by Mayor: 12/19/14	Date Returned to City Clerk: 12/19/14
Published by Title Only ✓ Published in Full Text	Date Vetoed by Mayor:
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by:

Committee Action:

Date	Recommendation	Vote
9.2.2014	PASS	JG TR MO BH 4-0

This file is complete and ready for presentation to Full Council.

Full Council Action:

Date	Decision	Vote
12/15/14	Passed as Amended	8-0 (excused: Clark)

Law Department

Kerry Smith
CEN Monorail Agreement ORD
December 9, 2014
Version #2

CITY OF SEATTLE

ORDINANCE 124674

COUNCIL BILL 118280

AN ORDINANCE relating to the Seattle Monorail; authorizing the Director of the Seattle Center to execute a concession agreement granting Seattle Monorail Services the right to operate and maintain the Monorail system for ten years, with an additional ten year extension by mutual agreement; authorizing the Director to enter into project agreements for Monorail capital improvements and major maintenance projects as provided for in the agreement; authorizing the Director to establish Monorail fares within the limitations provided in the agreement; and ratifying and confirming certain prior acts.

WHEREAS, the Seattle Center Monorail was constructed in 1962 by Alweg International of Germany as part of the 1962 Seattle World's Fair and is an iconic symbol of Seattle; and

WHEREAS, the Monorail trains are a designated Seattle Historic Landmark; and

WHEREAS, the Monorail provides a public transportation link between downtown Seattle and Seattle Center; and

WHEREAS, more than two million riders utilize the Monorail each year; and

WHEREAS, in 2013 Seattle Center published a request for proposals seeking a concessionaire to operate the Seattle Monorail as a concession and to provide management, marketing, and maintenance of the Seattle Monorail to maximize accountability for safety, service reliability, cost control, revenue, and business development; and

WHEREAS, Seattle Monorail Services submitted the successful proposal, and the Director of the Seattle Center and Seattle Monorail Services have negotiated an agreement; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Director of the Seattle Center (the "Director") and recommended by the Mayor, the Director or his designee is authorized to execute, for and on behalf of The City of Seattle, a concession agreement with Seattle Monorail Services, substantially in the form of the Monorail System Concession Agreement attached hereto as Attachment 1 (the "Concession Agreement") under which Seattle Monorail Services is granted

DIS CITY CLERK

the right to operate and maintain the Seattle Center Monorail for an initial ten year term. The Director is authorized to extend the Concession Agreement for an additional ten year term on the same terms and conditions as provided for under the Concession Agreement.

Section 2. Fares for the Monorail are established in the amount provided under the Concession Agreement. The Director is hereby authorized to approve increases to the fares in a manner consistent with the Concession Agreement so long as the fares do not exceed the maximum fares established under the Concession Agreement.

Section 3. The Director is hereby authorized to enter into subsequent project agreements with Seattle Monorail Services for capital projects and major maintenance of the Monorail System as provided for and in compliance with the requirements and limitations of the Concession Agreement.

Section 4. The Director shall deliver to the Mayor's Office and the Seattle City Council an analysis of and possible proposal for utilizing the One Regional Card for All ("ORCA") card as a method of fare payment on the Seattle Monorail before the end of the second quarter of 2015.

Section 5. Any act consistent with the authority of this ordinance taken after its passage and prior to its effective date is hereby ratified and confirmed.

Section 6. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

bjs CITY CLERK

Passed by the City Council the 15th day of December, 2014, and signed by me in open session in authentication of its passage this 15th day of December, 2014.

President _____ of the City Council

Approved by me this 19th day of December, 2014.

Edward B. Murray, Mayor

Filed by me this 19th day of December, 2014.

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Monorail System Concession Agreement

Exhibits to Attachment 1:

Exhibit A: Seattle Center Description
Exhibit B: 1987 Monorail System Operating and Easement Agreement
Exhibit C: Inventory of Spare Parts

BDS CITY CLERK

Attachment 1

Monorail System Concession Agreement

by and between

Seattle Monorail Services, LLC

and

The City of Seattle

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MONORAIL SYSTEM CONCESSION AGREEMENT

THIS MONORAIL SYSTEM CONCESSION AGREEMENT is made between **THE CITY OF SEATTLE** (the "City") operating through its Seattle Center Department (the "Seattle Center") and its Director of Seattle Center ("the Director") and **SEATTLE MONORAIL SERVICES, LLC**, a Washington limited liability company organized and existing under the laws of the State of Washington (the "Concessionaire"). In consideration of the mutual covenants contained herein, the parties agree as follows:

I. DEFINITIONS

As used in this Agreement, the following terms have the meanings given in this Section.

A. **Agreement** means this Concession Agreement, as amended from time to time.

B. **Approval or Approved,** whether or not capitalized, means the prior written consent of a party hereto or a designated representative thereof. Except as otherwise expressly provided herein, any approvals hereunder shall not unreasonably be withheld, conditioned, made or delayed.

C. **Armory** means the multi-use office, food and entertainment facility known as the "Seattle Center Armory" located on the Seattle Center campus and connected to the Seattle Center Monorail Station by an existing pedestrian bridge. If the name of the Armory is changed during the Term, all references in this Agreement to the "Armory" shall be deemed to refer to the re-named facility.

D. **Capital and Major Maintenance Program (CMMP) Expenses** means all costs and expenses incurred in the course of developing and updating the CMMP, and planning, providing or managing a Capital Improvement and/or Major Maintenance project that is identified in the rolling five year Capital and Major Maintenance Program plan and such expenses are Approved by the City.

E. **Capital and Major Maintenance Program (CMMP) Plan** means the rolling five-year plan cooperatively prepared by the City and the Concessionaire which identifies, sequences, and prioritizes current, future and potentially emergent Capital Improvement and Major Maintenance projects, including FTA eligible improvements, needed by the Monorail System, as amended from time to time and more completely described under Section XIII.B. These projects generally are intended to enhance the function and operation, add to the value of or extend the useful life of the Monorail System, improve the attractiveness of the Monorail System to users and the general public, and/or improve Monorail System operational, mechanical or financial performance.

F. **Capital Improvement(s)** means those physical alterations that substantially add to the value or appreciably prolong the useful life of the Monorail System. Activities in this category will generally be made as part of the CMMP.

G. **City Concession Fees** shall have the meaning set forth in Section VI B.

H. **City Coordinator(s)** means the Director's designee(s) responsible for administering the Agreement for the City, including coordinating with the Concessionaire regarding the Concessionaire's responsibilities described in this Agreement and reviewing/approving the Concessionaire's annual budget.

I. **City Services Fund** means a separately maintained fund identified in Sections XII G. and H. to be used to reimburse the City for certain costs at the Seattle Center Station or on the Monorail System.

J. **Common Areas** means those portions of the Seattle Center campus, as now or hereafter constituted, designated by the Director for use by the general public in common with all other users and visitors of Seattle Center including without limitation, parking lots and garages, walkways, seating areas, public restrooms, landscaped areas, public stairs, ramps, escalators and shelters, subject to such general rules, regulations, and hours as the Director may from time to time establish.

K. **Concession** means the rights granted to the Concessionaire to operate and maintain the Seattle Center Monorail as provided in this Agreement.

L. **Concessionaire's Management Fee** means 5% of Concessionaire's Total Revenues.

M. **Concessionaire's Total Revenues** means the total revenues and income of the Concessionaire from conducting business in, on or from the Monorail System pursuant to this Agreement including, but not limited to:

1. All Ridership Revenue;

2. All income received by the Concessionaire from any third parties or entities for the use or occupation of any portion of the Monorail System;

3. All income received by the Concessionaire from any other person or entity acting on behalf of Concessionaire and generated from the retail or wholesale sale of food, beverage, or merchandise, of any kind whatsoever, for cash, barter, exchange or credit (regardless of collections) on, from, or at any place on the Monorail System; and

4. All income derived by the Concessionaire during the Term from marketing, promotion, advertising, or sponsorship arrangements using or referring, in any way, to the Monorail System or any portion thereof and derived from any Private Asset of the Concessionaire.

5. All interest income from Concessionaire's cash holdings.

The term "Concessionaire's Total Revenues" shall not include (a) federal, state or local excise, sales, use, ticket, or other similar taxes collected from patrons based on gross receipts or admissions; (b) insurance proceeds other than proceeds to compensate for loss of Concessionaire's Total Revenues; (c) the proceeds of any financing or capital contributions to the

Concessionaire; (d) income or reimbursement to Concessionaire or its partners or affiliates pursuant to any separate contract for Capital Improvements or Major Maintenance set forth in a separate contract with the City, such as those set forth in Section XIII; or (e) the gross receipts of subconcessionaires or licensees (other than that portion thereof received by the Concessionaire).

N. **Consumer Price Index (CPI-U)** means the CPI for All Urban Consumer Items, Seattle-Tacoma Metropolitan Area using the base 1982-84 = 100, as published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor. If there is a change in the index base or other modification of the index, the City shall apply whatever conversion factors are necessary to establish an adjusted CPI-U base that produces the percentage increase in the CPI-U for each annual period that would have been produced had no change been made in the index by its publisher. If the CPI-U index is discontinued, the Director shall select a similar index that reflects consumer price changes.

O. **Contract Year** means each individual calendar year during the Term or the Extended Term, if any. The first Contract Year begins January 1, 2015 and ends December 31, 2015.

P. **Default** shall have the meaning set forth in Section XXX.

Q. **Director** means the Director of the Seattle Center Department or his/her designee.

R. **Emergency Maintenance**. Emergency Maintenance repair refers to those maintenance actions which must be performed to correct conditions caused by random events such as accidents, severe weather or unexpected equipment failure. As such, Emergency Maintenance cannot be scheduled by time interval, predictable occurrence, or failure rate, but must be performed promptly in response to developing situations.

S. **FTA** means the United States Federal Transit Administration.

T. **General Manager** means the employee or agent of the Concessionaire responsible for managing the Concessionaire's responsibilities and resources as described in this Agreement and for coordination of same with the City during the Term.

U. **Include**, and **including** whether capitalized or not, shall be treated as introducing non-limiting examples.

V. **Irrevocable Marketing Account (IMA)** means the reserve account funded by the monthly accrual of six-tenths of a percent (0.6%) of Ridership Revenue, or $25,000 per year, whichever is greater, to be used as further described in Section IX, for mutually agreed upon joint Monorail – Seattle Center marketing campaigns.

W. **Irrevocable Renewal Account (IRA)** means the reserve account funded by the monthly accrual of seven and a half percent (7.5%) of Ridership Revenue plus interest earnings on all cash balances net of banking expenses. The purpose of the IRA is to fund and leverage or facilitate other funds or financing for capital improvements as further described in Section VIII, for substantial train refurbishment, emergency maintenance, or for other Monorail System Capital

Improvements or Major Maintenance, as mutually agreed to by the parties and generally reflected in the Capital and Major Maintenance Program plan.

X. **Major Maintenance** means those activities that pertain to system-wide refurbishment or renewal of key system components and/or subsystems that improve attractiveness, operational, mechanical and/or financial performance of the Monorail System. Activities in this category will generally be made as part of the CMMP. If activity is limited in scope and necessary for the continuing operation of the Monorail System it will be undertaken as part of the Ordinary Maintenance program.

Y. **Monorail System** means the facilities, equipment, and areas described in Section III.A., and made available to the Concessionaire for use under this Agreement.

Z. **Net Operating Income** means Concessionaire's Total Revenue less Operating Expenses during each Contract Year.

AA. **Operating Expenses** means all costs and expenses necessary and incurred by the Concessionaire in the course of operating, maintaining, administering, managing and marketing the Monorail System, excluding CMMP Expenses. Operating Expenses include but are not limited to the following:

1. All utility fees and charges;

2. All wages, salaries and other labor costs, including taxes, insurance, retirement, medical and other employee benefits paid to the Concessionaire's employees and administrative personnel in connection with the Monorail System's operation, excluding CMMP Expenses and the labor costs of any person having an ownership interest in Seattle Monorail Services, LLC.

3. Fees, charges and other costs, including training costs, consulting fees, legal fees and accounting fees, of all independent contractors engaged by the Concessionaire in connection with the ordinary course of business of the Monorail System;

4. All local and state taxes, including but not limited to public utility taxes, business taxes and leasehold excise tax, imposed or incurred in connection with the Monorail System (excluding any federal income taxes);

5. The costs of fire, public liability and property damage insurance and all other insurance carried by the Concessionaire under this Agreement;

6. All marketing costs, including accruals to the IMA;

7. All accruals to the City Services Fund;

8. All accruals to the IRA;

9. The Concessionaire's Management Fee.

10. The aggregate of all costs and expenses incurred by the Concessionaire in the course of providing or making provisions for all Ordinary Maintenance on the Monorail System, exclusive of developing, performing and implementing the CMMP. These expenses include:

a. Maintenance training, maintenance plan programming, and record keeping of the Monorail System by the Concessionaire's staff;

b. The actual direct cost of parts and supplies, together with transportation or shipping charges and applicable sales or use taxes;

c. The costs of independent contractors who provide goods and services in connection with Ordinary Maintenance, including any applicable tax;

d. Equipment rented or purchased by the Concessionaire and used in connection with providing Ordinary Maintenance including any applicable tax, insurance, and cost of maintenance;

e. Street tree trimming costs;

f. Electrical vault and breaker maintenance costs, whether provided by the Concessionaire or by a third party by agreement with the City;

g. Any other expense or cost reasonably and necessarily incurred in connection with providing Ordinary Maintenance;

11. All costs associated with providing necessary operating capital in the event operating funds need to be augmented to meet cash flow requirements, including but not limited to interest and loan fees.

12. The City Management Fee under Section VI.C.

13. All costs associated with the 1987 Monorail Operating and Easement Agreement with Westlake Center Associates LLC, as amended.

14. All other reasonable and actual operating, administration and management expenses incurred by the Concessionaire in connection with operation and management of the Monorail System in accordance with this Agreement, except any Late Fees as described in Section VI.E.1.

BB. **Ordinary Maintenance** means the scheduled and unscheduled routine maintenance tasks performed on any part of the Monorail System on a daily, weekly, monthly, quarterly, semi-annual, annual, and as needed basis consisting primarily of inspections, repairs and service with a goal of making the Monorail System safe, reliable and attractive. In addition, Ordinary Maintenance includes unscheduled emergency repairs that are not Major Maintenance repairs made as part of the CMMP and are required to respond to system and/or component failures. All maintenance and repairs included in the CMMP are not Ordinary Maintenance.

CC. **Private Assets** means that property that is owned exclusively by the Concessionaire, however used or not by the Concessionaire in performing its duties under this agreement, and to which ownership remains with the Concessionaire after the conclusion of the term, subject to Sections IV and XXXII. Private Assets may include intellectual property, patents, social media content, images and videos, consumer and other ancillary products, trademarked events, and all associated collateral materials relating to the Monorail System.

DD. **Restricted Portion of Seattle Center Platform or Restricted Portion** means the center loading bay of the Seattle Center Platform to which public access is restricted to Monorail riders with a ticket, pass, or approved identification.

EE. **Revenue Service** means operation of the Monorail System for the general public for compensation from the individual passengers under the rates specified in Section XI.F hereof, compensation for extended hours of operation for prearranged commuter service, or from another source under other arrangements.

FF. **Ridership Revenue** means all revenue generated from ticket sales, including adult, discounted and group tickets, monthly passes, and commuter service.

GG. **Seattle Center** means the real property described on **Exhibit A** hereto, or when indicated by context, the Seattle Center Department governing it.

HH. **Seattle Center Platform** means the "E" shaped area at the Seattle Center Station that includes a center loading bay with an exit stairway to the ground, north and south train exit bays with exit stairways to the ground, and the area between these bays and the Armory (excluding the pedestrian bridge to the Armory) together with the ramp that connects this "E" shaped area to the Seattle Center grounds. The Seattle Center Platform is divided into three parts, a) the center loading bay and stairway, access to which is restricted to Monorail riders with tickets, passes or approved identification cards, the "Restricted Portion; b) the two exit bays, north and south of the center loading bay and their associated stairways to the ground, access to which is restricted to people offloading from the trains and c) the rest of the platform

II. **Term** means the Initial Term and the Extended Term, if any, as provided under Section II.

II. TERM; OPTION TO EXTEND TERM

A. **Initial Term.** The Initial Term of this Agreement shall begin on January 1, 2015 at 12:00 AM and end on December 31, 2024 at 11:59 PM. unless terminated earlier under the terms and conditions of this Agreement.

B. **Extended Term.** This Agreement may be extended under the same terms and conditions for one additional ten (10) year term (the "Extended Term") by mutual agreement of the Director and the Concessionaire. Either party may provide written notice to the other party of its desire to extend at any time after October 1, 2022. If the parties have not mutually agreed in writing to the Extended Term by December 31, 2022, the City reserves the right to take whatever action the Director deems appropriate, including but not limited to seeking another

concessionaire to operate the Monorail System after the expiration of the Initial Term. Nothing in this Section shall be interpreted as unilateral rights, and each party reserves the right to reject, for any reason, the other party's request for the Extended Term.

III. GRANT OF CONCESSION RIGHTS TO MONORAIL SYSTEM & ANCILLARY AREAS

A. **Monorail System Concession Right.** The City hereby grants to the Concessionaire the right and privilege to maintain and exclusively operate the Monorail System during the Term, subject to all terms, conditions, and limitations in this Agreement. The Concessionaire's right to maintain and operate the Monorail System includes the right to use and occupy the facilities and areas described below, the right to Concessionaire's Total Revenues, and the personal property and equipment therein. Portions of the Seattle Center Station have been made available for non-exclusive use by the Concessionaire.

1. Trains. Two (2) four-unit, triple-articulated, double-ended, electric trains riding on dual pneumatic rubber traction tires with horizontal pneumatic rubber tires pressing against the sides of the guideway beam for stability and guiding.

2. Guideway. The approximately nine-tenths of a mile long, dual, three (3) foot wide by five (5) foot high, pre-stressed concrete beam guideway structure together with its supporting "T-shaped" pylons approximately 25' high, which structure extends from the Seattle Center Station, over a portion of the Seattle Center campus, and along 5th Avenue to the Westlake Center Station.

3. Westlake Center Station. The Equipment Room, the cashiering booths, any janitor's closet; the Rectifier Room, Ramp Protection System Equipment Room, electrical vault in the basement; and associated areas of Westlake Center to which the City has been granted easement rights, all as described in that certain 1987 Monorail Operating and Easement Agreement with Westlake Center Associates LLC (successor to Westlake Center Limited Partnership) authorized by Ordinance 113272 and recorded under King County Recording No. 8702170365 (the "Monorail Operating and Easement Agreement"), amended on September 18, 2014, and attached as **Exhibit B**.

4. Exclusive Use Portions of Seattle Center Station. All of the lower level of the Seattle Center Station, including the open air maintenance bays, emergency exit pathways, storage yard, and the areas below the Platform level serving as administrative space, a maintenance work area, parts storage space, a parking space immediately adjacent to maintenance bays; and the Restricted Portion of the Seattle Center Platform as defined in Section I.DD. The City reserves certain rights on the Restricted Portion as described in Section XV.

5. Non-Exclusive Use Portions of Seattle Center Station. All of the "E" shaped Seattle Center Platform area at the Seattle Center Station together with the ramp that connects this "E" shaped area to the Seattle Center grounds, except the Restricted Portion which is the Concessionaire's Exclusive-Use space.

6. Monorail System Annex. Approximately 2,400 square feet of space on the upper level of the 370 Thomas Street Building located on the East 70 Feet of Lot 6, Block 51, D. T. Denny's Third Addition to North Seattle, as recorded in Vol. 1 of Plats, Page 145, Records of King County Washington; together with the bridge walkway between the Seattle Center Station exit platform and the building's second story, which space shall be used exclusively for administrative offices, cash handling, and storage, or, subject to the Director's approval, for other purposes ancillary to operation of the Monorail system. At such time that the Director may determine that the Monorail System Annex will no longer be available for Monorail System use; the Director shall identify a different comparable space with similar utility of at least 1800 square feet in the vicinity of the Seattle Center Station for the Concessionaire's use.

7. Supplemental Storage Area. Approximately 318 square feet (Room # 40) in the basement of the Armory.

B. **Non-Exclusive Access to Common Areas.** The City also grants to the Concessionaire, and its officers, employees, agents, customers, and invitees non-exclusive rights during the Term of this Agreement to access the Seattle Center Common Areas, as from time to time constituted, which access shall be in common with all members of the public and other visitors and users of the Seattle Center, subject to rules and regulations as may be promulgated by the Director from time to time and also subject to the other provisions of this Agreement. Such Common Areas include the pedestrian bridge connecting the Seattle Center Platform and Armory, the staircase from the pedestrian bridge to the Seattle Center grounds.

C. **Condition of Monorail System.** The City grants the Concessionaire the right to use the Monorail System in its "AS IS" condition and the Concessionaire accepts the same as of the date this Agreement is fully executed. The City disclaims all representations, statements, and warranties of any kind with respect to the condition of the Monorail System or its suitability for the Concessionaire's use, except as expressly set forth in this Agreement.

D. **City's Reserved Rights Regarding the Availability of Monorail System.** The City reserves the right to adjust, substitute, or relocate any part of the exact area in which any part of the Monorail System's facilities or equipment are located or area where Monorail services are provided, if the Director concludes that it is necessary in the interest of the public and/or the City's operation of the Seattle Center. If the Director determines that such adjustment of space is necessary, the City will use its best efforts to provide similar space and square footage to enable the Concessionaire to operate the Monorail System in the same manner as prior to such adjustment of space. The parties shall cooperate so that such change in space shall not unnecessarily interrupt the quality, quantity, or efficiency of service rendered by the Concessionaire under this Agreement, significantly damage the business of the Concessionaire or reduce the amounts payable to the City. The City shall bear the cost of moving its equipment and the Concessionaire's equipment, supplies, and fixtures if any space adjustment or relocation is necessary, and the City shall bear the cost, if any, of providing utilities to such relocated space.

IV. INTELLECTUAL PROPERTY

A. **Copyrights.** The Concessionaire shall retain the copyright (including the right of reuse) to all materials and documents developed by Concessionaire or its employees relating to

the Monorail System, including, images and videos, consumer and other ancillary products, events, and all associated collateral materials. The Concessionaire's use of any of the copyrighted materials in support of Monorail System operations, maintenance, and marketing shall be incidental and without charge as an Operating Expense during the Term. The Concessionaire grants the City an irrevocable, perpetual, royalty-free non-exclusive license to use content, images and videos of the Monorail System which Concessionaire utilized in marketing materials and social media accounts. At the end of the Term, as between the Concessionaire and the City, Concessionaire shall retain the rights to the content, images and videos subject to the City's license.

B. **Patents.** The Concessionaire hereby assigns to the City an irrevocable, perpetual, royalty-free license to use any invention, improvement, or discovery, with all related information, including but not limited to designs, specifications, data, patent rights and findings developed by Concessionaire for use in support of the Monorail System. Notwithstanding the above, the Concessionaire does not convey to the City, nor does the City obtain, any right to any document or material utilized by the Concessionaire created or produced separate from the Agreement or was pre-existing material (not already owned by the City), provided that the Concessionaire has identified in writing such material as pre-existing prior to Effective Date of theAgreement. If pre-existing materials are incorporated in the Monorail System, the Concessionaire grants the City an irrevocable, perpetual, royalty-free non-exclusive right and/or license to use or replicate the materials, but only for purposes of operating the Monorail System.

C. **Employee and Contractor Agreements.** Concessionaire shall ensure that its agreements with employees and any contractors for work in support of or relating to the Monorail System include terms and conditions consistent with this section.

V. WESTLAKE CENTER

To facilitate the Concessionaire's performance of the Monorail System operation and maintenance responsibilities described in this Agreement the City hereby assigns to the Concessionaire those of the City's rights under the Monorail Operating and Easement Agreement, that are necessary for the Concessionaire's activities and obligations under this Agreement and to the extent permitted by Westlake Center LLC. During the Term, the Concessionaire shall assume all of the City's obligations and comply with all restrictions imposed on the City under the Monorail Operating and Easement Agreement, which is attached as **Exhibit B,** and made a part of this Agreement. The City shall retain all underlying ownership rights under the Monorail Operating and Easement Agreement and Concessionaire's rights shall terminate upon the expiration or termination of the Term. The Concessionaire shall have no authority to amend or waive any right or power of the City under the Monorail Operating and Easement Agreement.

VI. PAYMENTS TO THE CITY

A. **Fees and Charges.** In consideration of the exclusive Concession rights granted herein, the Concessionaire shall pay to the City the fees and charges described in this Section VI, plus any additional amounts described in this Agreement.

B. **City's Concession Fees.** Each Contract Year during the Term the Concessionaire shall pay the City, an annual fee ("City Concession Fee"). The City Concession fee shall be the greater of two-thirds (66.67%) of Net Operating Income for the applicable Contract Year or Five Hundred and Fifty Thousand Dollars ($550,000) (the "Minimum Fee"). The Minimum Fee shall be adjusted as fares are adjusted from time to time in accordance with Section XI.F.1. and prorata with the change in the blended average fare (total Ridership Revenue divided by the total number of riders). In no case shall the Minimum Fee be less than Five Hundred and Fifty Thousand Dollars ($550,000). The annual City Concession Fee shall be payable in installments as provided under Section VI.E.1. In the event of an insured loss under Section XIX, the City Concession Fee shall be a continuing cost for the purposes of determining any business interruption claim. The Concessionaire shall retain the Net Operating Income in each Contract Year in excess of the City Concession Fee for the Contract Year.

C. **City Management Fee.** Each Contract year during the Term the Concessionaire shall pay the City a maximum of Thirty Thousand Dollars ($30,000) annually for labor and expenses for the City's Coordinator(s) to administer and oversee the Concession contract which includes coordinating with the Concessionaire, SDOT, WSDOT and FTA, coordinating efforts with City staff to maximize the efficiency and effectiveness of work funded by the City Services Fund, and if the City elects to do so, retaining the services of a third party to conduct the performance review identified in Section XI.E.3. The City shall invoice the Concessionaire for these expenses on a quarterly basis and the City Management Fee shall be included in Operating Expenses. The maximum City Management Fee of $30,000 shall be increased annually in an amount equal to the percentage increase in the CPI-U for the prior calendar year, regardless of whether the City invoices Concessionaire for the maximum amount in any given year.

D. **City Services Fund.** Each Contract Year during the Term the Concessionaire shall pay the City the balance remaining as of December 31st, if any, in the City Services Fund as provided under Section XII.H.

E. **Form, Time and Place of Payment.** Concessionaire's payments to the City are due as follows:

1. The City Concession Fee is due and payable in quarterly installments, as accrued, within thirty (30) days after the end of each calendar quarter (due no later than April 30, July 30, October 30, and January 30). The City Concession Fee shall be accompanied by the monthly reports for that quarter as required under Section VI.F.1. The City Management Fee is due and payable within thirty (30) days of invoice. The unexpended portion of the City Service Fund for any Contract Year shall be due to the City no later than January 30 of the following calendar year.

2. All payments shall be sent to the Seattle Center Accounting Office, at the address specified in Section XXIX, or to such other address as the Director shall specify by notice to the Concessionaire. Payments may be made in cash, or by check or money order. Payments not received within ten (10) days after the date due shall be considered delinquent. In the event of any delinquency, a late charge of one and one-half percent (1.5%) of the delinquency shall be added to the outstanding balance and the total sum shall be immediately due and payable. Any late charge shall not be included as an Operating Expense.

F. **Required Reports.**

1. Monthly Reports. Within thirty (30) days after the end of each calendar month during the Term, the Concessionaire shall deliver to the Director a written report detailing, by separate revenue or expense category in accordance with generally accepted accounting principles, the Concessionaire's Total Revenues, Operating Expenses, and profit or loss from the Monorail Concession during the previous calendar month and calendar year-to-date period. The statement shall include comparative data and the prior year for the same periods. The Director's acceptance of the report without objection shall not in any way be deemed a waiver of the City's right to examine and audit the Concessionaire's books and records regarding its business activity relating to the Monorail System, nor shall it in any way act as a modification of either party's rights or obligations under this Agreement.

2. Annual Report. Beginning in 2016 and thereafter annually, no later than March 31st of each calendar year during the Term, the Concessionaire shall deliver to the Director a written final annual report of the Concessionaire's Total Revenues, Operating Expenses, and total profit or loss for the operation of the Monorail concession during the preceding calendar year. The Annual Report shall be prepared and reviewed by a certified public accountant whose name and address shall be provided with the report.

3. Annual Budget. Upon execution of this Agreement, Concessionaire shall submit its 2015 budget to the City Coordinator for review and Approval. Thereafter, the Concessionaire shall submit its proposed annual budget to the City Coordinator for review and Approval no later than October 31st of the prior year.

G. **Records and Audits.**

1. Records. The Concessionaire shall keep true, separate, accurate, complete and auditable records according to generally accepted accounting principles detailing Concessionaire's Total Revenues and all expenses of all business, operations, maintenance, and repairs of anything conducted in, on or from the Monorail System, which records shall be subject to the approval of the City. The Concessionaire shall retain in King County, Washington, for at least six (6) years after the close of each calendar year during the Term, a copy of each sales receipt, the tape from each cash register and adding machine, documentation of each payment made by the Concessionaire, and collateral supporting data regarding Concessionaire's Total Revenues, expenses, and profit or loss from the operation of the Monorail System concession. The Concessionaire shall ensure that the obligation to keep accurate and auditable records is a condition of any subcontract or other arrangement under which any other person or entity is permitted to carry on a business activity in, on, or from the Monorail System.

2. Audit. Concessionaire shall permit the City at its expense, from time to time as the City deems necessary, to inspect and audit, at a reasonable time, all Concessionaire's books and records relating in any way to the Concessionaire's business conducted in, on, or from the Monorail System, including all expenses. Upon City's request, the Concessionaire shall permit the City to make copies of Concessionaire's books and records, at the City's expense. The Director shall notify the Concessionaire of the amount of any over- or underpayment discovered as a result of any audit. If the Concessionaire disagrees with the

Director's determination, the matter shall be resolved by the dispute resolution process in Section XXXV. If there is any overpayment to the City, the City Services Fund, IMA, or the IRA, the Director will elect one of the two following options: 1) the overpayment shall be credited against any future payment due to the City or the applicable account, or 2) the overpayment shall be refunded to the Concessionaire. If there is any underpayment, the full amount shall be due and payable to the City or the applicable account within ten days of invoice. The Concessionaire shall ensure that the City's rights to inspect, audit and copy records and books under this section is a condition of any subcontract or other arrangement under which any other person or entity is permitted to carry on a business activity in, on or from the Monorail System.

VII. CONCESSIONAIRE MANAGEMENT FEE

For purposes of calculating Net Operating Income, the Concessionaire may include in its Operating Expenses a Concessionaire's Management Fee of five percent (5%) of the Concessionaire's Total Revenue for each Contract Year during the Term. The Concessionaire's Management Fee shall be accrued monthly based on the Concessionaire's Total Revenues during that month.

VIII. IRREVOCABLE RENEWAL ACCOUNT (IRA)

A. **Annual Contribution.** To provide funding or matching funds for mutually agreed upon Capital and Major Maintenance Program planning and projects, effective January 1, 2015, during each Contract Year of the Agreement, Concessionaire shall accrue seven and a half percent (7.5%) of monthly Ridership Revenues, or such other higher amount to which the parties may agree, into the IRA, which shall be a reserve account maintained by the Concessionaire. In addition, the Concessionaire will accrue to the IRA all interest earnings received on its cash holdings net of any banking fees. The IRA shall only be used for the purposes provided for under this Agreement and shall be committed and spent only in accordance with the process described in this Section VIII.

Accruals to the IRA, shall be recorded as an Operating Expense in the calculation of Net Operating Income.

B. **Use of Funds.** The IRA shall be used for projects identified in the CMMP and for a contingency to fund Emergency Maintenance. No less than once a year during the Term, the Concessionaire and City shall meet to arrive at mutual agreement on modifications and/or reprioritizations to the rolling five (5) year CMMP plan. As the CMMP changes, the IRA funds may be applied to new or different projects, but they will not be refundable or available for any other purpose, except in the final year of the Agreement.

In the October before the final Contract Year of the Initial Term, or the Extended Term, if any, the Concessionaire and the City shall meet and agree upon an estimate of the uncommitted and unexpended balance expected to remain in the IRA at the end of the Contract Year, including payments and net interest accruals during the year. The agreed upon uncommitted amount shall be used to pay Monorail System Operating Expenses in the last year of the Agreement. The estimate will be included in the budget for the final year of the Agreement. If

there is any balance remaining in the IRA at the end of the final Contract Year, the remaining balance shall be treated as Net Operating Income.

The primary purpose of the IRA is to fund, leverage or facilitate other funds or financing for agreed upon CMMP projects expected to add life to the trains or monorail facilities, to modernize facilities or systems, to improve the customer experience or to demonstrably improve ridership or revenues. Intended uses of the IRA include:

1. To obtain grants or other matching funds or financing. Expenditures from the IRA may be used for matching funds for grants or other fund sources where expenditures are expected to extend the life or improve the Monorail System.

2. Station Improvements. To make CMMP improvements to either the Seattle Center or Westlake Center Stations.

3. Train Refurbishment and Major Maintenance. For substantial train refurbishment (e.g. floor replacement, car body repair), installation or reinstallation of systems (e.g. speed control, pneumatic suspension), or replacement of obsolete systems (e.g. Westlake Center ramps, gates and signaling components).

4. Guideway Improvements. For CMMP improvements involving the guideway and supporting pylons.

5. Contingency Funds for Emergency Maintenance. Fifty Thousand Dollars ($50,000), or such other amount as is mutually agreed to by the Concessionaire and the City, shall be set aside in the IRA so this amount is available in each Contract Year for Emergency Maintenance as described in Section XII.E. As emergencies occur, the use of these funds shall be upon mutual agreement of the Director and the Concessionaire.

6. Miscellaneous. Other major Monorail System projects upon mutual agreement of the Director and the Concessionaire.

A commitment of funds from the IRA will be made only upon the mutual agreement of the Concessionaire and the City and as specified in the CMMP and supplementary project specific agreements.

C. **Initial Carry Over Balance.** Effective January 1, 2015, Concessionaire shall ensure that the IRA has an initial balance of $80,000, which amount the City and Concessionaire agree represents the remaining balance of the irrevocable renewal account created under the prior concession agreement. The parties agree that the initial balance shall be in addition to all amounts required to accrue under this Agreement and that the initial balance shall be available for all purposes under this Agreement.

IX. IRREVOCABLE MARKETING ACCOUNT (IMA)

Beginning on January 1, 2015, and thereafter monthly during the Term, the Concessionaire will accrue six-tenths of a percent (0.6%) of each month's ridership revenue, or $25,000 per year,

whichever is greater, into an IMA, which will be a reserve account maintained by the Concessionaire. The IMA shall be used for the purpose of joint Monorail – Seattle Center marketing campaigns that have been mutually agreed upon between the parties to benefit the Monorail and Seattle Center. At the completion of the Initial Term, or the end of the Extended Term if the Agreement is extended, any balance in the IMA shall be remitted to the City.

X. MANAGEMENT REQUIREMENTS AND PLANS

A. **Oversight and Monitoring.** The Concessionaire shall provide a management team that is committed to ensuring reliable, on-time, cost-effective service for the operation, Ordinary Maintenance and marketing of the Monorail System that is in accordance with FTA and other applicable requirements. The Concessionaire shall implement management and monitoring procedures designed to measure human and systems performance, and periodically update and modify these procedures/plans as appropriate. Key management processes and plans shall include:

1. Monitoring. Regular monitoring of Ordinary Maintenance and operations programs and systems performance, including but not limited to ridership information, Concessionaire's Total Revenue and cash systems, and cost control.

2. Safety. Oversight of safety programs for employees and riders.

3. On-time performance and service reliability.

4. Training. Throughout the Term, the Concessionaire shall maintain and annually update a Personnel Training Program to create growth opportunities for staff, and make the Monorail System safe, reliable, and welcoming. The Concessionaire's training shall include the following:

a. The ongoing Training Program shall be vetted by the General Manager, Chief Systems Engineer, Maintenance Manager, and Training Manager to emphasize safe train operations, proper maintenance, and exceptional customer service, including drills to reinforce retention of information and improve performance under stressful situations.

b. The Training Program shall ensure employee training meets all the requirements established by the FTA and Washington State Departments of Transportation (WSDOT) and Labor and Industries.

c. The Concessionaire shall provide first aid training to all permanent staff during the first ninety (90) days of each staff person's employment with the Concessionaire. Documentation of the Concessionaire's training program shall be available to the City upon request.

d. All train operators shall have appropriate training and certification as agreed between Concessionaire and the City. Should Monorail System operators or other personnel become subject to local, state or federal regulations, then the Concessionaire shall ensure all employees meet any regulations affecting employment as a provider of Monorail

System transportation services.

5. State and Federal Compliance and Coordination. The Concessionaire shall ensure all operations comply with all state and federal requirements, including reports of the United States Federal Transit Administration (FTA) and Washington Department of Transportation (WSDOT). The Concessionaire shall keep accurate, timely, complete and useful records to inform management decisions for operations and maintenance. The Concessionaire's obligations include the following:

a. Complete and file monthly National Transit Data Base (NTDB) reports on ridership, mileage and hours of train operations (using the NTD MR-20 form); and safety issues (using the NTD S-50 form).

b. Prepare and file annual reports for government agencies and additional reports as required by the City, State and Federal governments.

c. In the event of an incident on the train or platforms, Concessionaire's personnel who witnessed or were involved in the event shall complete an incident report. Incident reports shall be reviewed by the General Manager and reported to Seattle Center and WSDOT per provisions in the Washington State Rail Safety Oversight Program Standard.

6. Marketing. Develop and implement advertising and sponsorship efforts to increase ridership and revenue to the Monorail System.

7. Janitorial. Provide janitorial service for the entire Monorail System including all property and equipment as well as the Seattle Center Station platforms and the exterior ramp from the Seattle Center grounds that provide access to such platforms.

8. Maintenance Management. Provide oversight and monitoring of performance measures for Ordinary Maintenance (does not include CMMP projects).

B. **Substance Abuse Program.** Throughout the Term, the Concessionaire shall maintain and update an employee substance abuse program that complies with state and federal regulations to assure safe operation of the Monorail System and supply to the City, when requested, documentation veryifing Concessionaire's compliance with program requirements. The Substance Abuse Program shall:

1. Assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthful manner;

2. Create a workplace environment free from the adverse effects of drug use and alcohol abuse;

3. Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and,

4. Alert employees about programs available for employees whose personal problems, including alcohol or drug dependence, adversely affect their ability to perform their duties.

Upon request, the Concessionaire shall provide written evidence to the City of enforcement and results of employee testing for illegal substances (drugs) while on the job.

Concessionaire's full-time, part-time, and temporary employees shall be subject to drug and alcohol testing as a condition of employment. All of the Concessionaire's employees who perform safety-sensitive functions, and all employees of any company or organization who perform safety-sensitive functions on behalf of the Concessionaire, are subject to FTA prohibited drug and misuse of alcohol testing requirements of 49 CFR Part 655. If there is a conflict between any local law and the requirements of 49 CFR Part 655, the federal law shall govern.

C. **Concessionaire's Staff.**

1. The Concessionaire shall employ competent, courteous and efficient staff in numbers to adequately serve Monorail patrons. The Concessionaire shall ensure that its employees who interact with the general public are customer service oriented. The Concessionaire shall make every effort to resolve disputes with customers in a respectful and proactive manner. The Concessionaire shall conduct performance reviews with employees on a regularly scheduled basis as a means of fostering employee development and motivating employees to reach their potential. The Concessionaire shall take appropriate action consistent with law to correct, retrain or to discharge or immediately remove from employment, any employees whom the Concessionaire considers unsuitable for such work.

2. Neither the Concessionaire nor its employees shall represent directly or indirectly that they are employees, agents, or legal representatives of the City. The Concessionaire agrees its employees shall not be considered the employees of the City under any circumstances, including, but not limited to, under the Fair Labor Standards Act of 1938, the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Family and Medical Leave Act of 1993, the Employee Retirement Income Security Act of 1974, the Worker Adjustment and Retraining Notification Act, or any other city, local, state or federal laws, statutes, codes, ordinances, regulations or constitutions or common law.

3. Representations. The Concessionaire hereby warrants and represents that the Concessionaire is solely responsible for the following:

a. Paying its employees at least the applicable minimum wage (or Prevailing Wage if applicable) for all hours worked;

b. Paying its employees required premiums for overtime hours, spread of hours, and split shifts where required;

c. Paying its employees within the time period required by applicable law;

d. Providing its employees with meal and rest breaks as required by applicable law;

e. Withholding all applicable taxes for the Concessionaire's employees;

f. Providing unemployment and workers' compensation coverage for the Concessionaire's employees;

g. Keeping all required recordkeeping documents pertaining to the Concessionaire's employees;

h. Properly completing all appropriate paperwork for the employment of such individuals, including, but not limited to, the I-9 form and applicable tax forms;

i. Ensuring that no improper deductions are taken from the wages of the Concessionaire's employees;

j. Complying with the requirements of Seattle's Paid Sick Time and Paid Safe Time Ordinance (Seattle Municipal Code Chapter 14.16; and

k. Providing health care benefits, to the extent and if required by federal, state, or local law.

4. General Manager. The Concessionaire shall designate a "General Manager" who shall serve as the transmitter to and receiver of all official communications with the City and who shall be responsible for the Concessionaire's overall performance under this Agreement.

The Concessionaire shall employ a qualified General Manager who shall oversee all concession operations and a qualified person who shall oversee the Ordinary Maintenance program for the entire Monorail System ("Maintenance Manager"). The General Manager selected by the Concessionaire shall be subject to the Director's approval.

XI. OPERATIONAL REQUIREMENTS

A. **System Operations Plan and Procedures.** The Concessionaire shall implement a System Operations Plan which strives to optimize system availability and safety, and minimize operation and maintenance costs.

B. **Days & Hours of Operation.**

1. Minimum City requirements for operations shall be as follows:

Either the Blue or Red Train shall operate daily except for Christmas Day, Thanksgiving Day and New Year's Day. Operation on those holidays shall be at the discretion of the Concessionaire. On Christmas Eve and the Wednesday before Thanksgiving, the Concessionaire may cease its operation of Monorail trains one (1) hour after the scheduled ending time of the last scheduled event at Seattle Center. On an annual basis the Concessionaire shall operate trains so that the

train mileage logged for the Red Train shall be within ten percent (10%) of the train mileage logged for the Blue Train unless otherwise authorized in writing by the Director.

2. Minimum Revenue Service hours shall be:

Winter Hours	(January – April) from 8:30 am to 9 pm
Summer Hours	(April – January) from 8:30 am to 11pm

C. **Frequency of Service and Mode of Operation.**

Regular Operation. Regular Monorail System Revenue Service shall be a minimum of four (4) round trips completed each hour. Normal, efficient operations is five (5) trips per hour which is the operational goal. As soon as all waiting passengers on the platform are loaded onto the train, the appropriate departure procedures shall be employed by the operator and other Monorail System staff to maintain this frequency of service.

At no time should departures from a station exceed 15-minute intervals. During heavy ridership periods, Concessionaire will adjust staffing and train deployment to optimize service and minimize wait time.

D. **Additional Train Revenue Service.**

1. Additional Train Revenue Service. To serve Seattle Center event and programming needs, the Director may require the Concessionaire to provide up to one hundred (100) additional Revenue Service hours in excess of the minimum hours of Revenue Service during each Contract Year of this Agreement, at no additional cost to the City. Any hours of additional revenue service hours in excess of the one-hundred (100) hours per Contract Year shall be billed directly to Seattle Center (rather than applied to Operating Expenses) at the rate of four-hundred eighty Dollars ($480) per hour less any Ridership Revenues earned during the same. The Director shall notify the Concessionaire in writing a minimum of five (5) days in advance of the date for which the additional service is required. The per train hour dollar amounts due to the Concessionaire for additional Revenue Service shall be increased annually in an amount equal to the percentage increase in the CPI-U for the immediately preceding calendar year.

Nothing in this Section will be interpreted to limit the Concessionaire's ability to provide additional hours or frequency of Revenue Service.

E. **Service Performance Standards.**

1. On-Time Performance. On-time performance shall be defined as providing a minimum of four (4) train departures an hour with ten (10) to fifteen (15) minute headways. The Concessionaire shall achieve an annual average of ninety-nine percent (99%) on-time performance unless excused under Section XXVIII (Force Majeure). The parties acknowledge that the image and reputation of the Monorail as a robust and reliable transportation provider will be undermined if the Concessionaire fails to maintain on-time performance, and that any damage to the image and reputation of the Monorail would be difficult to calculate. Accordingly, if the Concessionaire fails to achieve the on-time performance standard, the Concessionaire shall pay

the City as liquidated damages and not as a penalty, One Thousand Dollars ($1,000), for each 0.1% by which the Concessionaire's actual on-time performance is below the 99% annual on-time performance standard; provided, however, that the calculation of annual on time performance shall exclude (i) periods excused by events of Force Majeure (Section XXVIII), (ii) periods of interrupted service caused by casualty to the Monorail (unless the casualty resulted from the Concessionaire's negligence or intentional misconduct) and (iii) periods of suspended operations under Section XXIII.C; and provided further that the maximum annual liquidated damages shall not exceed $25,000. An annual average on-time performance standard below 96.5% shall be considered a failure to perform its obligations under this Agreement and shall constitute a default by the Concessionaire per Section XXX.A. The $1,000 per 0.1% in liquidated damages and the annual maximum shall both be increased annually in an amount equal to the percentage increase in the CPI-U for the immediately preceding calendar year. Liquidated damages assessed under this section shall not be included in Operating Expenses.

2. Appearance and Performance. The Concessionaire shall maintain the Monorail System so it is attractive to users and the general public and in keeping with the general appearance standards of the Seattle Center campus. The Concessionaire shall provide uniforms of a color and design including logos and symbols appropriate to the Monorail System activities that have been approved by the Director. The Concessionaire shall keep the uniforms in a clean and neat condition, providing laundering, repair, and replacement as necessary. Uniforms shall be worn by the Concessionaire's non-administrative employees whenever they are on duty on the Monorail System.

3. Annual Service Performance Review.

a. The City may conduct annual, written performance reviews focusing on Monorail System operating standards, performance and/or compliance with FTA or other regulations. This performance review may be conducted by any party selected by the City. The City's cost of performing any such performance review shall be borne by the City, which can elect to have such costs reimbursed by the Concessionaire as part of the City Management Fee as described in Section VI.C.

b. The performance review may include the following categories:

i. Marketing, advertising, promotions, program;

ii. Image and physical appearance of the stations and the trains;

iii. Routine Maintenance of the Monorail System;

iv. Operations in general;

v. Customer service;

vi. Safety;

vii. Financial performance;

viii. Compliance with governmental requirements, and

ix. Overall performance.

c. The Concessionaire agrees to cooperate with the City's selected reviewer to facilitate an accurate and efficient assessment of performance.

F. **Fares and Fare Collection System.**

1. Allowable Fares. Actual one-way fares shall be established by the Concessionaire, subject to the Approval of the Director, and will generally keep pace with inflation. One-way regular fares shall not exceed $4.00 and one-way discounted fares may not exceed $2.00 without amendment of this Agreement authorized by the Seattle City Council. Pass and group fares may be adjusted consistent with the one-way regular fare. The Concessionaire may, subject to the Director's Approval, institute alternative discount fares, modify the fare terms and/or implement variable pricing within the guidelines and limitations of this Section XI.F. As of the beginning of the term, fares, which have not increased since November 1, 2011, are:

Regular Fares:	
One way - regular fare (ages 13 - 64):	$ 2.25
Discounted Fares:	
One way - youth fare (ages 5 - 12):	$ 1.00
One way – discounted fare (seniors 65+, riders with disability or Medicare cards & active duty US military):	$ 1.00
Children under 4:	Free
Round trip fares shall be no more than twice one way fares.	
Passes and Group Fares:	
Monthly Pass (for unlimited transportation)	$ 45.00
Monthly Pass for seniors 65+, riders with disability or Medicare cards or active duty US military (for unlimited transportation)	$ 20.00
Group fares – 125 to 250 roundtrip tickets @ $4.00 each	
More than 250 roundtrip tickets @$3.50 each	

2. Price Policy. The Concessionaire and its employees shall not make or permit any misrepresentation of services offered for sale. The Concessionaire and its employees shall not sell single ride/round trip tickets at prices different than that approved in writing by the Director. A copy of the then current individual fares shall be displayed on the Monorail System in locations and in a manner easily viewed by the public whenever the Monorail System is open for business.

3. Fare Collection. The Concessionaire's operators, cashiers or other authorized personnel shall collect from all passengers on each train the amount of fare required for transportation on the Monorail (including collection of or notation of use of any passes, commuter cards, tickets, tokens, vouchers, coupons, and punching of cards). All fares collected shall be the property of the Concessionaire and shall be part of Concessionaire's Total Revenues. The Concessionaire shall maintain the security of all fare boxes, cash registers and associated revenue collection systems.

The Concessionaire may utilize tickets, tokens, passes, commuter cards, credit/debit cards, or other non-cash fare substitutes with the Director's Approval. The City may require the Concessionaire to utilize the One Regional Card for All ("ORCA") smart card as a fare payment method. If the ORCA card is utilized and use of the card is found to have a material and adverse operating and/or financial impact, the Concessionaire and the City will enter into good faith negotiations to reasonably address the impact by amendment of the Agreement. In the event the City and the Concessionaire do not reach agreement, the Concessionaire may terminate this Agreement by providing written notice thereof to the City with the effective date of the termination being no less than one (1) year after the written notice. The Minimum Fee for the period from January 1 of the calendar year in which the notice of termination is given to the date of the written notice of termination shall be prorated based on the prior calendar year's ridership for the same time period. The Minimum Fee shall not be in effect as of the date of written notice of termination.

4. Cashier Facilities and Equipment.

a. The City shall provide the Concessionaire with the current six (6) cashiering stations for its use for the duration of this Agreement, including two cashier booths at the Seattle Center station, two cashier booths at the Westlake Center station, and one cashier station on each of the two trains.

b. The high-security vault room located in the area described in Section III.A.6 containing safety deposit boxes for up to twenty (20) cashiers shall be provided to the Concessionaire "AS IS." The City makes no warranties or guarantees regarding the effectiveness of the existing security system.

c. The Concessionaire shall be responsible for all revenue counting, handling, transporting, and the deposit of revenue into an account which can be audited by the City.

d. The Concessionaire shall keep the process of acquiring a ticket, waiting in line and boarding the trains in line with efficient, cost-effective, up-to-date technology and operating standards.

5. Fare Data Collection and Reporting Systems. The Concessionaire shall maintain and operate a fare data collection and reporting system. The Concessionaire shall provide any and all maintenance for the fare collection system, facilities, equipment and software. Changes to a system with cashless options may be required by the City, subject to Approval by Concessionaire. Changes may be made by the Concessionaire subject to Approval by the Director. The Concessionaire's operators, cashiers or other authorized personnel shall enter all data necessary for the satisfactory operation of the fare data collection and reporting system. The Concessionaire shall produce daily, weekly and monthly revenue reports which shall be available upon request by the City Coordinator in a form subject to Approval by the Director.

G. **Security, Safety and Emergency Preparedness Requirements and Plan.** The Concessionaire shall take all reasonable steps and actions to maximize the safety of employees, patrons, and the general public. These provisions shall be required in all of the elements of

operation and maintenance of the Monorail System including trains, equipment and fixed facilities and revenue collection. The safety of passengers, operating and maintenance personnel, and the general public shall be an overriding consideration in the development of operating rules and procedures. The Concessionaire shall meet or exceed safety-related codes, standards and regulations of the appropriate local, state and federal authorities.

The Concessionaire shall prepare and implement a System Safety Program Plan (SSPP) and a System Security and Emergency Preparedness Plan (SSEPP), which includes medical emergencies and fire evacuation procedures. These documents and the processes they describe are laid out in the WSDOT Program Standard as new Federal requirements under MAP-21. The Concessionaire shall also be responsible for preparing and implementing any additional reporting requirements and successor reports for WSDOT. These two Plans shall be kept current based on changing rules and continuous improvement action plans. This shall be accomplished through monthly letters to the WSDOT Rail Safety Office. In addition, the Concessionaire shall prepare for annual formal audits by WSDOT of the SSEPP and SSPP. The Concessionaire shall manage the Plans and audits, and provide an annual letter for the Director to sign for certification.

1. Passenger Safety. The Concessionaire shall provide an on-going safety program with the goal of ensuring passenger safety. During the Term, the Concessionaire shall implement procedures for the safe and efficient handling of both normal and emergency conditions. The procedures shall include provisions to enable the safe and timely evacuation of patrons and personnel from all fixed structures and facilities. These provisions shall include but not be limited to those required to safeguard patrons, system and emergency personnel, and the general public anywhere on the evacuation or access route from hazards created by the power distribution system, moving persons, vehicles, and potential falls.

2. Industrial Safety. The Concessionaire shall operate and maintain the Monorail System to provide health and safety provisions for maintenance and operations personnel that are equal to or exceed the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor (OSHA), and the Washington State Department of Labor and Industries.

3. Train Operations. The trains shall operate with human drivers and shall be governed by written rules and standard operating procedures developed by the Concessionaire with the Director's Approval. Trains shall be operated only by trained and qualified operators. Operating personnel shall be regularly monitored for conformance with operating rules and procedures, which shall be firmly and consistently enforced. Operating rules and procedures shall include, but not be limited to, the following:

a. Visual verification that all ramps and vehicle doors are clear before initiation of door closure;

b. Procedures for continued safe operation in the event of failure of signaling, or other wayside or train equipment;

c. Evacuation of patrons from the guideway under emergency or abnormal train/operating conditions;

d. Support of emergency response personnel during emergencies; and

e. Use of automatic stopping equipment.

4. Maintenance Safety Procedures. Standard safety procedures shall govern all Ordinary Maintenance and CMMP work on the Monorail System. During the Term, the Concessionaire shall employ all appropriate safety procedures which shall be included in an Ordinary Maintenance Plan approved by the Director. The Ordinary Maintenance Plan and Program shall include an Accident Prevention Program. The Concessionaire shall include safety procedures in the SSPP and the Ordinary Maintenance Plan to govern maintenance operations, personnel safety, and communications when persons are on the guideway. Rules and procedures for maintenance work on the beam shall include, but not be limited to, notification to management, shutdown and lockout procedures for traction electrification power, and fall protection requirements. Other components of the Plans shall include but not be limited to: documentation control; system safety and hazards analyses; system Ordinary Maintenance assurance plan; operator, attendant and maintenance personnel training program; and failure and Emergency Management Plan. The Concessionaire shall implement and update the SSPP and Maintenance Plans (and their regular updates) throughout the Term under this Agreement.

5. Ordinary Maintenance and Operation Inspections. The City may periodically conduct maintenance and operations inspections. The Concessionaire shall immediately correct any problems identified by the Director or Project Manager. The Director may request the Concessionaire to remove an employee or subconcessionaire from working on the Monorail System if the employee or subconcessionaire has not carried out his/her work in a safe manner and in accord with safety rules, regulations and procedures subject to applicable law, and the Concessionaire shall comply with such request if just cause for removal exists.

6. Station Security. The Seattle Center will provide security to the Seattle Center Monorail Station, Monorail Annex and storage areas consistent with the standards provided to its other public facilities and campus. The Concessionaire shall be responsible for identifying any additional security services or equipment necessary to maintain a safe operating and maintenance environment, and shall notify the Director in writing of any additional security services the Concessionaire believes are the City's responsibility. Subject to the Director's Approval, these additional services shall be funded by the City Services Fund identified in Section XII.H.

7. Communications System. The Concessionaire shall have an effective communication system for normal and emergency situations that includes telephones and a working public address system.

H. **Parking.** The Concessionaire shall have the right to park one maintenance vehicle in the exclusive use area adjacent to the maintenance bay and shall be issued four (4) parking permits in a City parking facility within three (3) blocks of Seattle Center without separate charge by the City. Additional parking spaces in City parking facilities for service and staff parking will be available at established City parking rates. No additional parking will be accommodated within the perimeter of Seattle Center. Contractor parking passes will be made available to SMS in accordance with Seattle Center established policies for accommodating contractor work on the

Seattle Center campus.

I. **Delivery Access.** Deliveries shall be made to and on the Monorail System prior to 11:00 a.m. daily and in a manner that minimizes congestion and interface with users of the Seattle Center unless otherwise authorized by the Director. Emergency access after 11:00 a.m. may be arranged with the City Coordinator.

XII. ORDINARY MAINTENANCE REQUIREMENTS AND PLAN

A. **Maintenance Philosophy.** The objective of the Ordinary Maintenance Plan (OMP) is to maintain the Monorail System as a safe, reliable, maintainable, cost-effective and attractive transportation link between Seattle Center and the Seattle Downtown core. The Ordinary Maintenance philosophy shall be based on Reliability Centered Maintenance (RCM), which integrates planned preventative maintenance inspections, predictive testing and inspection, repair and proactive maintenance techniques to create a cost-effective maintenance strategy that addresses dominant causes of equipment failure. The OMP will be evaluated on the results achieved, and modified, by mutual agreement of the parties, as necessary to improve the performance of the Monorail System.

B. **Performance Measures.** A key measure of the effectiveness of the OMP is how well it prevents or avoids problems over both the long- and the short-term. Specific performance criteria, which may be modified by mutual agreement of the parties, shall include:

1. Technician hours for Routine Maintenance;

2. Number of "breakdowns" causing service failure;

3. Number of missed trips due to equipment failure;

4. Percent of scheduled Routine Maintenance done on time;

C. **General Ordinary Maintenance Responsibilities.** Ordinary Maintenance for all elements, components, facilities, equipment and infrastructure shall be the responsibility of the Concessionaire. The Concessionaire shall provide all the resources necessary for Ordinary Maintenance of the entire Monorail System, which includes the trains, guideway and support pylons, electrical rooms, train control systems, stations, maintenance and repair equipment as described in Section XII. D. Ordinary Maintenance shall include, but not be limited to:

1. Janitorial service for the entire Monorail System including all property and equipment as well as the Seattle Center Station platforms and the exterior ramp from the Seattle Center grounds that provides access to such platforms.

2. Routine inspections of trains, guideway, traction power systems, and train control systems.

3. Repairs - scheduled and minor unscheduled;

4. Component changeout;

5. Component and system element overhaul;

6. Testing;

7. System safety and assurance.

8. Adequate spare replacement parts and consumables inventory, including software to track parts in support of Monorail operations;

9. Development of and adherence to an inspection schedule and reliability centered and/or preventive maintenance program, as applicable and represented in the Ordinary Maintenance Program and Plan;

10. Upkeep of system and component maintenance manuals;

11. Upkeep of current system and component drawings; and

12. All-encompassing system maintenance record keeping and reporting.

D. **Elements of Ordinary Maintenance Plan (OMP).** The OMP shall provide a framework for RCM, which provides flexibility to respond to modifications as dictated by inspections. The Plan's purpose is to identify, plan, coordinate, and accomplish the current and future Ordinary Maintenance needs of the Monorail System in an effective and systematic manner. Ordinary Maintenance can be either planned or unplanned. The Concessionaire shall submit the annual OMP to the City Coordinator. It is the intent of the parties that the Plan shall be consistent with the Monorail System maintenance philosophy. An annual update shall include the Concessionaire's modifications or elimination of maintenance elements, their frequency, and/or the type of maintenance.

1. Staffing Plan. The Concessionaire will prepare and implement an Ordinary Maintenance staffing plan that defines the qualifications and experience of maintenance personnel, the number of maintenance personnel and shift coverage for Ordinary Maintenance personnel, and maintenance call-out and emergency procedures.

2. Training for Multiple Tasks. The Concessionaire shall have a comprehensive training program for all Maintenance Technicians, and shall train all Maintenance Technicians to do as many different Ordinary Maintenance tasks as practical. The Concessionaire shall keep detailed records of all training activities, which shall be available for inspection by the Seattle Center at any time. Such training shall provide continuity for vacation relief and shall expedite the effective handling of emergency situations and unscheduled repairs.

Operator training shall include recognition of electrification system defects, particularly improper power system operation or performance. Technicians should be able to identify electrification and power system defects visually, with emphasis on breaks or damage to the conductor rails, bonds, expansion joints, splices, and support brackets.

3. Computer-Based Maintenance Information Reporting System. The Concessionaire shall use a computer-based maintenance management system (CMMS) or other software and technology to efficiently collect and synthesize data on Ordinary Maintenance, schedules, purchase orders, inventory, and reports to proactively manage service requests, simplify work order administration, and track/oversee vendors. This system should make it possible to measure actual results and more readily identify existing and potential maintenance problems. The system shall support detailed analysis of Ordinary Maintenance schedules and practices by the Concessionaire management. At the termination of this Agreement, any software and all system data for the Ordinary Maintenance information reporting system shall become the property of the City.

4. Ordinary Maintenance Program. Maintenance tasks fall into two categories: planned and unplanned maintenance.

a. Planned Maintenance. Performed daily, weekly, monthly, quarterly, semi-annual, and annually, and consists primarily of scheduled inspections and repair(s) to ensure an item of equipment is operating correctly to avoid any unscheduled breakdown and downtime.

b. Unplanned Maintenance. Maintenance required to respond to system and/or component failures. These repair activities cannot be scheduled precisely, but resources need to be dedicated to them. Typically, this type of Ordinary Maintenance may be discovered during operations or during the routinely scheduled maintenance inspections.

5. Ordinary Maintenance Tasks. Ordinary Maintenance tasks shall emphasize exchange of system components, rather than repair of components on the trains, to assure maximum availability of trains for Revenue Service wherever practical. Components removed from the trains shall be tested, serviced, repaired, adjusted, and rebuilt as appropriate.

The specific cycles of vehicle Ordinary Maintenance work to be accomplished, determined based on the past history of the system, shall include the following tasks unless modified by the mutual agreement of the parties.

a. Daily

- Test drive each train to ensure satisfactory normal operation to include package control and braking systems (normal and emergency) prior to initiation of passenger service
- Functional test of all train doors, gates, ramps, and signals prior to initiation of passenger service and replacement or repair as necessary for safe and reliable operation
- Functional test of all safety devices, annunciators, switches, and the interlock, and replacement or repair as necessary for safe and reliable operation
- Tire inspection
- Visual inspection and functional test collectors
- Functional and/or visual inspection of all train safety-related items, including but not limited to lights, fire extinguishers, first aid kits and windshield washers/ wipers

- Visual inspection of beam

b. Weekly
   - Inspect Westlake/Seattle Center Substations to ensure operations within normal electrical and temperature control parameters, and all safety features are operating satisfactorily
   - Tire inspection for defects and satisfactory wear

c. Monthly
   - Inspection of station and train fire extinguishers
   - General inspection of train interior and exterior for signs of damage or deterioration
   - General inspection of train lower compartments for cleanliness, removing any accumulated oil, grease or flammable material that could contribute to a fire
   - Inspection of train doors, adjustment and lubrication of door operators and sensitive edges
   - Train batteries test and fill
   - Inspection of resistor racks for abnormal conditions
   - Inspection of on-train compressors for satisfactory operation
   - Inspection of shop air compressor for satisfactory operation
   - Inspection of the propulsion control electronics, including testing and adjustment of inputs and outputs including visual check/repair of low voltage contacts, rollers and wire
   - Inspection of air and electrical systems
   - Lubrication of brake shafts, guide tire hubs, air spring load arm pivot pin bushings
   - Inspect gates including condition of sensitive edges, tubing, rubber lip seals and wave switches
   - Clean and inspect ramp operating mechanisms for cracked welds, failed parts, and damage

d. Bi-Monthly
   - Inspect forklift for satisfactory operation, including battery check and safety features

e. Quarterly
   - Brake inspection including shoe wear, integrity linkages, actuator proper operation. Lubricate brake S-cam shaft bushings, brake shaft slip joints and U-joints
   - Visually check Bogie alignment
   - Inspect high speed and low speed shafts including lubrication of shaft slip-joints and U-joints
   - Lubricate collector assembly bushings
   - Lubricate car inter-car pins
   - Remove all excess oils/greases on interior of maintenance doors/compartments

- Inspect and clean interior of gate enclosures, integrity of the gate linear actuators and inspect glass and frames of gates for damage
- Cleaning of cabinets, relays, annunciators, and signal heads
- Cleaning, lubrication and adjustment of gate and ramp operating mechanisms and bearings
- Inspect gear boxes and change gear box oil

f. Semi-Annual
- Motors Insulation Resistance test, inspect traction motor commutator, bearings and brushes
- Ramp inspection, lubrication and extensive cleaning as required
- Inspect and clean interior of gate enclosures
- Inspect and replace filters and oil in Shop air compressor
- Re-lamping of signals
- Clean and check integrity and function of detectors

g. Annual
- Inspect crane and hoist
- Beam and power rail inspection including checking integrity and tightness of all mounting hardware and fittings, checking/cleaning insulators for damage and replacement as necessary, checking integrity and continuity of expansion joints and bonding straps, checking tightness of butt splices and midpoint anchor clamps
- Check power rail wear at points of unusual stress, including splices, sections on curves, locations where the distance from beam surface to contact surface changes rapidly, and hard spots where arcing occurs from contact shoe bounce
- Calibration of shop tools requiring calibration
- Inspection at Seattle Center and Westlake Center substations, including gauge calibrations as required. Inspection will include a functional check be performed on all devices, switches and breakers; cleaning of all devices, buses, breakers, switches, fuse holders, contacts, terminals, batteries (for cleanliness, electrolyte level and state of charge),relays and annunciators
- Cleaning at Seattle Center and Westlake substations of devices, buses, breakers, switches, fuse holders, contacts, terminals, relays and annunciators; transformers and rectifiers; batteries and battery racks; Calibration of all meters and instruments; and check all terminals for tightness

h. Unplanned Ordinary Maintenance tasks are characterized as maintenance that is unplanned but is necessary for maintaining the operation of the Monorail System. All expenses related to unscheduled maintenance and repairs shall be included in Operating Expenses, unless agreed otherwise by the parties.

E. **Emergency Maintenance.** The Concessionaire shall respond to emergency situations in a timely fashion. Outside contractors should be available in "on-call" status to

provide additional personnel and specialized equipment (e.g., service trucks, heavy equipment, lighting units, etc.) that may be needed to respond to major incidents. All Emergency Maintenance shall be included in Operating Expenses unless the Director and the Concessionaire mutually agree otherwise.

F. **Subconcessionaire Activities.** Concessionaire may subcontract for Ordinary Maintenance work performed requiring infrequently needed skills, specialized machinery and/or large production crews. Whether the Concessionaire chooses to perform the work with its staff or with a subcontractor, the work shall be the responsibility of the Concessionaire.

G. **Maintenance of Stations, Shop, Monorail System Annex, Storage Areas, Signage.**

1. Seattle Center Station, Annex and Storage Areas. The City shall be responsible for performing all Seattle Center Station, Shop, and Monorail System Annex maintenance (including mechanical, structural, painting, electrical, and plumbing work), except the Concessionaire shall be responsible for maintenance of the fare collection system, and all equipment, fixtures, and tools associated with Monorail System operation. Examples of equipment and fixtures, which are the responsibility of the Concessionaire, are the Westlake station gates and ramps, the Westlake station equipment electrical system, the Monorail System electrical equipment at both stations, two maintenance vehicles used for guideway repairs, the portable work stands, shelving for parts storage, the air compressor, the lathe and the joist/boom to lift the maintenance vehicles. The Concessionaire shall also be responsible for janitorial maintenance and re-lamping of light fixtures at the Seattle Center Station, shop, Monorail System Annex, and Armory storage area. The cost of maintenance performed by the Concessionaire under this Section shall be an Operating Expense. The maintenance performed by the City under this Section is subject to reimbursement through the City Services Fund.

If the Concessionaire requests that the City perform maintenance services which are the City's responsibility under this section, the City reserves the right, consistent with the City's labor agreements and in the Director's sole discretion, to authorize the Concessionaire to undertake and complete the requested work consistent with Seattle Center maintenance specifications, in which case the Director Approved cost of any such maintenance services may be charged to the City Services Fund.

2. Signage. Maintenance and repairs to all operational, directional, and informational signage at the Westlake Center Station and Seattle Center Station, and Monorail signs on Fifth Avenue shall be the responsibility of the Concessionaire, shall meet Seattle Center Signage Standards, and shall be an Operating Expense.

3. Westlake Center Station. The Concessionaire shall timely pay to Westlake Center the monthly fee as specified in the Westlake Center Operating and Easement Agreement. Proof of payment shall be sent to the City Coordinator at the City's request.

The Concessionaire shall notify Westlake Center Associates, in writing, of any deficiencies in the services it is required to provide. The Concessionaire shall also notify the City's Coordinator in writing regarding any such deficiencies.

4. Maintenance Standards for City Services. The maintenance services Seattle Center provides shall be consistent with the standards provided to its other public facilities such as the Armory. The Concessionaire shall be responsible for identifying all repairs and services required for the Monorail System and notifying the Director in writing of any item which it believes are the City's responsibility. It is the Concessionaire's responsibility to notify the Director regarding any problems associated with the quality or timeliness of services provided by Seattle Center staff.

H. **Reimbursement for Services Provided by the City.** The Concessionaire shall accrue five thousand dollars ($5,000) per month, plus annual CPI-U adjustments in an amount equal to the percentage increase in the CPI-U for the immediately preceding calendar year, into a separate line item account, the "City Services Fund". This fund shall be used to reimburse the City for costs incurred by Seattle Center for graffiti removal or maintenance work performed on the Monorail System or, if City determines and has notified the Concessionaire in writing that the City will authorize Concessionaire to perform maintenance work which is the City's right, with the Director's Approval, Concessionaire may undertake the work and charge the actual Concessionaire's costs to the City Services Fund per Section XII.G. The fund may also be used for incremental security services beyond those provided for the rest of the resident organizations and public spaces at the Seattle Center and Approved by the Director in his sole discretion. The City will be reimbursed at the current Seattle Center Work Order Billing Rate for all hours of service provided by City personnel. At the end of each calendar year, any unspent funds remaining in the City Services Fund shall be remitted to the City.

XIII. CAPITAL AND MAJOR MAINTENANCE PROGRAM

A. Requirements for Capital and Major Maintenance Program Plan.

1. Capital and Major Maintenance Program Plan Purpose. The Concessionaire and City shall jointly prepare a rolling five-year (5) Capital and Major Maintenance Program Plan (CMMP Plan). The CMMP Plan will identify all planned Capital Improvement and Major Maintenance projects for the subsequent five years, whether anticipated to be funded by the Irrevocable Renewal Account, by a federal grant, by some other funding source, or any combination of sources. The CMMP Plan's purpose is to identify and prioritize current and future Capital Improvement and Major Maintenance needs of the Monorail System in a systematic manner.

B. CMMP Plan Overview and Requirements.

1. CMMP Plan Content. The CMMP Plan will be a rolling five-year plan addressing the required and anticipated capital improvement and major maintenance needs of the Monorail System and their anticipated funding sources. These projects shall include modifications, repairs and improvements to the Monorail System which are requested by the City or the Concessionaire to enhance the function and operation of the Monorail System, to add to the value of or extend the useful life of the Monorail System, improve the attractiveness of the Monorail System to users and the general public, and/or improve Monorail System operational, mechanical or financial performance.

2. Initial CMMP Plan. The CMMP will be prepared and maintained by the Concessionaire with input from the City and shall be mutually agreed to by both parties. The first five-year CMMP plan shall be prepared coincident with the execution of this Agreement and shall address the period January 1, 2015 through December 31, 2019. Annual approval of the CMMP Plan updates will provide the basis for City and Concessionaire to enter into Project Agreements which shall identify the budget, schedule and contracting methods for specific projects.

3. Criteria for Projects. Projects proposed for inclusion in the CMMP Plan shall be evaluated in relation to each of the following criterion:

a. Improves safety or security for riders and/or staff, and/or the public;

b. Enhances reliability;

c. Improves the appearance of the Monorail trains and/or stations

d. Improves efficiency of maintenance or operations;

e. Improves the long-term maintainability of the Monorail System;

f. Enhances the number of riders and/or increases revenue;

g. Improves the rider experience;

h. Reduces the cost of operations or maintenance;

i. Enhances revenue generation.

4. Annual Modifications and Plan Approval. On or before October 15th of each Contract Year, the Concessionaire shall propose and prepare updates and modifications to the CMMP Plan and submit them to the Director for review and Approval. It is the intent of the parties that the CMMP Plan shall be dynamic, be the result of a cooperative effort, and be consistent with the Monorail System Maintenance philosophy as described in Section XII. At the election of either party, review of the Plan may be aided by the expertise of a mutually selected independent engineer or consultant. The cost of utilizing such expert shall be a CMMP Expense. The existence of the CMMP Plan shall in no way limit the City's ability to perform capital improvements to the Monorail System which do not use funds from the Irrevocable Renewal Account. The CMMP Plan, when approved, shall identify the estimated cost, proposed funding source, the anticipated project schedule, and the proposed contracting method for each CMMP Plan project.

C. **CMMP Plan Projects.**

1. CMMP Plan Project Implementation. The Concessionaire will perform or manage and contract for CMMP Plan projects if mutually determined in a Project Agreement.

2. Major Maintenance, Capital Improvements, Alterations. The Concessionaire shall not perform or contract for any Major Maintenance, Capital Improvement, or substantial alteration to the Monorail System, regardless of the funding source, without the Approval of the Director, which may be granted, withheld, or conditioned in the Director's sole discretion. The Concessionaire shall submit to the Director all contract documents, schematic designs, design development drawings, and final working drawings and specifications for such work. The Concessionaire shall not begin any Major Maintenance or Capital Improvement or construction of any improvement, addition, or alteration of the Monorail System until after the Director has approved all applicable contract documents, plans, specifications, and drawings. All work carried out by Concessionaire shall be completed in compliance with this Agreement and with the terms of a Project Agreement (defined below) executed by the parties.

3. Project Agreements. Prior to beginning any CMMP Plan project, whether carried out by the Concessionaire or otherwise, the Director and the Concessionaire shall enter into a project specific construction agreement ("Project Agreement") that details the specific project scope, schedule, budget, and contracting method. If the Concessionaire will carry out the project, the Project Agreement shall also include all applicable state, federal and funding source requirements, and insurance provisions. Unless otherwise specified in the Project Agreement, the City shall own all improvements and alterations to the Monorail System. Each party hereby agrees to provide the other technical support and project coordination in support of CMMP projects performed by or managed by the other, and the Concessionaire agrees to reimburse the City for the same as a CMMP Expense, subject to a Project Agreement.

4. Permits, ADA. All CMMP Plan projects shall comply with all permitting and legal requirements, including but not limited to compliance with applicable building codes and with the Americans with Disabilities Act (ADA) and the requirements of the City of Seattle's ADA Compliance Team. The Concessionaire expressly acknowledges that the provisions of the ADA may exceed requirements contained in building codes and other regulations and that in such instances, the ADA requirements shall control.

5. Work Consistent With Approved Plans and Specifications. No Capital Improvement, Major Maintenance, or other improvement, alteration, or addition shall be constructed, placed, or erected except in accordance with final working plans and specifications to which the Director has given approval. Immediately following the Concessionaire's receipt of notice by the City of any variation between the approved plans and specifications and any improvement, addition, or alteration in, on, or being made to the Monorail System, the Concessionaire shall either desist from occupation, use, and operation of such improvement, addition, or alteration and remove it from the Monorail System or make it consistent with such approved plans and specifications.

6. CMMP Expenses. All CMMP Expenses shall be recorded separately from Operating Expenses. Any project funded all or partially with federal funds must meet all federal requirements. The CMMP Expenses that may be included in a Project Agreement may include:

a. Project planning and programming, including costs of developing and updating the CMMP;

b. Administration, record keeping, project related reporting requirements,

and coordination with the Seattle Center related to the project;

c. Salaries and wages, including payroll taxes and benefits, of the Concessionaire's employees working on the approved project (including the Maintenance Manager, but not the General Manager);

d. The actual direct cost of parts, supplies and inventory items used, together with transportation charges and sales or use taxes thereon if procured by the Concessionaire;

e. The costs of independent vendors or professionals, together with sales or use tax thereon, who provide goods and services in connection with the CMMP;

f. Equipment rented or purchased by the Concessionaire, together with sales or use tax thereon, used in connection with CMMP projects and the costs thereof; and

g. Facility Repairs and upgrades

7. Improvements, Additions, and Alterations Become City Property. All improvements, additions, and alterations made to the Monorail System shall become the property of the City upon completion.

8. Concessionaire's and City's CMMP Expenditures. The Concessionaire shall document all CMMP Expenses and preserve all records of development, alteration, improvement, and construction costs during the Term of this Agreement and make the records available to the Director for audit.

XIV. SPARE PARTS, SUPPLIES AND EQUIPMENT

A beginning inventory of spare parts and supplies provided to the Concessionaire is identified in **Exhibit C.** This beginning inventory of parts and supplies is generally suitable for the ongoing operation of the Monorail System in its current configuration. Consistent with City accounting requirements, the Concessionaire shall manage and update this inventory annually, or as requested by the City, to provide for the ongoing operation of the Monorail System and at the end of the Term shall relinquish to the City an ending inventory with the same general level of utility as is reasonably practical. All system records, including any software, parts, and supplies are the property of the City and shall be relinquished to the City at the termination or expiration of this Agreement.

A. **Itemized inventory.** The Concessionaire will maintain an itemized inventory of critical Monorail System spare parts and supplies. All spare parts and supplies purchased shall be an Operating Expense, be the property of the City, and be relinquished to the City at the termination of this Agreement.

B. **Minimum Train Spare Parts.** To assure maximum train availability and to accommodate long lead times required to receive the following parts, a reasonable supply of spare parts must be acquired, stored, and replenished as necessary to be available within

twenty-four (24) hours. Items which can be procured readily from commercial vendors (such as cable, switches, relays and lights) need not be kept in large quantities, so long as immediate emergency requirements can be met. A reasonable inventory of spare parts should include:

1. Electrical and mechanical components for propulsion, braking, doors, lights, air comfort, and other auxiliary systems
2. Wheels and tires
3. Power supplies
4. Batteries
5. Current collectors
6. Distribution system including brackets, hardware, fittings, power rail, insulators, feeder wire, bonding cable, expansion joints, midpoint anchor clamps, and rail butt splices. Spare parts needed for the Seattle Center and Westlake substations shall include but not be limited to circuit breakers, circuit breaker contacts, switches, diodes, instruments, relays, timers, fuses, annunciator lights and wiring.

C. **Equipment.** Any new or replacement equipment that the Concessionaire purchases as an Operating Expense shall be deemed City property and relinquished to the City at the expiration or earlier termination of the Term.

XV. MARKETING PLAN

A. **Cooperation and Coordination.** The Concessionaire and the City hereby acknowledge that successful promotion and marketing of the Monorail System requires the parties have aligned priorities and objectives, coordination, and mutual cooperation. The parties will work in good faith to build a common vision for the Monorail System and develop a work plan to pursue this vision. To this end, the Concessionaire and the City agree to ongoing, open and timely communication of prospective opportunities and upcoming program plans.

B. **Joint Marketing Plan.** The Concessionaire and City shall jointly develop, update, and implement a Monorail Strategic Marketing Program that shall strive to: i) optimize the gross receipts and net operating income from Monorail System operations, ii) grow opportunities and market demand for revenue enhancement such as advertising, merchandising, sponsorships, and special events, iii) build the image of the Monorail as a valuable public icon, and iv) align with the Seattle Center Strategic Marketing Plan, incorporated by reference and as amended from time to time in the City's discretion.

City and Concessionaire marketing staff shall meet quarterly to:

1. Develop and implement the Monorail Strategic Marketing Program in alignment with the Seattle Center Strategic Marketing Plan;

2. Look for ways to leverage and complement each organization's marketing

efforts;

3. Determine the use of the Irrevocable Marketing Account;

4. Coordinate potential marketing and sponsorship opportunities for both Seattle Center and the Monorail System and their anticipated impact on the goals of the Strategic Marketing Program; and

5. Make recommendations to the Director and General Manager regarding scheduling windows and operational impacts of prospective opportunities and upcoming program plans, including advertising, sponsorship and promotional opportunities, for the Monorail System and for Seattle Center specific plans that would impact the Monorail System.

C. **City's Marketing Responsibilities.** To assist the Concessionaire in promoting the Monorail System, and where recommended by the Monorail Strategic Marketing Program, the City will feature Monorail information in the Seattle Center Marketing program. The City shall:

1. Provide opportunities to feature the Monorail in City marketing programs which may include:

a. marketing and communications ads and inserts in print advertising materials and other advertising mediums;

b. campus posters and brochures

c. e-newsletters (produced by Seattle Center)

d. seattlecenter.com, keyarena.com, mccawhall.com homepages

e. Seattle Center iPhone and Droid applications, or such other alternatives as may be available as technology develops

f. press materials

g. Event Sales materials

h. Events and Operations Calendars

2. When requested by members of the public, provide Monorail information from the Seattle Center's Customer Service Desk regarding rates and hours of operation (to walk-in customers as well as telephone inquiries).

3. Include Monorail information in Seattle Center's press materials.

4. Include Monorail information in promotional materials for major public programs produced by Seattle Center.

5. Provide campus electronic reader board space as outlined in the Strategic Marketing Program to promote the Monorail. The Concessionaire will provide the City with written reader board copy thirty (30) days in advance of posting. All reader board copy will be subject to City approval and will be posted at City expense.

6. The digital monitors on the Seattle Center Monorail platform shall be maintained in good repair and appearance, and/or removed by the City if necessary, at City expense. The City shall provide and update the digital monitor programming, which shall be augmented as outlined in the Strategic Marketing Program, and which at a minimum will provide the Concessionaire an opportunity to promote services, hours and special events on the monitors. All content must be approved by the Seattle Center.

7. Subject to event priorities and contractual event requirements, promote the Monorail System on the electronic scoreboard of the KeyArena at least once during events when the scoreboard is in use.

D. **Free or Discounted Passenger Trips**.

1. The Concessionaire shall provide free passenger trips requested by the Director for:

a. Uniformed Seattle Police Department employees;

b. Seattle Center Employees in accordance with Seattle Center policies and union contracts, with a Seattle Center ID card; and

c. No more than two hundred (200) round trip uses per calendar year by government officials, volunteers or employees of the City for official City business.

2. The Director may annually identify up to fifty-five hundred (5,500) free or discounted one-way Monorail System passenger trips in conjunction with Seattle Center promotions and events.

3. The Concessionaire shall be entitled to up to fifty-five hundred (5,500) free or discounted one-way Monorail System passenger trips annually in connection with special promotions or events and unlimited trips for employees, subconcessionaires or subconcessionaire employees while in the performance of their respective work duties.

E. **Media and Public Relations.** The Concessionaire shall handle its own media and public relations regarding maintenance and operation of the Monorail System. However, the Seattle Center shall be informed within twenty-four (24) hours of any media inquiries and immediately of any media issues of an emergency nature such as accidents, safety-related issues, or misappropriation of funds.

F. **Signage and Graphics.**

1. At the Seattle Center Station, Seattle Center retains the right to have site directories identifying some or all campus constituents, digital monitors on the Platform per

Section XV.C.6, and signage on the Seattle Center Station exterior. In the portions of the Seattle Center Station where the Concessionaire does not have exclusive use, the Director retains the right to add such other signage as the Director may reasonably determine consistent with the Monorail Strategic Marketing Program. In addition, all Westlake Center Station signage requires Seattle Center approval. Removal and replacement of and/or modification to any of these signs will be subject to Seattle Center Approval.

2. The Concessionaire will be responsible for all Monorail System signage (including rate, directional and informational signage, and system signage). The Concessionaire will be responsible for any signage required by the FTA. A copy of the then current individual fares will be displayed on the Monorail in such a manner so as to be easily viewed by the public whenever the Monorail is open for business. Each party shall be responsible for updating and maintaining their advertising, sponsorship and promotional signage on the Monorail System.

3. Seattle Center retains the right to place and maintain signage, advertising and sponsorship on all Monorail columns in accordance with the Land Use and Traffic codes of the City of Seattle. All revenue from signage, advertising and sponsorship on the Monorail's columns from City use will be retained by the City. Subject to the Director's Approval and Land Use and Traffic Codes, the Concessionaire may utilize the Monorail columns for advertising, sponsorship and signage and all revenue from such Concessionaire use shall be included in Concessionaire's Total Revenue.

4. All graphic designs, text and images of any type or nature to be viewed by the general public and placed upon or affixed to the Monorail System, or used on materials in connection with the Monorail System including but not limited to printed materials, advertising, sponsorship and other promotional materials and the location thereof, will be subject to the Approval of the Seattle Center Director. Approval for designs, text and images on social networking platforms such as Facebook, Twitter, Flickr and Instagram may be granted on a platform basis.

5. All signs, advertisements, and verbal messaging must be consistent with current Seattle Center messaging.

6. The City grants the Concessionaire a non-exclusive, royalty-free license to use the Monorail logo for the term of this Agreement for the purpose of marketing activities conducted in compliance with this Agreement.

G. **Portable Stands.** The City may permit temporary or portable promotional stands to be located from time to time on the Monorail Platform. The Concessionaire will furnish, as an operating expense, all labor, equipment and supplies for the moving, setting up and dismantling of temporary or portable stands in such locations as are Approved by the Director and the City's Fire Department. The number and location of temporary or portable stands will be subject to mutual agreement of the Director and the Concessionaire.

H. **Vending and Hawking.**

1. To the extent that such activities are given Approval by the Director, the Concessionaire shall have the exclusive right to use vending machines and to engage in or permit

the hawking of concession food, beverages, or merchandise, on the Seattle Center Platform and the Monorail Trains. All income to the Concessionaire through any vending and hawking shall be included in Concessionaire's Total Revenue.

2. The location of points of sale, methods of sale, and prices for tickets sold or business transacted will be subject to the Approval of the Seattle Center Director.

I. **Non-Fare Revenue.**

1. Exclusive Right. The Concessionaire shall have the exclusive right, subject to the Director's Approval, to pursue non-fare revenue sources on the Monorail Trains and the Restricted Portion of the Seattle Center Platform. However, on the Restricted Portion of the Seattle Center Platform, the City retains the right to place advertising, sponsorship and marketing materials and implement programs in mutually agreeable locations that do not impact train operations. All income to the Concessionaire or to the City from advertising and sponsorship from use of the Monorail trains or the Restricted Portion of the Seattle Center Platform shall be included in Concessionaire's Total Revenue.

2. Non-Exclusive Right. The Concessionaire shall have the non-exclusive right, subject to the Director's Approval, and consistent with the Monorail Strategic Marketing Plan, to pursue non-fare revenues sources identified in Section XV.I.3. on those portions of the Monorail System to which the Concessionaire has not been granted exclusive rights, per Section XV.H and XV.I.1.

3. Non-Fare Revenue Sources May Include:

a. Direct sales or concessions (limitations exist on the City's ability to merchandise the Westlake Center station) such as sale of Monorail memorabilia, postcards, buttons, literature, T-shirts, newspapers, or coffee.

b. Advertising and sponsorship.

c. Promotional dollars or exchange of services, supplies, equipment or parts for promotional benefit.

d. A marketing program targeted to tour group promoters or other distribution channels to reach the tourist market.

e. Use of the Monorail by film companies in exchange for publicity and/or site use fees.

f. After hours rental of the Monorail.

g. Promotions with Seattle Center event clients, resident organizations, tenants, the Space Needle, Pacific Science Center, and Westlake Center.

h. Promotions with non-profit groups.

i. Any fees paid to Concessionaire by subconcessionaires for activities or promotions conducted within the Monorail System.

j. Any fees paid to Concessionaire by licensees if the subject matter of the license pertains to the operation of the Monorail System or is derived from the Concessionaire's marketing activities under the agreement.

All non-fare revenue shall be included in Concessionaire's Total Revenue.

J. **Sponsorship Coordination with Seattle Center.** The Concessionaire will work cooperatively with Seattle Center in site enhancements and/or display of promotional materials supplied by Seattle Center to promote Seattle Center events and programs and in support of Seattle Center advertising and sponsorship, provided these are consistent with the mutually developed Monorail Strategic Marketing Plan and do not unreasonably interfere with Monorail operations, advertising, sponsorship or concession programs of the Concessionaire which have been previously approved by the Director. The City reserves the right to enter into, or grant a third party the right to enter into, naming rights, advertising or sponsorship agreements, including granting exclusive representation, applicable to any Seattle Center common area or Seattle Center facility, including the Monorail System such that the City, Concessionaire, or other Seattle Center tenants will be limited or prohibited from entering into new agreements or renewing advertising or sponsorship agreements with competing sponsors. Concessionaire shall not violate or interfere with any exclusivity right granted to a sponsor as of the effective date of this Agreement.

K. **Restrictions on the Concessionaire's Marketing Activities.** The Concessionaire shall not permit any promotion or advertisement that is inappropriate to the family orientation of Seattle Center, as determined by the Director, or that encourages the purchase or consumption of any tobacco product or alcoholic beverage or other product regulated by the Washington State Liquor Control Board, or that conflicts with an existing Seattle Center promotional agreement or marketing plan. In the event any such service or commodity, other than that specifically authorized by the Director, is offered for sale, promoted or advertised, the Concessionaire shall immediately cease and desist from any further sale, promotion or advertisement upon receipt of notice from the Director.

XVI. UTILITIES

The Concessionaire shall pay, as an Operating Expense, all charges for water, light, heat, gasoline, garbage collection, sewer, telephone service and all other utilities provided to the Monorail System; provided that if such utility services are furnished to the Monorail System and adjacent City property on a consolidated basis and are not separately metered, the Concessionaire shall reimburse the City for a pro rata share of the consolidated charge at the rate paid by the City in an amount to be reasonably determined by the Director. The Concessionaire shall pay all charges for utility hookups, connections and installations including those for telephone and high-speed internet service. The City shall not be liable for any failure or interruption of water, gas or electrical supply, or for loss of property, or for injury or damage to person or property resulting from steam, gas, electricity, water, rain or snow that may leak or flow from or into any part of any Seattle Center building, or from the pipes, appliances or plumbing of a

building or from any other place or for interference with light, view, or access caused by any operations by or for any governmental or quasi-governmental entity in the construction or repair of any public utility, but the City shall use its best efforts to remedy any such failure or interruption over which the City has control as quickly as practical. The Concessionaire shall not install any equipment that will exceed or overload the capacity of any utility facility. If any equipment installed by the Concessionaire requires additional utility facilities, the same shall be installed at no expense to the City, and only in accordance with, plans and specifications subject to the approval of the Director.

XVII. ENVIRONMENTAL STANDARDS

A. **Definitions.** As used in this Agreement, "Environmental Law" means any environmentally related local, state or federal law or regulation, ordinance or order as now or hereafter amended, including but not limited to: the Federal Clean Air Act; the Federal Clean Water Act; the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the Federal Hazardous Materials Transportation Control Act of 1980; the Federal Waste Management Recovery and Recycling Act; the Federal Toxic Substances Control Act; the Washington Hazardous Waste Management Act; Washington Model Toxics Control Act; the Washington Water Pollution Control Act; the Washington Underground Petroleum Storage Tanks Act; the Washington Industrial Safety and Health Act; the Washington Worker and Community Right to Know Act; the Washington Oil and Hazardous Substance Spill Prevention and Response Act; and any regulations developed under the authority of the above laws from time to time. As used in this Agreement, "Hazardous Substance" means any substance designated as, or containing any component designated as hazardous, toxic, or harmful under any Environmental Law.

B. **Concessionaire's General Obligations.** The Concessionaire shall not use any portion of the Monorail Annex, Westlake Center Station, Seattle Center Station, or any other area designated for the Concessionaire's use under this Agreement to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process Hazardous Substances, with the exception of Hazardous Substances necessary and customary for the operation and maintenance of the Monorail System (*e.g.*, solvents and petrochemicals). The Concessionaire shall store, handle, use and dispose of all Hazardous Substances in compliance with all applicable Environmental Laws and standard safety guidelines, such as customary office and cleaning supplies in reasonable, normal quantities handled in compliance with applicable law and safety guidelines and Material Safety Data Sheets. The Concessionaire shall promptly provide the Director with any correspondence the Concessionaire receives from, or provides to, any governmental unit or agency in connection with the Concessionaire's handling of any Hazardous Substance or the presence, or possible presence, of any Hazardous Substance in, on, or around the areas designated for Concessionaire's use under this Agreement.

C. **Environmental Testing.** Upon reasonable notice (not less than one business day) to the Concessionaire, the City shall have access to all Monorail System areas, including areas designated for the Concessionaire's exclusive use, for the purpose of conducting environmental inspections, including but not limited to collection and analyses of soil, groundwater

or air samples. The City will make its consultants available to Concessionaire so that the Concessionaire may, at its discretion and expense, arrange to procure and preserve split samples of any materials obtained from any testing or inspection; and the City will furnish Concessionaire and its consultants with access to any environmental reports obtained from the testing or inspection. Except as provided herein, the Concessionaire shall not conduct or permit others to conduct environmental testing in the Monorail System areas without obtaining the Director's approval. The Concessionaire shall promptly inform the Director of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the premises whenever the same becomes known to the Concessionaire, and the Concessionaire shall provide a copy of each of the same to the Director immediately following Concessionaire's receipt of the same.

D. **Concessionaire's Obligation to Remove Hazardous Substances.** Upon the expiration or termination of this Agreement, in addition to all other requirements under this Agreement, the Concessionaire shall remove any Hazardous Substance stored or released by the Concessionaire or its agents or employees in or around the Monorail System areas during the Term, and shall dispose of such Hazardous Substances in compliance with all applicable Environmental Laws. The Concessionaire is responsible for removal or remediation of any Hazardous Substances that the Concessionaire released during the Term even if such Hazardous Substances have migrated off of, or come to be located off of the Monorail System Areas. The Concessionaire shall provide copies to the City of all required paperwork related to the characterization, transportation and disposal of any Hazardous Substances from the Monorail System under this section within thirty (30) days after disposal of such Hazardous Substances.

E. **Concessionaire's Obligations upon Violation of Environmental Standards; City's Remedial Rights.** If Concessionaire violates any of the terms of this Section XVII concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, the Concessionaire shall promptly take such action as is necessary to mitigate and correct the violation. If the Concessionaire does not act in a prudent and prompt manner respecting a violation of the terms of this Section XVII after ten (10) days' notice from the City, the City reserves the right, but not the obligation, to take such action as the Director deems necessary to ensure compliance or to mitigate the violation, including but not limited to entering the exclusive use areas, as the Director deems necessary. If the City has reasonable belief that the Concessionaire's actions or inactions present an immediate risk to public health, safety or the environment, the City reserves the right, but not the obligation, to take corrective or mitigating action as the Director deems necessary, including but not limited to entering the exclusive use areas; and, except in an emergency, the City will give Concessionaire reasonable notice of its intention to take such action. All reasonable and actual costs and expenses incurred by the City in connection with any such actions shall become immediately due and payable by the Concessionaire upon presentation of an invoice therefore.

F. **Additional City Remedies for the Concessionaire's Violation of Environmental Standards.** No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the City shall be entitled to full reimbursement from the Concessionaire whenever the City incurs reasonable costs to the extent such reasonable costs result from the Concessionaire's violation of the terms of this Section XVII, including, but not limited to, remedial action costs, fines, penalties assessed directly against the City, and loss of revenues resulting from an inability to allow other persons or entities to use or occupy the

Monorail System due to its environmental condition as the result of the Concessionaire's violation of the terms of this Agreement (even if such loss of revenue occurs after the expiration or earlier termination of this Agreement).

G. **Concessionaire's Environmental Indemnification Obligation.** In addition to all other indemnities provided in this Agreement, the Concessionaire shall indemnify, defend and hold the City free and harmless from any and all third-party claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation any required cleanup and other remedial or removal action costs (including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation) (collectively, "Claims"), to the extent such Claims result from the Concessionaire's use, release or disposal, of any Hazardous Substance during the term of this Agreement, or the migration of any Hazardous Substance released by the Concessionaire, its agents or employees during the term of this Agreement from the Monorail System to other properties or into the surrounding environment, whether (i) made, commenced or incurred during the Term of this Agreement, or (ii) made, commenced or incurred after the expiration or termination of this Agreement if resulting from the Concessionaire's, or its employees, agents, contractors, licensees, or invitee's acts, omissions, release of any Hazardous Substance, or breach of this Section XVII during the Term. Nothing contained in this Section XVII shall require the Concessionaire to indemnify City for any such Claims resulting from the presence of Hazardous Substances that have come to be located on, under or around the Monorail System areas or in the soil or ground water as a result of the use, storage, release or disposal by persons other than the Concessionaire, its agents, employees, or other persons under the control of the Concessionaire, unless the Concessionaire exacerbates or contributes to the migration or continued release of such Hazardous Substances in violation of applicable Environmental Laws.

H. **Rights Reserved.** Notwithstanding any other terms in this agreement, the City reserves all rights, claims, causes of action and defenses established under any Environmental Law, including but not limited to the Washington State Model Toxics Control Act and the Federal Comprehensive Environmental Response, Cleanup and Liability Act.

I. **Survival of Environmental Obligations.** The provisions of this Section XVII shall survive the expiration or earlier termination of this Agreement.

XVIII. CITY'S CONTROL OF BUILDINGS, GROUNDS AND ACTIVITIES

Notwithstanding any other provision of this Agreement the City, without liability of any kind, may:

A. **Physical Appearance.** Increase, reduce or change, in any manner the number, appearance, dimensions, and location of any Seattle Center walkway, landscaping, parking, service area, or building (including the Armory) as desired by the City;

B. **Traffic & Parking Regulation.** Regulate all traffic within and adjacent to the Seattle Center; and restrict or prohibit vehicle access and parking on Seattle Center grounds;

C. **Admission Charges.** Impose a temporary reasonable charge for admission to the Seattle Center and any of the facilities therein, including parking facilities for specific events;

D. **Promotions, Advertising & Events.** Erect, display and remove promotional exhibits, advertising and materials and permit special events on the Seattle Center grounds and in or at any or every building and facility thereof including but not limited to the common areas of the Armory Building;

E. **Rules & Regulations.** Establish, from time to time, reasonable rules and regulations regarding the use and occupancy of any area of Seattle Center;

F. **Hours of Operation.** Determine the days and hours that the Seattle Center and the various business operations therein will be open to the public, provided that such determination will not restrict reasonable access to the Monorail Platform or Seattle Center grounds during the Monorail's hours of operation, including the Minimum Revenue Service Hours under Section XI B.; and

G. **Other Businesses, Activities, & Operations.** Change the size, number, type and identity of other businesses, activities and operations at Seattle Center; and authorize other lessees, licensees, and the sponsors of special events at Seattle Center, directly or indirectly, to offer for sale food and beverages, and for sale or rent any merchandise and services.

XIX. INSURANCE REQUIREMENTS

A. **The Concessionaire's Insurance Coverages and Limits.** Concessionaire shall, as an Operating Expense, maintain in full force and effect the following minimum limits and types of insurance throughout the entire Term:

1. Commercial General Liability (CGL) written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability:

$1,000,000 per Occurrence
$2,000,000 General Aggregate
$2,000,000 Products/Completed Operations Aggregate
$1,000,000 Personal/Advertising Injury Liability
$1,000,000 Damage to Premises Rented to You
Employers Liability / Washington Stop
$1,000,000 Each Accident / Each Disease / Policy Limit

Alternatively, may be evidenced as Employer's Liability insurance under Part B of a Workers Compensation insurance policy.

Coverage shall include: Premises and Operations (including for the Monorail System); Broad Form Property Damage (Including Completed Operations); Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract); Personal Injury and Advertising Liability; Fire Damage Legal; Per Location Aggregate CG2504; Independent Contractors; Severability of Interest Clause; Waiver of Subrogation endorsement in favor of

Owner as required by contract; General Aggregate Limits of Insurance shall apply separately; "Claims Made" and "Modified Occurrence" policy forms are not acceptable.

The limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by Concessionaire, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by Concessionaire as respects this Agreement, nor (2) construed as limiting the liability of any of Concessionaire's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

2. Automobile Liability insurance at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased or hired vehicles as applicable, with a minimum limit of $1,000,000 each accident for bodily injury and property damage.

3. Workers' Compensation insurance securing Concessionaire's liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington.

4. Umbrella or Excess Liability insurance if and as necessary to maintain total CGL insurance limits of $20,000,000 Each Occurrence and $25,000,000 General Aggregate and be no less broad than coverages described above.

5. Property Insurance. The procurement of property insurance shall be the responsibility of the Concessionaire. Coverage should be provided up to mutually agreed limits as follows:

a. Concessionaire's Business Personal Property. Coverage should be provided for Concessionaire's business personal property including, but not limited to, leasehold improvements, machinery, equipment, fixtures and inventory. Such property shall be covered for all risks of direct physical loss or damage and machinery breakdown in an amount not less than the total 100% value of the property on a replacement cost new basis. Coverage shall be written on a policy form not less broad than the insurance industry standard "Causes of Loss – Special Form" (ISO Form CP 1030 or equivalent).

b. Monorail System and Associated Property. Coverage should be provided for the Monorail System and associated property, including, but not limited to stations, cars, track, rail, support system, equipment, controls, ancillary buildings, storage areas, and other improvements. Such property shall be covered for all risks of direct physical loss or damage, machinery breakdown, upset, collision and overturn, in an amount not less than the total 100% value of the property on a replacement cost new basis. Coverage shall be written on an insurer policy form or manuscript policy form not less broad than the insurance industry standard "Causes of Loss – Special Form" (ISO Form CP 1030 or equivalent). This coverage shall be considered primary and non-contributory to any coverage that may be procured by the City. The City shall be a named as a named insured. Westlake Center Associates shall be named as an additional insured if such entity requires such action.

i. All losses shall be adjusted jointly by the Concessionaire and the City. Any loss payable under such insurance above shall be paid to the Concessionaire and

the City for application to the cost of rebuilding, repairing, replacing or restoring the Monorail System; provided, that in the event the Concessionaire elects to exercise its termination right under Section XXVII.C hereof, then the City shall be paid the portion of the insurance proceeds that is commensurate with the direct physical damage subject to the limit of insurance. Such payment shall be made to the City within seven (7) days after receipt by the Concessionaire of the insurance proceeds or the effective date of termination, whichever is later.

c. The following requirements pertain to the property insured under Clauses A. and B. above:

i. Coverage should be provided for business interruption and extra expense in amount not less than the estimated annual revenue less expenses and charges that would not continue.

ii. Coverage should be provided on a replacement cost new basis.

iii. No coinsurance shall apply to the coverage procured under Clauses A. and B. above, and Clause C.1).

iv. The deductible for all other losses under Clause A above shall not exceed $10,000, and the deductible for all other losses under Clause B above shall not exceed $25,000.

6. Pollution Legal Liability is required if the Concessionaire will be using or storing amounts and types of hazardous materials or regulated substances, such as fuel, beyond what is normally required for Monorail System operation. It is acceptable to add ISO endorsement CG 24 15 Limited Pollution Liability Extension or its equivalent to the CGL policy or obtain a separate pollution legal liability policy.

7. In the event that the City and the Concessionaire mutually agree and deem insurance to be inadequate to protect Concessionaire and the City, Concessionaire shall increase coverages and/or liability limits as jointly deemed reasonably adequate within sixty (60) days of agreement without further change to this Agreement. In the event that the City and the Concessionaire do not agree about how much insurance coverage is adequate to protect the Concessionaire and the City, the City may require Concessionaire to increase coverages and/or liability limits and, if the cost of such increased insurance coverage has a material adverse impact on the Monorail System Net Operating Income, the parties may renegotiate the financial terms of this Agreement and amend the Agreement to address the adverse impact created by the City's required coverage increase.

B. **General Requirements for Concessionaire's Insurance**.

1. The CGL insurance and Excess and/or Umbrella liability insurance shall include "The City of Seattle, its officers, officials, employees, agents and volunteers" as additional insureds. Concessionaire's insurance shall be primary and non-contributory to any insurance maintained by or available to the City. The term "insurance" in this paragraph shall include insurance, self-insurance (whether funded or unfunded), alternative risk transfer techniques, capital market solutions or any other form of risk financing.

2. Coverage shall not be cancelled without forty-five (45) day written notice of such cancellation, except ten (10) day written notice as respects cancellation for non-payment of premium, to the City at its notice address except as may otherwise be specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer.). The City and the Concessionaire mutually agree that for the purpose of RCW 48.18.290 (1), for both liability and property insurance the City is deemed to be a "mortgagee, pledge, or other person shown by (the required insurance policies) to have an interest in any loss which may occur thereunder."

3. Each insurance policy required hereunder shall be (1) subject to reasonable approval by the City that it conforms with the requirements of this Section, and (2) be issued by an insurer rated A–:VII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).

4. Any deductible or self-insured retention ("S.I.R.") must be disclosed to, and shall be subject to reasonable approval by, the City. Concessionaire shall cooperate to provide such information as the City may reasonably deem to be necessary to assess the risk bearing capacity of the Concessionaire to sustain such deductible or S.I.R. The cost of any claim falling within a deductible or S.I.R. shall be the responsibility of Concessionaire. If a deductible or S.I.R. for CGL or equivalent insurance is not "fronted" by an insurer but is funded and/or administered by Concessionaire or a contracted third party claims administrator, Concessionaire agrees to defend and indemnify the City to the same extent as the City would be protected as an additional insured for primary and non-contributory limits of liability as required herein by an insurer.

C. **Waiver of Subrogation.** Unless such waiver would void the property insurance coverage to be provided pursuant to this section, the City and Concessionaire waive all subrogation rights each may have against the other, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Monorail System, except such rights as they have to proceeds of such insurance held by the City or the Concessionaire or both as fiduciary. This waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, whether or not the person or entity paid the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged.

D. **Evidence of Insurance.** On or before 12:01 AM on January 1, 2015, and thereafter not later than the last business day prior to the expiration date of each such policy, the following documents must be delivered to City at its notice address as evidence of the insurance coverage required to be maintained by Concessionaire:

1. Certification of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein; and

2. A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript

endorsements;

3. A copy of the CGL insurance policy provision(s) documenting the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement;

4. Pending receipt of the documentation specified in this Section XIX, Concessionaire may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

E. **Assumption of Property Risk.** The placement and storage of Concessionaire's Business Personal Property in or about the Premises shall be the responsibility, and at the sole risk, of Concessionaire.

F. **Adjustments of Claims.** The Concessionaire shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Concessionaire under this Agreement.

XX. INDEMNIFICATION

A. **Indemnity.** The Concessionaire shall defend, indemnify and hold the City, and its officers, employees, agents, contractors, and volunteers harmless from any and all losses, claims, actions, damages, and expenses of any kind, including reasonable attorney's fees alleged against or incurred by the City through any third party and arising from any damage to or loss of property or any bodily injury including death (collectively, "Claims"), to the extent that the Claims result from the following: (i) the negligence or intentional misconduct of Concessionaire or its officers, employees, contractors, agents, licensees, or invitees, including, but not limited to, negligence or intentional misconduct related to the operation and maintenance of the Monorail System; or (ii) Concessionaire's breach of this Agreement.

The Concessionaire's obligations to defend and indemnify the City shall not extend to any Claims to the extent of negligence or intentional misconduct of the City or its elected officials, agents, contractors, or employees. If any Claim arises from the joint or concurrent negligence or intentional misconduct of the City (including any of its employees, contractors or agents) and the Concessionaire (including any of its officers, employees, contractors, or agents), each party shall be liable to the extent of that party's fault.

B. **Waiver of Immunity.** The Concessionaire agrees that its obligation to defend and indemnify the City under this Section XX specifically applies to actions brought against the City by the Concessionaire's employees. As a result, the Concessionaire hereby expressly waives its immunity under RCW Title 51 or any applicable industrial insurance act, but only with respect to the City to the extent necessary to fulfill the Concessionaire's defense and indemnification obligation herein.

CITY AND CONCESSIONAIRE ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS CONCESSION AGREEMENT WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

C. **Cooperation.** The City shall provide Concessionaire with: (i) prompt written notice of any Claim made or threatened for which the obligations under Section XX.A. are or might be sought, or any events that might result in such a Claim; and (ii) its full cooperation in the investigation, defense or settlement of any Claim or suit covered herein; and (iii) control over the investigation, defense and settlement of any Claims; provided, that if the Director determines that one or more principles of governmental, City, or public policy or law are involved, the City retains the right to participate in such action, and provided further that Concessionaire shall not compromise or settle any Claim without the City's written consent.

D. **Insurance.** Notwithstanding anything contained in this Section XX to the contrary, it is the intention of the parties to avail themselves, to the maximum extent possible, of the proceeds of the insurance policies required.

XXI. COMPLIANCE WITH LAW

A. **General Requirement.** The Concessionaire shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle; and rules, regulations, orders, and directives of the administrative agencies of each of the foregoing.

B. **Environmental Compliance.**

1. Biodegradable Products/Recycling of Waste Materials. Wherever practical, the Concessionaire shall use biodegradable products for containers and supplies used on the Monorail System. The Concessionaire shall collect, sort and separate into such categories as may be legally required all solid waste products on the Monorail System and recycle all such products that are locally accepted for recycling. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by the City, which receptacle shall be dumped or removed from the Seattle Center at such minimum frequency as is specified by the Director. The City reserves the right to refuse to collect or accept from the Concessionaire any waste product that is not sorted and separated as required by law, ordinance, rule or regulation and to require the Concessionaire to arrange for the collection of the same using a contractor satisfactory to the City.

2. Federal Clean Air Act and Water Pollution Control Act. The Concessionaire shall comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738 and Environmental Protection Agency (EPA) regulations (40 CFR, Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List for Violating Facilities. Concessionaire shall report violations to FTA and to the USEPA Assistant Administrator for Enforcement (ENO329).

3. Federal Energy Policy and Conservation Act. The Concessionaire shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq.).

C. **Non-discrimination.** The Concessionaire shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Concessionaire shall affirmatively try to ensure applicants are employed, and employees are treated during employment, without regard to race, color, age, sex, marital status, sexual orientation, gender identify, political ideology, creed, religion, ancestry, national origin, or any sensory, mental or physical handicap. Such efforts include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay or other compensation, and training.

D. **Equal Benefits.** The Concessionaire shall comply with SMC Ch. 20.45 and Equal Benefit Program Rules, which require the Concessionaire to provide the same or equivalent benefits ("equal benefits") to domestic partners of employees as the Concessionaire provides to spouses of employees. At City's request, the Concessionaire shall provide information and verification of the Concessionaire's compliance. Any violation of this Section is a material breach, for which the City may exercise enforcement actions or remedies defined in SMC Chapter 20.45.

E. **Training and Mentoring Programs.** The Concessionaire will provide employees with an opportunity for advancement through the use of training, cross training and mentoring. The Concessionaire shall provide the City with an annual update on these programs and their outcome.

F. **Prevailing Wages.** Any "public work" as defined by RCW 39 and performed by the Concessionaire under this Agreement shall be subject to prevailing wages. The Concessionaire and any subcontractor shall pay any laborer; worker or mechanic engaged in the "public work" according to the classifications provided for under RCW 39.12 no less than the prevailing hourly wage rates in effect for King County as issued by the Department of Labor and Industries for the State of Washington for King County on January 9, 2014. It will be the sole responsibility of the Concessionaire to assign the appropriate classification and associated wage rates to all laborers, workers or mechanics that perform "public work" under the concession agreement in conformance with the scope of work descriptions of the Industrial Statistician of the Washington State Department of Labor and Industries. On each contract anniversary, the Concessionaire and any subcontractors shall review the then current prevailing wage rates and shall increase wages paid if required to meet no less than the then-current prevailing wage rates. The prevailing wage rates may be found at: https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx

XXII. LICENSES, ROYALTIES AND TAXES

A. **Licenses and Similar Authorizations.** The Concessionaire, as an Operating Expense, shall secure and maintain in full force and effect during the Term of this Agreement, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

B. **Taxes.** The Concessionaire shall pay, before delinquency, all taxes, levies, and assessments arising from its activities on or occupancy of the Monorail System, including but not limited to taxes arising out of the activity or business conducted on the Monorail System, such as the rental or sale of goods or services, equipment and improvements on the Monorail System, and taxes on the Concessionaire's interest in this Agreement. The City shall pay all property taxes, if any, on the Monorail System's real or personal property.

C. **Royalties and Patents.** The Concessionaire shall pay all royalties and license fees. In addition to and without limiting any other indemnification obligation under this Agreement, the Concessionaire shall defend and indemnify the City from all suits or claims for the Concessionaire's infringement of any patent rights.

XXIII. CITY'S RIGHT TO MONORAIL SYSTEM: INSPECTION, REPAIR AND IMPROVEMENT OF MONORAIL SYSTEM AND OTHER PROPERTY

A. **Access to Monorail System.** The Concessionaire shall provide the City with access to the Monorail System at all reasonable times to inspect the same and to make any repair, improvement, alteration or addition thereto of any property owned by or under control of the City, deemed necessary by the Director; provided that this right of access shall not impose on the City any obligation to make any repair, alteration, addition, or improvement except as specifically provided in this Agreement.

B. **Permitted Interference With Concessionaire's Operations.** In inspecting, and in making repairs, alterations, additions, and improvements, the City may erect barricades and scaffolding in and outside of the Monorail System and may otherwise interfere with the conduct of the business and operations of the Concessionaire and any of its subcontractors, where such action is reasonably required by the nature of the City's work, and such interference shall not be deemed to be a breach or default under this Agreement. The City shall use its best efforts to minimize interference with access to and from the Monorail System and with business and operations in, on or from the Monorail System.

C. **Suspension of Concessionaire's Operations.** If any City inspection, repair, alteration, addition, or improvement work necessitates the temporary suspension of the business or operations of the Concessionaire or any of its subcontractors in, on, or from the Monorail System for a period of two (2) hours or more, the Director shall notify the Concessionaire as soon as reasonably possible in advance of the anticipated beginning and ending date and time of the suspension. The Concessionaire waives on behalf of itself and all of its subconcessionaires all claims for damages and for any injury to and interference with business operations and loss of revenues occasioned by such suspension; provided however, that in the event such suspension continues for more than 3 calendar days, the minimum

Concession Fee per Section VI.B shall be reduced based on estimated Ridership Revenues realized during the equivalent operating days in the prior year. For example, a Thursday, Friday, Saturday closure during the second week of August would result in the minimum Concession Fee being adjusted downward by the estimated net revenues earned during the Thursday, Friday, and Saturday of the second week of August during the prior year. The City shall use all reasonable efforts to minimize damages or interference.

D. **City's Retention and Use of Key to Monorail System.** The City shall at all times have and retain a key with which to unlock all of the doors in, upon, and about the Monorail System, excluding the Concessionaire's vaults, safes, and files. In an emergency, the City shall have the right to use any and all means which the Director deems proper to obtain entry to any portion of the Monorail System, without liability to the Concessionaire or any subconcessionaire. Any entry to the Monorail System by the City in an emergency shall not be construed or deemed to be a forcible or unlawful entry into the Monorail System.

XXIV. NO NUISANCES OR OBJECTIONABLE ACTIVITY

The Concessionaire shall not willfully permit any excessive or objectionable noise, odor, dust, vibration, or other similar substance or condition to remain on or be emitted from the Monorail System, shall not willfully create any nuisance in or adjacent to the Monorail System; and shall not willfully do anything on the Monorail System that will create a danger to life or limb.

XXV. SUBCONTRACTING AND ASSIGNMENT

A. **Subcontracting and Assignment Conditioned Upon Director's Approval.** The Concessionaire's services and the concession rights granted by the City under this Agreement are personal to the parties. As a result, except as expressly permitted under this Agreement, Concessionaire shall not license, subcontract, sell or transfer any of Concessionaire's rights or obligations under this Agreement without the Approval of the Director in that official's sole discretion. Neither this Agreement nor any interest thereunder shall be assignable or transferable by the Concessionaire or by operation of law without the Director's Approval, in that official's sole discretion. Any assignment, subcontract, sale or transfer shall be subject to all the terms and provisions of this Agreement. Any purported or partial or complete assignment, license, subcontract, sale or transfer of this Agreement in violation of this paragraph shall be null and void and of no force and effect and shall further constitute a breach of this Agreement, at the Director's election. The Director's giving or withholding of Approval under this Section in one instance shall not be deemed to be an Approval to any subsequent assignment, license, subcontract, sale or transfer of this Agreement. Each assignment and subcontract shall be in a written form satisfactory to the Director. The Concessionaire shall not be released from any obligations under this Agreement by virtue of any assignment, license, subcontract, sale, or transfer, whether accomplished with or without the Director's approval, unless the Director expressly provides otherwise in writing.

B. **Change in Ownership Constitutes Transfer.** Any transfer of this Agreement as a result of merger, consolidation, liquidation, or any direct or indirect change in Concessionaire's ownership or legal entity structure that changes decision-making control of

Concessionaire shall constitute a transfer or assignment. If the Concessionaire is a joint venture or partnership, then a change in joint venturers or general partners or decision-making control of the partnership or joint venture shall also constitute a transfer or assignment. If the Concessionaire is a limited liability company, then a change in the manager of a manager-governed company or a change in the membership of a membership-governed company shall also constitute a transfer or assignment; provided however, that a change from Tom Albro as the current Seattle Monorail Services LLC Manager to Tina Albro (his spouse), shall not be considered a transfer, assignment, or change in ownership.

XXVI. SALE OR ASSIGNMENT BY CITY OF SEATTLE

If the City sells or otherwise transfers the Monorail System, such purchaser, transferee, or assignee thereof shall be deemed to have assumed City's obligations under this Agreement arising after the date of such transfer, and City shall thereupon be relieved of all liabilities under this Agreement arising thereafter but this Agreement shall otherwise remain in full force and effect. In the event of such sale or transfer, the Concessionaire may terminate this Agreement by providing written notice of such termination within sixty (60) days after the effective date of the sale or transfer, with the effective date of the termination being no less than one (1) year after the written notice.

XXVII. DAMAGE AND DESTRUCTION

A. **The Concessionaire's Report of Damage.** The Concessionaire shall immediately notify the Director of any occurrence of damage or destruction to the Monorail System. The Concessionaire shall further submit a written report to the Director, in care of the Transportation Services Office, regarding the circumstances of any such damage or destruction within twenty-four (24) hours after any such event.

B. **Obligation to Pay Fees and Charges in the Event of Damage or Destruction.** In the event the Monorail System is damaged or destroyed by fire or other casualty, or is damaged so extensively as to render the Monorail System unusable, so long as the damage or destruction is not the result of Concessionaire's negligence or intentional misconduct, the Concessionaire's obligation to pay fees and charges therefor shall be suspended until the Monorail System is made usable. If only a portion of the System is damaged or destroyed by fire or other casualty and the Monorail System remains usable, then so long as the damage is not the result of Concessionaire's negligence or intentional misconduct, the fees, charges, and Minimum Fees hereunder shall be prorated and the Concessionaire shall pay only fees and charges in an amount proportionate to the extent of the Monorail System that remains usable for the purposes identified in this Agreement.

C. **The Concessionaire's Right to Terminate.** Notwithstanding any other provision in this Agreement to the contrary, in the event that fifty percent (50%) or more of the Monorail System is destroyed or is so damaged by fire or other casualty as to be untenantable or commercially unusable and such event was not caused by the negligence or intentional misconduct of the Concessionaire, the Concessionaire may terminate this Agreement by providing written notice thereof to the City.

D. **City's Right to Terminate.** Notwithstanding any other provision of this Agreement to the contrary, the City shall have the right to terminate this Agreement by providing prior written notice to the Concessionaire in any of the following circumstances: (i) in the event that fifty percent (50%) or more of the Monorail System is destroyed or is so damaged by fire or other casualty as to be untenantable or commercially unusable, or (ii) if the City desires to discontinue the Concessionaire's operations because of substantial destruction of any other part of Seattle Center, regardless of whether the Monorail System is destroyed, or (iii) if the City determines that the insurance proceeds are not adequate to complete the repair or replacement.

E. **Notice of Termination.** Any notice of termination by the Concessionaire or City pursuant to this section shall be provided within sixty (60) days after the occurrence of the damage or destruction and shall specify the effective date of such termination.

XXVIII. SUSPENSION OF OBLIGATIONS (FORCE MAJEURE)

Whenever a party's performance of any obligation under this Agreement is prevented by an act of nature; war or war-like operation; civil commotion; riot; labor dispute including a strike, lock-out, or walk-out; sabotage; or governmental regulation or control (each an "Event of Force Majeure"), performance of such affected obligation shall be suspended, but only for so long as such performance remains beyond the reasonable control of such party. No suspension shall result in an extension of the expiration date of this Agreement unless specifically agreed upon, in writing, by the parties. No suspension under this Section XXVIII shall arise from a party's financial inability or insolvency. The City's performance under this Agreement shall not be excused by special legislation or regulation applicable only to Concessionaire or exercised primarily for the purpose of impairing Concessionaire's rights under this Agreement. Each affected party shall make reasonable efforts to remove the Event of Force Majeure so that its performance may resume.

XXIX. NOTICES AND DELIVERABLES

All notices and other materials to be delivered hereunder shall be delivered or mailed to the following unless a different address is provided by either party:

To City:	Seattle Center Director Seattle Center Department The City of Seattle 305 Harrison Street Seattle, Washington 98109 Attn: Project Manager
To Concessionaire:	Tom Albro Seattle Monorail Services LLC 310 30th Ave South Seattle, Washington 98144

XXX. DEFAULT

A. **Definition of Default by the Concessionaire.** Any of the events or circumstances in Subsections 1 through 9 below that are not cured within the applicable cure period set forth below in Section XXX B. shall constitute a "Default" by the Concessionaire, and the Concessionaire shall be "in Default" under this Agreement.

1. The Concessionaire's failure to make any payment to the City in the time required under this Agreement; or

2. The Concessionaire's failure to provide insurance of the type and amount required under Section XIX at all times during the Term; or

3. The Concessionaire's violation of any law, Charter provision, ordinance, rule, regulation, order, or directive; or

4. The Concessionaire's failure to deliver to the City and maintain at all times during the Term, a security deposit or bond in the amount required under Section XXXIII; or

5. The Concessionaire's failure to submit in a timely manner all written reports due to the City; or

6. The Concessionaire's failure to continuously operate the Monorail unless such failure is excused under this Agreement; or

7. The Concessionaire's failure to perform any other obligation under this Agreement in the time required, or the Concessionaire's violation of any other condition or covenant of this Agreement; or

8. Concessionaire's assignment or subcontracting of its interest in this Agreement in violation of Section XXV; or the filing of a voluntary or involuntary petition in bankruptcy, or for reorganization or an arrangement; or the adjudication of the Concessionaire as being bankrupt or insolvent; or the appointment of a receiver of or for the Concessionaire if such appointment, adjudication or similar order or ruling remains in force or unstayed for a period of sixty (60) days.

9. Annual on-time performance standard of below 96.5% that is not excused under Section XI.E.

B. **City's Notice of Concessionaire's Failure of Performance.** Upon the occurrence of any of the events or circumstances listed in Section XXX.A., prior to exercising the right to terminate this Agreement, the Director shall provide written notice to the Concessionaire specifying such event or circumstance and the reasonable number of hours or days for the Concessionaire to cure, which, in any case, shall not be any less than ten (10) days for a monetary failure or failure to provide insurance, and shall not be less than thirty (30) days for any other event or circumstance; provided, however, that no cure period shall apply to the events set forth in Sections XXX.A.8. and 9. Except for a monetary failure, failure to provide insurance, or events and circumstances set forth in Sections XXX A 8 and 9, if the nature of the event or

circumstance is such that Concessionaire may not reasonably cure it within thirty (30) days, the Concessionaire shall not be in Default so long as the Concessionaire commences the cure within thirty (30) days and thereafter diligently pursues the cure to completion within a time reasonable under the circumstances.

C. **City's Remedies Upon Termination.** If the Concessionaire is in Default, the City shall have the following non-exclusive rights and remedies, at its option: (i) to cure the Default on the Concessionaire's behalf and charge the Concessionaire for all of the City's actual and reasonable costs and expenses, and (ii) to terminate this Agreement and the Concessionaire's rights to the Concession without any further proceedings, re-enter the Monorail System, operate the Monorail System itself or lease and license others to operate the Monorail System and receive all associated revenues; provided termination shall not relieve the Concessionaire from liability to the City for any damages caused by the Concessionaire's Default, including the City's reasonable and actual expenses incurred in the leasing or licensing of the Monorail System.

D. **City's Remedies Cumulative; No Waiver.** The City's rights and remedies hereunder are not exclusive, but cumulative, and City's exercise of any right or remedy following the Concessionaire's Default shall not be deemed a waiver, nor shall it alter, affect or prejudice any other right or remedy that the City may have under this Agreement, or under law or equity. Neither the City's acceptance of payments nor any other action by the City after any event for which the City may terminate this Agreement shall operate as a waiver of any past or future Default by the Concessionaire, nor shall it deprive the City of its right to terminate this Agreement or exercise any other option, right or remedy that it may have under any term or provision of this Agreement.

E. **Default by the City.** The City shall be in Default if the City fails to perform any of its obligations under this Agreement and such failure continues for more than thirty (30) days after written notice by the Concessionaire to the City specifying the particular obligation that the City has failed to perform. If the nature of the City's obligation is such that more than thirty (30) days are required for performance, then the City shall not be in Default if the City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. If the City is in Default, the Concessionaire may pursue any rights or remedies available under law or equity.

XXXI. TRANSITION SERVICES

Upon the expiration of the Term or earlier termination of the Agreement, whether terminated by the City or by the Concessionaire, the Concessionaire shall reasonably cooperate with the City to effect an orderly transition to the new operator of the Monorail System. At its option, the City may require the Concessionaire to provide the following transition services:

A. General Manager or equivalent - Provide full-time training and Routine Maintenance support for up to four (4) months;

B. Operator Trainer or equivalent - Provide up to thirty (30) working days training for operators and other staff; and

C. Site Operations Manager or equivalent - Provide up to thirty (30) working days training and support of daily operations including but not limited to scheduling and cash collection.

All post-termination or post-expiration transition services provided to the City or its designee shall be billed to the City at actual labor and material costs plus an overhead charge of no more than sixty percent (60%).

XXXII. SURRENDER OF MONORAIL SYSTEM; HOLDING OVER

A. **Surrender and Delivery.** Upon the expiration or termination of the Term, whichever is earlier, Concessionaire shall surrender the Monorail System and promptly deliver to the Director all keys the Concessionaire, its subcontractors, and any of their officers, agents, and employees may have to any areas of the Seattle Center, the Westlake Center, and the Monorail System. Upon expiration or termination, the Concessionaire shall: (i) assign to the City such leases and contracts for equipment used for or in connection with the Routine Maintenance or operation of the Monorail System that the Director elects to assume; and (ii) terminate, without cost or liability to the City, all other contracts for Monorail System-related equipment and services that were executed by the Concessionaire; (iii) convey to the City, free and clear of all liens and encumbrances, and without additional compensation, but subject to normal wear and tear, all equipment used for or in connection with the Routine Maintenance or direct operation of the Monorail System that the Concessionaire purchased during the Term and credited as an Operating Expense under this Agreement, and (iv) surrender and assign to the City all social networking site accounts relating to the Monorail System, including the passwords, account name, and contacts.

B. **Removal of the Concessionaire's and Subconcessionaire's Property.** Prior to the expiration date of the Term, or in the event this Agreement is terminated, within thirty (30) days after the termination date, whichever is earlier, the Concessionaire shall ensure that all fixtures, furnishings, trade equipment and personal property owned or installed by the Concessionaire or any of its subcontractors in, on, or from the Monorail System other than items funded through Operating Expenses, or leased or purchased items of equipment that are to be assigned to or conveyed to the City under this Agreement, are removed from the areas made available to the Concessionaire under Section III, taking due care not to injure or damage the Monorail System or any portion thereof, and following removal, shall restore the Monorail System and facilities to their condition as of the Effective Date of this Agreement, ordinary wear and tear and casualty, and improvements, additions, and alterations approved by the City excepted. Improvements, additions, and alterations installed on the Monorail System by the City shall not be removed.

C. **Storage of the Concessionaire's and Subcontractor's Property.** If the Concessionaire fails to remove any fixtures, furnishings, trade equipment, and other personal property owned or installed by or for the Concessionaire or any of its subcontractors as required on or by the time specified in subsection B, the City may, but shall not be required to remove, such property and materials from the Monorail System and store the same, all at the Concessionaire's expense. If the City removes or arranges for the storage of such material, the City shall be reimbursed its actual cost of storage and a reasonable administrative fee for staff

time, which reimbursement shall be a claim upon the Concessionaire or, at the City's option, may be deducted from the security provided by the Concessionaire under this Agreement.

D. **No Claims for Removal.** In no event shall the Concessionaire or any of its subcontractors make any claim or demand upon the City, nor shall the City be liable for any inconvenience, annoyance, disturbance, or loss of business or any other damage arising out of City's removal of materials and property under Subsection XXXII.C.

XXXIII. BONDING REQUIREMENT

A. **Bond.** The Concessionaire shall deliver to the address specified in Section XXIX hereof within five (5) days after the execution of this Agreement, and shall thereafter maintain in full force and effect throughout the Term of this Agreement, a good and sufficient bond in the amount of Two Hundred Thousand Dollars ($200,000). Said bond shall be executed by the Concessionaire, as principal, and by a surety company authorized to do such business in the State of Washington, and conditioned upon full performance by the Concessionaire of all of the terms and conditions of this Agreement including but not limited to the timely payment by the Concessionaire of all fees, charges, and portions of Net Operating Income due to the City. The Concessionaire must secure the City Attorney's approval of the surety and form of the bond prior to submitting the bond to the Director.

XXXIV. MISCELLANEOUS PROVISIONS

A. **Use of Language.** Terms used in the neuter gender include the masculine and feminine, and terms used in the singular or plural include the other, as the context may require.

B. **Captions.** The titles of sections are for convenience only and do not define or limit the contents.

C. **Amendments.** No modifications or amendment of the terms hereof shall be effective unless in writing and signed by authorized representatives of the parties hereto. The parties hereto expressly reserve the right to modify this Agreement from time to time, by mutual agreement.

D. **Time of Essence.** Time is of the essence in this Agreement.

E. **Remedies Cumulative.** Rights under this Agreement are cumulative; failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. Each party shall also have any other remedy given by the law. The use of one remedy shall not be taken to exclude or waive the right to use another.

F. **No Waiver.** No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default of any of the terms, covenants and conditions of this Agreement. The waiver of any right under this Agreement must be in writing and signed by the party making the waiver. The payment or acceptance of any compensation or fee for any

period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

G. **Limited Effect of Approval by Director.** Action of the Director pursuant to or in implementation of this Agreement does not constitute any official action that may be required by law, City Charter, ordinance, rule or regulation before the Concessionaire may rightfully commence, suspend, enlarge, or terminate any particular undertaking.

H. **No Relationship Established.** The Concessionaire is an independent contractor. Neither the City nor the Concessionaire shall be construed to be a partner, associate, or joint venturer of the other party or any of its affiliates by virtue of this Agreement. The Concessionaire is not an agent of the City for any purpose whatsoever and shall not create any obligation or responsibility on behalf of the City or bind the City in any manner. This Agreement was negotiated by each party as an arms-length transaction and neither party is a fiduciary or trustee of the other.

I. **Powers of the City.** Nothing contained in this Agreement shall be considered to diminish the governmental or police powers of the City.

J. **Binding Effect.** The provisions, covenants, and conditions contained in this Agreement apply to bind the parties, their legal heirs, representatives, successors, and assigns.

K. **Enforcement of this Agreement.** The obligations of the parties to this Agreement are unique in nature; this Agreement may be specifically enforced by either party.

L. **Invalidity of Particular Provisions.** Should any term, provision, condition, or other portion of this Agreement or the application thereof be held to be inoperative, invalid, or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected hereby and shall continue in full force and effect.

M. **Joint and Several Liability.** In the event the Concessionaire is composed of more than one corporation or entity, each corporation or entity composing the Concessionaire shall be jointly and severally liable under this Agreement.

N. **Governing Law; Venue.** This Agreement shall be governed by and construed under the laws of the State of Washington. Venue for any action arising under this Agreement shall be in King County Superior Court.

O. **No Third Party Beneficiaries.** Except as expressly set forth in this Agreement, no party is a third-party beneficiary under this Agreement.

XXXV. DISPUTE RESOLUTION

The parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in order to ensure that Monorail services are not adversely impacted or interrupted. If a dispute cannot be resolved by negotiations between subordinate staff of the Concessionaire and Seattle Center, the matter

shall be referred to the Seattle Center Director and Tom Albro (Managing Director of Seattle Monorail Services, LLC). If those officials are unable to resolve the dispute between them, then either party may commence mediation by providing to the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs and that such costs shall not be considered an Operating Expense of the Monorail System. Except for equitable relief to preserve the status quo pending the completion of the mediation, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

XXXVI. ATTORNEYS FEES

If either party retains the services of an attorney in connection with enforcing the terms of this Agreement, each party agrees to bear its own attorneys' fees and costs.

XXXVII. APPLICABLE LAW; VENUE

This Agreement shall be construed under the Laws of the State of Washington. Venue for any action brought hereunder shall be in King County, Washington.

A. **Previous Agreements Superseded.** The terms and conditions of this Agreement supersede the terms, obligations and conditions of any existing or prior agreement between the parties regarding the subject matter hereof.

B. **Redevelopment Modifications.** Notwithstanding any other provisions hereof, in the event the Director determines that in order to facilitate the redevelopment of the Seattle Center in a manner consistent with the "Seattle Center Century 21 Master Plan" approved through Seattle City Council Resolution 31071, or subsequent Seattle Center Master Plans, any portion of the Monorail System is required for some use or purpose other than that contemplated by the parties under this Agreement, the Director shall have the right to materially change the Monorail System without recourse by the Concessionaire, by providing written notice of such change to the Concessionaire and specifying the effective date of such material change which, in no event, shall be less than two (2) years prior to the Seattle Center's use or purpose for said System.

XXXVIII. ACKNOWLEDGEMENT OF NEGOTIATED AGREEMENT

The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

XXXIX. ENTIRE AGREEMENT

This Agreement, including the Exhibits and agreements referenced herein, which by this reference form a part hereof, constitute the entire agreement between the parties concerning the subject matter herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by having their respective authorized representative sign his/her name in the appropriate space below:

CONCESSIONAIRE: **SEATTLE MONORAIL SERVICES LLC**, a Washington limited liability company

By _____
Its _____

Date_____

CITY: **THE CITY OF SEATTLE**

By _____
Its _____

Date_____

LIST OF EXHIBITS

Exhibit A	Seattle Center Description
Exhibit B	1987 Monorail System Operating and Easement Agreement
Exhibit C	Inventory of Spare Parts

EXHIBIT A. SEATTLE CENTER DESCRIPTION

Seattle Center consists principally of the real property within the boundary formed by the following streets:

First Avenue North, Republican Street, Warren Avenue North, Mercer Street, Fifth Avenue North, Broad Street, Second Avenue North, and Thomas Street

with the exception of properties occupied by the Space Needle and the Pacific Science Center. The Seattle Center also includes three parking garages adjacent to the above described boundaries. They are on the full blocks bounded by:

a) Fifth Avenue North, Republican Street, Broad Street and the vacated Sixth Avenue North, b) Mercer Street, Fourth Avenue North, Roy Street and Third Avenue North, and c) Thomas Street, First Avenue North, Warren Street and John Street.

It also includes the Seattle Monorail System including but not limited to the elevated guideway therefor, which extends from a passenger station within the Seattle Center adjacent to the intersection of vacated Thomas Street and vacated Nob Hill Avenue North, along Fifth Avenue North to the passenger station at Westlake Center adjacent to the intersection of Fifth Avenue North and Pine Street.

EXHIBIT B. 1987 MONORAIL SYSTEM OPERATING AND EASEMENT AGREEMENT

Exhibit B includes:

1. September 18, 2014 First Addendum to Monorail Operating and Easement Agreement

2. January 28, 1988 Amendment to the Monorail Operating and Easement Agreement Scope of Work, exhibits to the Amendment are not included. They are available from the Seattle City Clerk's Office as part of Comptroller File 296229 (p. 68-315)

3. February 13, 1987 Monorail System Operating and Easement Agreement

AFTER RECORDING MAIL TO:

_____

_____

_____

FIRST ADDENDUM TO MONORAIL
OPERATING AND EASEMENT AGREEMENT

This First Addendum to Monorail Operating and Easement Agreement ("First Addendum") is made as of the 18 day of September, 2014 to that certain Monorail Operating and Easement Agreement ("Monorail Agreement") by and among Westlake Center, LLC, a Delaware limited liability company ("Westlake Center") (successor-by-conversion to Westlake Center Associates Limited Partnership ("Associates")) and the City of Seattle ("City") entered into on February 12, 1987 and recorded on February 17, 1987 as Document No. 8702170365 in the King County Recorder's Office. All capitalized terms not defined herein shall have the meanings ascribed to them in the Monorail Agreement.

RECITALS

A. By virtue of a corporate entity restructuring, Associates converted itself from a limited partnership to a limited liability company (i.e., Westlake Center), with no change in beneficial ownership.

B. Westlake Center has requested, and City has agreed to, a relocation of certain easements granted by Westlake Center to the City under Section 8 of the Monorail Agreement in locations depicted on the first and second pages of Exhibit D of the Monorail Agreement to provide more direct commuter access to the Property and to accommodate renovation of Westlake Center's retail space.

C. Westlake Center and City now desire to amend Exhibit D to the Monorail Agreement to reflect the relocation of said easements.

NOW, THEREFORE, the parties agree as follows:

1. Amendment to Exhibit D. The first page of Exhibit D to the Monorail Agreement is hereby deleted and fully replaced with Exhibit A attached hereto and collectively designated as Page 1 of Exhibit D.

2. Ratification. Except as provided herein, all of the terms, covenants and conditions of the Monorail Agreement are hereby continued, approved and ratified, and, as hereby amended, shall continue in full force and effect and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

3. Counterparts. This First Addendum may be executed and delivered in any number of counterparts, each of which shall constitute an original.

[*Remainder of page intentionally left blank; signature page to follow*]

IN WITNESS WHEREOF, Associates and City have caused this First Addendum to be executed as of the date and year first written above.

ASSOCIATES:

Westlake Center, LLC,
a Delaware limited liability company

By: _____
Name: Andrew P. Massmann
Title: Authorized Signatory

CITY:

The City of Seattle

By: _____
(signature)

Name: Robert Nellams
Title: Director of the Seattle Center

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I certify that I know or have satisfactory evidence that Andrew P. Massmann appeared before me and signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Authorized Signatory of WESTLAKE CENTER, LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 2nd day of September, 2014

"OFFICIAL SEAL"
JENNIFER R. ANFINSON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 2/25/2017

Jennifer R. Anfinson
Notary Public in and for the State of ~~Washington~~ Illinois
Residing at Chicago, IL
My appointment expires: 2/25/17

STATE OF WASHINGSTON)
) SS.
COUNTY OF KING)

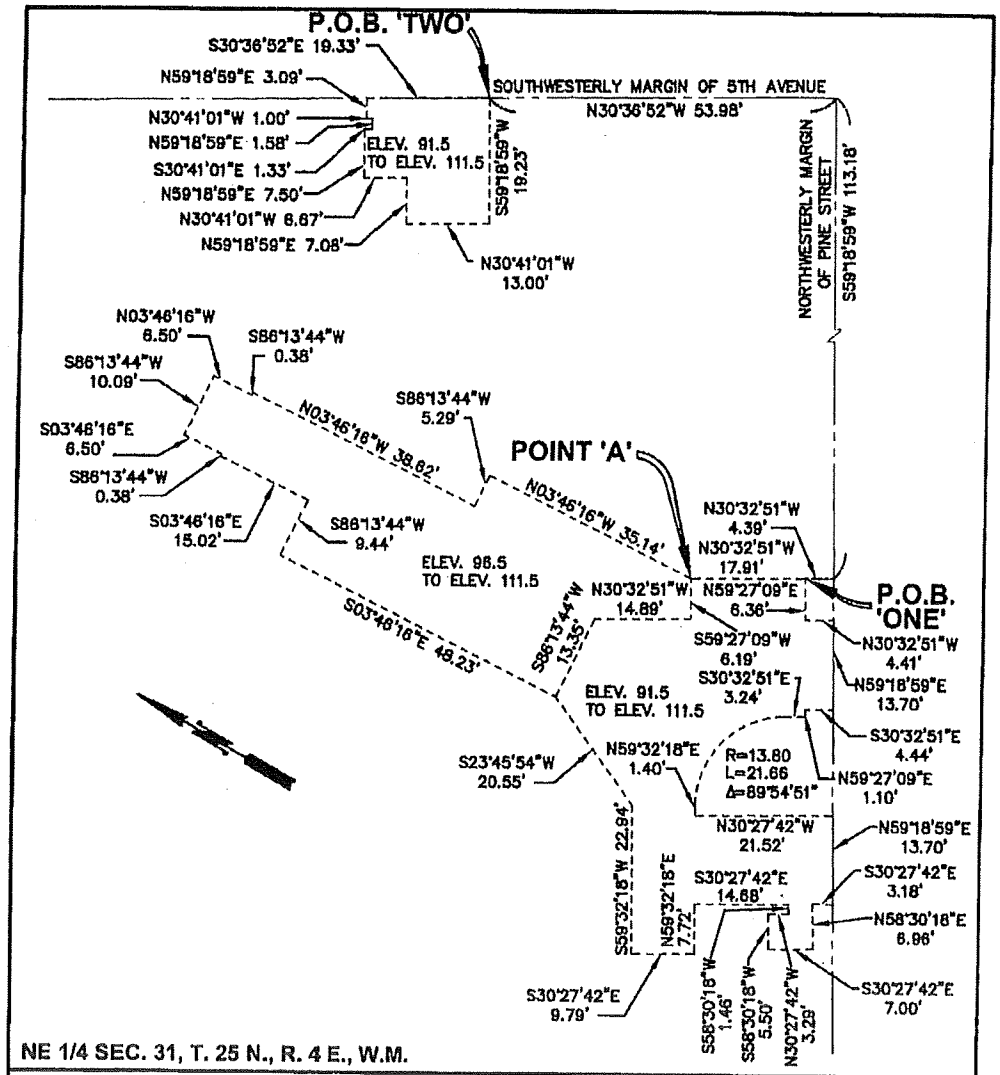
I certify that I know or have satisfactory evidence that Robert Nellams appeared before me and signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Director of the Seattle Center Department of THE CITY OF SEATTLE, a municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 18th day of Sept, 2014

Diane D Woods
Notary Public in and for the State of Washington
Residing at Spokane
My appointment expires: 7-25-15

DIANE D. WOODS
NOTARY PUBLIC
COMMISSION EXPIRES
07-25-15
STATE OF WASHINGTON

Exhibit A



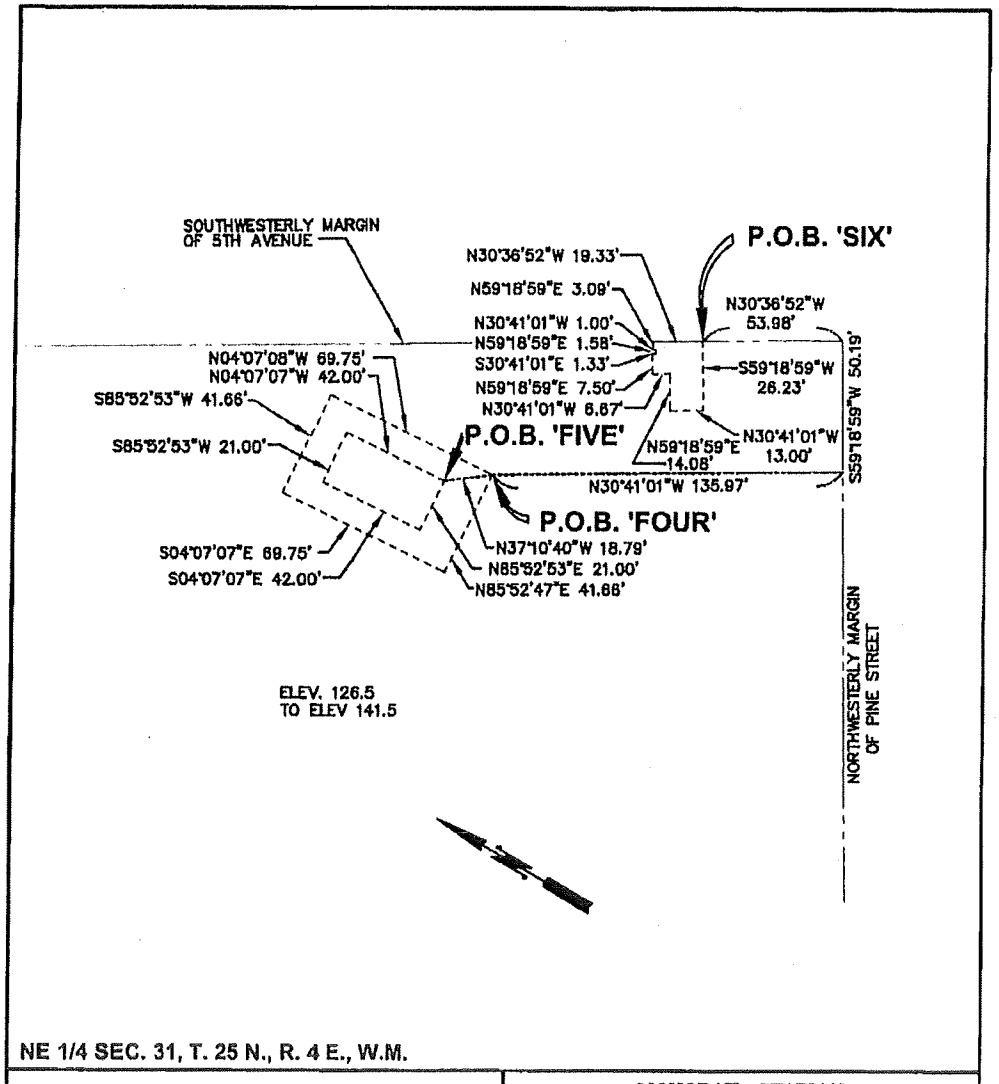
Signature
Surveying & Mapping, PLLC
15541 26th Avenue NE
Shoreline, Wa. 98155

SSM

TRANSIT STATION
ACCESS EASEMENT EXHIBIT
METRO LEVEL

WESTLAKE CENTER
SEATTLE, WA.

DWN. BY	DATE	JOB NO.
DPH	8/15/2013	13028
CHKD. BY	SCALE	SHEET
PLS	1" = 20'	1 OF 2



NE 1/4 SEC. 31, T. 25 N., R. 4 E., W.M.

Signature
Surveying & Mapping, PLLC
15541 26th Avenue NE
Shoreline, Wa. 98155

SSM

MONORAIL STATION
ACCESS EASEMENT EXHIBIT
LEVEL 2

WESTLAKE CENTER
SEATTLE, WA.

DWN. BY	DATE	JOB NO.
DPH	8/29/2013	13028
CHKD. BY	SCALE	SHEET
PLS	1" = 50'	2 OF 3

WESTLAKE CENTER TRANSIT STATION ACCESS EASEMENT
LEGAL DESCRIPTION

THAT PORTION OF LOTS 1, 11, AND 12 (INCLUDING THE PORTIONS THEREOF LYING WITHIN VACATED WESTLAKE AVENUE AS VACATED BY CITY OF SEATTLE ORDINANCE NUMBER 113078, AND VACATED ALLEY AS VACATED BY CITY OF SEATTLE ORDINANCE NUMBER 113078), BLOCK 1, ADDITION TO THE TOWN OF SEATTLE AS LAID OFF BY THE HEIRS OF SARAH A. BELL, DECEASED (COMMONLY KNOWN AS HEIRS OF SARAH A. BELL'S ADDITION TO THE TOWN OF SEATTLE), ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 103, IN KING COUNTY, WASHINGTON, SITUATE IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHWESTERLY MARGIN OF 5TH AVENUE AND THE NORTHWESTERLY MARGIN OF PINE STREET AS ESTABLISHED UNDER ORDINANCE NUMBER 14500 OF THE CITY OF SEATTLE;
THENCE SOUTH 59°18'59" WEST 113.18 FEET;
THENCE NORTH 30°32'51" WEST 4.39 FEET TO **POINT OF BEGINNING 'ONE'**;
THENCE NORTH 30°32'51" WEST 17.91 FEET TO A POINT HEREINAFTER REFERED TO AS **POINT 'A'**;
THENCE SOUTH 59°27'09" WEST 6.19 FEET;
THENCE NORTH 30°32'51" WEST 14.89 FEET;
THENCE SOUTH 86°13'44" WEST 13.35 FEET;
THENCE SOUTH 23°45'54" WEST 20.55 FEET;
THENCE SOUTH 59°32'18" WEST 22.94 FEET;
THENCE SOUTH 30°27'42" EAST 9.79 FEET;
THENCE NORTH 59°32'18" EAST 7.72 FEET;
THENCE SOUTH 30°27'42" EAST 14.68 FEET;
THENCE SOUTH 58°30'18" WEST 1.46 FEET;
THENCE NORTH 30°27'42" WEST 3.29 FEET;
THENCE SOUTH 58°30'18" WEST 5.50 FEET;
THENCE SOUTH 30°27'42" EAST 7.00 FEET;
THENCE NORTH58°30'18" EAST 6.96 FEET;
THENCE SOUTH 30°27'42" EAST 3.18 FEET;
THENCE NORTH 59°18'59" EAST 13.70 FEET;
THENCE NORTH 30°27'42" WEST 21.52 FEET;
THENCE NORTH 59°32'18" EAST 1.40 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 13.80 FEET;
THENCE WESTERLY ALONG THE ARC OF SAID CURVE PASSING THROUGH A CENTRAL ANGLE OF 89°54'51" A DISTANCE OF 21.66 FEET;
THENCE SOUTH 30°32'51" EAST 3.24 FEET;
THENCE NORTH 59°27'09" EAST 1.10 FEET;
THENCE SOUTH 30°32'51" EAST 4.44 FEET;

THENCE NORTH 59°18'59" EAST 13.70 FEET;
THENCE NORTH 30°32'51" WEST 4.41 FEET;
THENCE NORTH 59°27'09" EAST 6.36 FEET TO **POINT OF BEGINNING 'ONE'**.

TOGETHER WITH THE FOLLOWING:

COMMENCING AT THE INTERSECTION OF THE SOUTHWESTERLY MARGIN OF 5TH AVENUE AND THE NORTHWESTERLY MARGIN OF PINE STREET AS ESTABLISHED UNDER ORDINANCE NUMBER 14500 OF THE CITY OF SEATTLE;
THENCE NORTH 30°36'52" WEST 53.98 FEET TO **POINT OF BEGINNING 'TWO'**;
THENCE SOUTH 59°18'59" WEST 19.23 FEET;
THENCE NORTH 30°41'01" WEST 13.00 FEET;
THENCE NORTH 59°18'59" EAST 7.08 FEET;
THENCE NORTH 30°41'01" WEST 6.67 FEET;
THENCE NORTH 59°18'59" EAST 7.50 FEET;
THENCE SOUTH 30°41'01" EAST 1.33 FEET;
THENCE NORTH 59°18'59" EAST 1.58 FEET;
THENCE NORTH 30°41'01" WEST 1.00 FEET;
THENCE NORTH 59°18'59" EAST 3.09 FEET;
THENCE SOUTH 30°36'52" EAST 19.33 FEET TO **POINT OF BEGINNING 'TWO'**.

LYING BETWEEN ELEVATION 91.5 AND 111.5 FEET, CITY OF SEATTLE VERTICAL DATUM.

CONTAINING 1,846 SQUARE FEET MORE OR LESS.

TOGETHER WITH THE FOLLOWING:

BEGINNING AT THE HEREINBEFORE MENTIONED **POINT 'A'**;
THENCE NORTH 3°46'16" WEST 35.14 FEET;
THENCE SOUTH 86°13'44" WEST 5.29 FEET;
THENCE NORTH 3°46'16" WEST 38.62 FEET;
THENCE SOUTH 86°13'44" WEST 0.38 FEET;
THENCE NORTH 3°46'16" WEST 6.50 FEET;
THENCE SOUTH 86°13'44" WEST 10.09 FEET;
THENCE SOUTH 3°46'16" EAST 6.50 FEET;
THENCE SOUTH 86°13'44" WEST 0.38 FEET;
THENCE SOUTH 3°46'16" EAST 15.02 FEET;
THENCE SOUTH 86°13'44" WEST 9.44 FEET;
THENCE SOUTH 3°46'16" EAST 48.23 FEET;
THENCE NORTH 86°13'44" EAST 13.35 FEET;
THENCE SOUTH 30°32'51" EAST 14.89 FEET;
THENCE NORTH 59°27'09" EAST 6.19 FEET TO POINT 'A' AND THE TERMINUS OF THIS DESCRIPTION.

LYING BETWEEN ELEVATION 96.5 AND 111.5 FEET, CITY OF SEATTLE VERTICAL DATUM.

CONTAINING 1,448 SQUARE FEET MORE OR LESS.

TOGETHER WITH THE FOLLOWING:

COMMENCING AT THE INTERSECTION OF THE SOUTHWESTERLY MARGIN OF 5TH AVENUE AND THE NORTHWESTERLY MARGIN OF PINE STREET AS ESTABLISHED UNDER ORDINANCE NUMBER 14500 OF THE CITY OF SEATTLE;
THENCE SOUTH 59°18'59" WEST 132.76 FEET TO **POINT OF BEGINNING 'THREE'**;
THENCE NORTH 04°07'07" WEST 46.51 FEET;
THENCE NORTH 85°52'53" EAST 1.71 FEET;
THENCE NORTH 04°07'07" WEST 12.61 FEET;
THENCE NORTH 85°52'53" EAST 0.69 FEET;
THENCE NORTH 04°07'07" WEST 19.37 FEET;
THENCE SOUTH 85°52'53" WEST 20.65 FEET;
THENCE NORTH 04°07'07" WEST 9.12 FEET;
THENCE NORTH 86°13'44" EAST 9.85 FEET;
THENCE NORTH 04°07'07" WEST 21.52 FEET;
THENCE NORTH 86°13'44" EAST 10.79 FEET;
THENCE NORTH 04°07'07" WEST 50.41 FEET;
THENCE NORTH 35°28'10" EAST 16.70 FEET;
THENCE NORTH 04°07'07" WEST 68.25 FEET;
THENCE NORTH 85°52'53" EAST 3.42 FEET;
THENCE NORTH 04°07'07" WEST 24.01 FEET;
THENCE NORTH 30°36'52" WEST 30.63 FEET;
THENCE SOUTH 04°07'07" EAST 65.93 FEET;
THENCE NORTH 85°52'53" EAST 17.50 FEET;
THENCE NORTH 04°07'07" WEST 101.04 FEET;
THENCE NORTH 30°36'52" WEST 30.00 FEET;
THENCE SOUTH 03°53'08" EAST 69.88 FEET;
THENCE SOUTH 85°52'53" WEST 1.33 FEET;
THENCE SOUTH 04°07'07" EAST 11.00 FEET;
THENCE NORTH 85°52'53" EAST 1.09 FEET;
THENCE SOUTH 04°07'07" EAST 56.50 FEET TO A POINT HEREINAFTER REFERED TO AS **POINT 'B'**;
THENCE CONTINUING SOUTH 04°07'07" EAST 157.42 FEET;
THENCE NORTH 85°52'53" EAST 11.60 FEET;
THENCE SOUTH 04°07'07" EAST 12.61 FEET;
THENCE NORTH 85°52'53" EAST 1.60 FEET;
THENCE SOUTH 04°07'07" EAST 54.22 FEET;
THENCE NORTH 59°18'59" EAST 17.24 FEET TO POINT OF BEGINNING 'THREE';

EXCEPT THE FOLLOWING;

COMMENCING AT THE HEREINBEFORE MENTIONED **POINT 'B'**;
THENCE NORTH 85°52'53" EAST 15.24 FEET TO **POINT OF BEGINNING 'FOUR'**;
THENCE CONTINUING NORTH 85°52'53" EAST 11.33 FEET;
THENCE SOUTH 04°07'07" EAST 31.94 FEET;
THENCE SOUTH 85°52'53" WEST 11.33 FEET;
THENCE NORTH 04°07'07" WEST 31.94 TO **POINT OF BEGINNING 'FOUR'**.

TOGETHER WITH THE FOLLOWING:

COMMENCING AT THE INTERSECTION OF THE SOUTHWESTERLY MARGIN OF 5TH AVENUE AND THE NORTHWESTERLY MARGIN OF PINE STREET AS ESTABLISHED UNDER ORDINANCE NUMBER 14500 OF THE CITY OF SEATTLE;
THENCE NORTH 30°36'52" WEST 53.98 FEET TO **POINT OF BEGINNING 'FIVE'**;
THENCE SOUTH 59°18'59" EAST 26.23 FEET;
THENCE NORTH 30°41'01" WEST 13.00 FEET;
THENCE NORTH 59°18'59" EAST 14.08 FEET;
THENCE NORTH 30°41'01" WEST 6.67 FEET;
THENCE NORTH 59°18'59" EAST 7.50 FEET;
THENCE SOUTH 30°41'01" EAST 1.33 FEET;
THENCE NORTH 59°18'59" EAST 1.58 FEET;
THENCE NORTH 30°41'01" WEST 1.00 FEET;
THENCE NORTH 59°18'59" EAST 3.09 FEET;
THENCE SOUTH 30°36'52" EAST 19.33 FEET TO **POINT OF BEGINNING 'FIVE'**.

LYING AT ELEVATION 111.5 FEET, CITY OF SEATTLE VERTICAL DATUM.

CONTAINING 8,717 SQUARE FEET MORE OR LESS.

Signature
Surveying & Mapping, PLLC SSM
"Professional & Accessible"

P.O. Box 55487· Shoreline, WA 98155
206-947-4975 phone · 206-364-3032 fax
info@signaturepllc.com

AMENDMENT TO THE MONORAIL OPERATING
AND EASEMENT AGREEMENT SCOPE OF WORK

THIS AGREEMENT made as of the 28th day of January, 1988, by and between the City of Seattle, a municipal corporation of the State of Washington, having its office at the Seattle Municipal Building, 600 Fourth Avenue, in The City of Seattle, Washington (hereinafter called "City") and Westlake Center Associates Limited Partnership (hereinafter "Associates"), a Washington limited partnership whose general partners are Rouse-Seattle, Inc., a Maryland corporation and Westlake 7 Building Partners Limited Partnership, a Washington limited partnership.

WHEREAS, the City and Associates have entered into that certain Monorail Operating and Easement Agreement dated February 13, 1987 (herein "Agreement") wherein, among other things, the parties have entered into an agreement respecting construction, maintenance, use and operation of certain elevated monorail tracks and monorail platform; and

WHEREAS, it is in the mutual benefit of the City and Associates to amend the Agreement to modify the scope of work provided for in Exhibit "C" of the Agreement, respecting the construction of a portion of the elevated monorail tracks.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

NOW, THEREFORE, in consideration of the promises and mutual obligations herein undertaken and other good and valuable consideration, the City and Associates agree as follows:

1. Exhibit "C" of the Agreement, providing for the design standards and scope of work applicable to the construction of the Monorail station and Monorail Platform is amended to include the following work to be performed by the Associates ("Associate Work") pursuant to the following conditions. To the extent there is a conflict between other provisions in the Agreement and the conditions pertaining to the additional scope of work contained in this amendment, the conditions in this amendment shall apply to the additional scope of work.

2. Associates Work shall include construction of the Guideway Piers and Vaults in that certain Contract known as the Monorail Contract 4. The description, conditions and requirements of said construction work are contained in Exhibit "1" to this Agreement, attached and incorporated by reference herein, which includes the following:

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

(1) WASH DOT/APWA 1984 Standard Specifications, 1986 City of Seattle Supplement, as modified and amended by the 1986 City of Seattle Standard Plans, Special Provisions which is itself modified and amended by Special Provisions, Guideway Pier and Vaults Contract 4, as amended by Addendum No. 1;

(2) Bid Document Drawings;

(3) Bid Item List Contract 4 (City of Seattle);

(4) Bid Item response list from Howard S. Wright Company;

(5) Letter from Philip M. Frederick to Darrell Vange, dated October 27, 1987; and

(6) City of Seattle Utilities Permit No. 48148.

(7) Exhibits A & B1 and B2

3. Special Provisions, Section 2-08.9, LIQUIDATED DAMAGES (FAILURE TO COMPLETE WORK ON TIME) as stated Exhibit 1 shall not apply, but rather the following shall apply when there is a failure to complete work on time.

Time is of the essence in this Amendment, and Associates shall use all reasonable efforts to meet their contract milestones (as provided in Exhibit 1, item No. 1-a in the attached Addendum No. 1 to Special Provisions, Piers and Vaults, Contract No. (4)) in a timely fashion. Except as provided herein, Associates shall not be responsible to pay

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

damages to the City or its agents for failing to complete their work on time, whether the delay to complete such work is due to the City's own negligence, the fault of third parties or otherwise. If there is a failure to complete work on time which is due to the negligence of Associates, their contractor, subcontractor or agents, and if as a direct result of said negligence there are delays to other contractors and/or subcontractors for the work and contract milestones of related projects (as identified in said Item No. 1-b of Addendum No. (1)), then Associates shall be responsible for the reasonable construction cost increases which may become necessary in order to reasonably achieve the contract milestones of said related projects and shall further, to the extent permitted by law, indemnify, save harmless and defend the City from any claims and liability from said other contractors and/or subcontractors resulting from such delay. Each party shall be responsible proportionately for their own negligent acts, errors and omissions resulting in such delays and claims and liability arising therefrom as governed by the laws of the State of Washington.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

4. Cost overruns and cost savings shall be treated as provided in that certain Contract for Sale ~~and Redevelopment~~ executed August 17, 1984, amended October 5, 1984 and further amended February 5, 1987 by and between the City and Associates (hereinafter the "Contract") and Section 4 of the Agreement. The work undertaken pursuant to this Agreement shall be for a price of Five Hundred Twenty Five Thousand Nine Hundred and Thirty Dollars ($525,930.00) including general conditions, fees, state sales tax, B&O and Contingency but excluding bid item 32, Limestone Veneer identified in Exhibit 1, Bid Item List by the City of Seattle dated June 25, 1987, which work is eliminated as part of the work under this Agreement. For any change orders or for any work in excess of the price, (hereinafter referred to as cost overruns), Associates shall prior to authorizing or undertaking such work first seek approval from the City in writing by submitting its request which shall include a detailed written proposal, to:

Seattle Engineering Department
Monorail Project Manager
Attention: Phil Frederick
Room 600 - Municipal Building
Seattle, WA 98104

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

For any change orders or any cost overruns involving less than Five Thousand Dollars ($5,000), the City shall have three (3) working days from the date of the Associates' written request to notify Associates of its acceptance or rejection or shall be deemed to have given its acceptance to the work. For change orders or cost overruns in excess of Five Thousand Dollars ($5,000.00), the City shall have ten (10) calendar days from the date of the Associates' written request to notify Associates of its acceptance or rejection; failure to so notify Associates shall make the City solely responsible for the additional costs attributable to the delay, but in no event shall silence or inaction on the part of the City be considered "deemed acceptance" so as to authorize the work.

The City shall be responsible for cost overruns (whether due to change orders or otherwise) except to the extent such cost overruns are due to the ~~fault or~~ negligence of Associates, their contractors, subcontractors or agents, in which event Associates shall be proportionally responsible for such additional costs and cost overruns. In any event

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Associates, after following the notification and approval procedure as previously stated, shall thereupon provide payment for the additional costs or cost overruns and shall be reimbursed for the City's share of the costs in the manner provided for in Section 4 of the Agreement.

5. In the event that Associates are unable to complete construction of the work provided for in the Monorail Contract 4 within the time frame provided for, then, except to the extent provided for in paragraph 3 of this Amendment, the City shall not otherwise be relieved of its obligations to have the Monorail Station ready and open for business as provided for in Section 3 of the Agreement, nor shall it give rise to an extension of time for the City to meet its obligations as provided in Section 9(a)(vii) of the Agreement.

6. This Amendment to the Agreement is being executed by and on behalf of the City of Seattle by its Director of Community Development pursuant to Section 46 of that certain Contract for Sale of Property and Redevelopment executed August 17, 1984, as amended, and Section 38 of the Agreement.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

IN WITNESS WHEREOF, the City and Associates have executed this Agreement as of the day and year first hereinabove written.

ATTEST:

THE CITY OF SEATTLE

By: _____
Director, Department
of Community Development

WESTLAKE CENTER ASSOCIATES
LIMITED PARTNERSHIP

ATTEST:

By: Rouse-Seattle, Inc.
General Partner

_____

By: _____
Its VICE PRESIDENT

By: WESTLAKE 7 BUILDING PARTNERS
LIMITED PARTNERSHIP,
General Partner

ATTEST:

By: Koehler, McFadyen & Company,
General Partner

_____

By: _____
Its PRESIDENT

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

STATE OF WASHINGTON)
) ss.
COUNTY OF K I N G)

On this day personally appeared before me David Mosley to me known to be the Director, Dept of Community Development of the municipal corporation that executed the within and the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath stated that they are authorized to execute said instrument and that the seal affixed is the corporate seal of said municipal corporation.

WITNESS my hand and seal this 1st day of February, 1988.

Juanita E. Serrato
NOTARY PUBLIC in and for the State of Washington, residing at Seattle
My Commission expires 1-29-88

STATE OF WASHINGTON)
) ss.
COUNTY OF K I N G)

I hereby certify that on this 2nd day of February 1988, personally appeared before me Darrell M. Vaske and _____, to me known to be the Vice President and _____ respectively of Rouse-Seattle, Inc., a corporation executing the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said corporation as general partner of Westlake Center Associates Limited Partnership for the uses and purposes therein mentioned and on oath stated that they are authorized to execute said instrument.

WITNESS my hand and official seal this 2nd day of February, 1988.

Robin Bushnell
NOTARY PUBLIC in and for the State of Washington, residing at Seattle
My Commission expires 4-17-90

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

STATE OF WASHINGTON)
) ss.
COUNTY OF K I N G)

I hereby certify that on this 2nd day of February 1988, personally appeared before me Stephen K. Koehler ~~and~~ ~~, to~~ me known to be the President ~~and~~ respectively of Koehler, McFadyen & Company, a corporation executing the within and foregoing instrument as general partner of Westlake 7 Building Partners Limited Partnership and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath stated that they are authorized to execute said instrument.

WITNESS my hand and official seal this 2nd day of February, 1988.

Robin Bushnell
NOTARY PUBLIC in and for the State of Washington, residing at Seattle
My Commission expires 1-17-90

7:AGR3.

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ORIGINAL — Director of ...ing
WHITE — Permittee
YELLOW — Inspector
PINK — Inspector
PINK — Const. Clerk

THE CITY OF SEATTLE

DEPARTMENT OF ENGINEERING

DIRECTOR OF ENGINEERING

APPLICATION FOR UTILITIES PERMIT
TO THE BOARD OF PUBLIC WORKS

The undersigned (pursuant to Ordinance No. 90047) hereby applies for permission to

Construct monorail piers, vaults and ducts in 5th Avenue adjacent to Westlake Center in accordance with the Monorail Agreement; Letter dated 10/26/87, Frederick to Vange; and contract documents associated with Seattle Engineering Department Plan No. 782-163.

☐ Permittee to do restoration between curb and property line.
☒ Permittee to do full restoration of street right-of-way with full time inspection by Director of Engineering.
☐ Seattle Engineering Department to do restoration between curb and property line.

Permittee/Contractor Rouse-Seattle-Inc./ H. S. Wright, Inc. By [signature] Sr. project mgr. Date 11-25-87.

I recommend that this permit be granted, subject to the conditions set forth therein.

DIRECTOR OF ENGINEERING

Date December 7, 1987 By [signature]

WORK UNDER THIS PERMIT SHALL BEGIN WITHIN SIX MONTHS OF THE DATE OF THE PERMIT UNLESS OTHER ARRANGEMENTS ARE MADE, OTHERWISE PERMIT SHALL BE REVOKED.

PERMIT

THE ABOVE APPLICATION IS HEREBY GRANTED SUBJECT TO GRANTEE:

Complying with all City Ordinances and Board of Public Works regulations;
Notifying the Director of Engineering of the time the work will start, and when it will finish; XXXXXXXX XXXXXXXX
Notifying any utility or property owner subject to damage or inconvenience during performance of the work, and, grantee shall make all arrangements necessary for the protection of any such utility or owner interest;
Prosecuting the work with diligence and with due respect to all property, contracts, persons, rights and the interests and convenience of the public;
Saving the City harmless from any and all damages which may accrue to any person or property because of this installation or maintenance;
NOTIFYING THE UTILITIES OF THE WORK BY CALLING 1-800-424-5555 48 HOURS BEFORE DIGGING.
Complying with special conditions below and on back as noted:

(X) UNDERGROUND CONSTRUCTION ☐ CUSTOMER SERVICE ☐ AERIAL CONSTRUCTION

(X) CONDITION NO'S 1, 2, 4, 7, 8, 9

FAILURE TO GIVE NOTICE TO DIRECTOR OF ENGINEERING WILL RESULT IN THE ASSESSMENT OF A MINIMUM OF ONE HOUR INSPECTION TIME CHARGED AGAINST THE PERMITTEE.

Maintain a minimum of subject to spec lane(s) of vehicular traffic in each direction at all times.

Hours of Work: 6:00 a.m. to 7:00 p.m. subject to Section 1-08.11(1) in City Supplement

Board of Public Works

[signature] Chairman

[signature] Exec. Secretary

Date _____

_____ Director of Engineering

By _____

The undersigned accepts this permit and agrees to abide by the conditions thereof.

Permittee/Contractor _____ By _____ Date _____

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FILED FOR RECORD AT REQUEST OF
SAFECO TITLE INSURANCE COMPANY
2615 4th AVENUE, SEATTLE, WA 98121

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MONORAIL OPERATING AND EASEMENT AGREEMENT

by and between

WESTLAKE CENTER ASSOCIATES
LIMITED PARTNERSHIP

and

THE CITY OF SEATTLE

8702170365

SAFECO DL-453263

EXHIBIT

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MONORAIL OPERATING AND EASEMENT AGREEMENT

THIS AGREEMENT made as of the 13th day of February, 1987, by and between the City of Seattle, a municipal corporation of the State of Washington, having its office at the Seattle Municipal Building, 600 Fourth Avenue, in The City of Seattle, Washington (hereinafter called "City") and Westlake Center Associates Limited Partnership (hereinafter "Associates"), a Washington limited partnership whose general partners are Rouse-Seattle, Inc., a Maryland corporation and Westlake 7 Building Partners Limited Partnership, a Washington limited partnership.

W I T N E S S E T H:

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WHEREAS, pursuant to a Contract for Sale of Property dated August 17, 1984, as amended (the "Contract") between the City and Rouse-Seattle, Inc., predecessor in interest to Associates, the City has conveyed to Associates Lots 1, 3, 8, 9, 10, 11 and 12 located on Block 1 in the City of Seattle and Associates has acquired separately Lots 2 and 7 of Block 1 (the "Property" as more particularly described in Exhibit A attached hereto and made a part hereof); and

WHEREAS, pursuant to the Contract (the interest of Rouse-Seattle, Inc. therein having been assigned to Associates), Associates is to develop on the Property and certain adjacent property a mixed use office, retail and garage complex (the "Westlake Project"); and

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WHEREAS, pursuant to the Contract, Associates is to construct the Westlake Project so as to provide access through the Westlake Project and over and upon a platform located within the Westlake Project, constructed by Associates and designed to allow pedestrians to enter monorail trains operating on elevated tracks to be constructed by the City adjacent to Block 1 on the easterly side of the Westlake Project; and

WHEREAS, pursuant to the Contract, the City has agreed to construct and operate such elevated monorail tracks as part of the monorail system serving the City of Seattle and extending from Seattle Center to the Westlake Project; and

WHEREAS, the Contract provides for the City and Associates to enter into an agreement respecting construction, maintenance, use and operation of such elevated monorail tracks, monorail platform and associated pedestrian access, and respecting easements to be granted in order to preserve such pedestrian access; and

WHEREAS, the City and Associates have agreed as to such matters.

NOW, THEREFORE, in consideration of the promises and the mutual obligations herein undertaken and other good and valuable consideration, the City and Associates agree as follows:

Section 1. Definitions. In addition to the terms defined in the recitals of this Agreement, as used herein, the following terms have the following definition:

"Improvements" means the buildings and permanent improvements to be constructed by Associates on the property and certain

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adjacent property in accordance with the Contract and which will upon completion constitute the Westlake Project.

"Monorail System" means the elevated monorail public transit system owned and operated by the City and extending from Seattle Center to the Westlake Project and all equipment appurtenant thereto and necessary or appropriate for the operation of such public transit system, including but not limited to stations, terminals, trackage, trains and rolling stock and switching equipment.

"Monorail Station" means that portion of the Monorail System consisting of elevated monorail tracks constructed or to be constructed by the City pursuant to the Contract and this Agreement and located adjacent to Block 1 on the easterly side of the Westlake Project and generally in the location shown on the Site Plan attached hereto as Exhibit B and made a part hereof, together with all improvements and equipment necessary for the safe and proper use and operation of the Monorail Station, including without limitation pilings, supports, tracks and switching equipment, but not including the hereinafter defined Monorail Station Platform.

"Monorail Station Platform" means that portion of the Improvements constructed by Associates pursuant to the Contract and this Agreement consisting of a passenger terminal, including but not limited to a concrete platform, walls, ceilings, glass canopy, stairs, and an elevator located adjacent to the Monorail Station generally as shown on Exhibit B (but not constituting a

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exit of the Monorail Station), which will serve as an area through which passengers may enter upon or exit from the Monorail Station.

Section 2. Construction; Design Standards and Scope of Work. Attached hereto as Exhibit C are design standards and a scope of work applicable to the construction of the Monorail Station by the City and Monorail Station Platform by Associates. Associates shall complete bare building construction, finish work, lighting, signage and other improvements described in Exhibit C hereof respecting the Monorail Station Platform ("Associates' Work") in accordance with plans and specifications consistent with such design standards and scope of work (to the extent applicable to the Monorail Station Platform) and approved by the City, as part of the plans and specifications for construction of the Improvements, in the manner set forth in the Contract. The City shall construct the sliding ramps ("Ramps") which connect to and extend from the Monorail Station Platform and shall complete other improvements (including, without limitation, platform handrails, ticket issuing machines and kiosk interior) respecting the Monorail Station Platform ("City Work") and shall construct all portions of the Monorail System (including, without limitation, the Monorail Station) other than the Monorail Station Platform, and it shall construct its improvements respecting the Monorail Station Platform and the Monorail Station in accordance with plans and specifications consistent with such design standards and scope of work (to the extent applicable to the Monorail Station Platform and Monorail Station) and approved as to appearance by Associates.

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All such improvements of the City as are located within the Improvements shall be located upon the Monorail Station Platform except that the City may install ticket issuing machines, as approved by Associates, at the other locations. Associates shall submit its plans and specifications for the Monorail Station Platform to the City as part of its plans and specifications for the Improvements to be submitted pursuant to the Contract and within the time frames set forth in the Contract. The City shall use its reasonable efforts to submit its design development plans and specifications for its improvements to the Monorail Station Platform and for the Monorail Station to Associates on or prior to January 1, 1987, and to submit to Associates its construction plans and specifications for its improvements to the Monorail Station Platform and for the Monorail Station on or prior to March 1, 1987. Associates shall approve or disapprove the plans and specifications of the City within the time frames (i.e., 15 working days) applicable to the City's approval of Associates plans and specifications under the Contract, and such plans and specifications shall be deemed approved by Associates unless the City is notified to the contrary within 15 working days following submission. If Associates disapproves the plans and specifications of the City, Associates shall so notify the City in writing and state the specific reasons therefor. Following such notification, the City shall either resubmit corrected plans and specifications to Associates for approval or incorporate such corrections as are requested by Associates in the City's subsequent plans.

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The right of Associates and the City to disapprove plans and specifications respecting the Monorail Station and Monorail Station Platform shall be exercised in a reasonable fashion and limited to matters (1) which are not consistent developments of the design standards and scope of work set forth in Exhibit C or plans and specifications previously approved respecting the Monorail Station or Monorail Station Platform, as the case may be or (2) which are new and material architectural or design elements not depicted or described in Exhibit C or in previously approved plans and specifications. Any bona fide dispute as to whether disapproval of plans and specifications or any amendment or modification thereof is allowed hereunder shall be resolved by arbitration in the manner set forth in Section 10(D) of the Contract.

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Section 3. Completion of Construction: Construction Schedule. Associates shall use its reasonable efforts to complete base building construction of the Monorail Station Platform, as part of the Improvements, in accordance with the schedule for completion of the Improvements as set forth in the Contract. The City shall likewise use its reasonable efforts to complete construction of the Monorail System and Monorail Station in accordance with the Schedule set forth in the Contract. The parties intend that the Monorail System, Monorail Station and Monorail Station Platform shall be complete and operational so that the Monorail System will be open and available for passenger service to and from the Monorail Station Platform on the Scheduled Opening

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Date (as defined in the Contract). In addition, Associates shall use its reasonable efforts to complete its work respecting the Monorail Station Platform (excluding pedestrian access) sufficient to allow the City access to the Monorail Station Platform for construction and testing purposes pursuant to Section 9(b)(vii) hereof.

In the event the Monorail Station Platform and retail portions of the Improvements are open for business or ready to open for business (as defined in the Contract) on the Scheduled Opening Date but the Monorail Station is not open for business (as defined in the Contract), Associates shall have the rights set forth in the Contract, and exercise of such rights shall be without limitation of any other rights and remedies of Associates under the Contract resulting from the City's failure to comply with its obligations and undertakings set forth therein (including, without limitation, those respecting streetscaping and Westlake Park). In the event the Monorail Station is open for business or ready to open for business on the Scheduled Opening Date, and if the City shall have completed and fulfilled its other obligations and undertakings under the Contract to be completed and fulfilled by the Scheduled Opening Date, but the Monorail Station Platform and retail portions of the Improvements are not open or ready to open for business on the Scheduled Opening Date, the City shall have the rights set forth in the Contract, and exercise of such rights shall be without limitation of any other rights and remedies of

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the City under the Contract resulting from Associates' failure to comply with its obligations and undertakings set forth therein.

Under the Contract the City is obligated to incur overtime and premium costs, as necessary, in order to complete, among other things, the Monorail Station, on or prior to the Scheduled Opening Date. If the City incurs such overtime and premium costs and causes the Monorail Station and certain other obligations of the City to be complete and open for business or ready to open for business by the Scheduled Opening Date but the Monorail Station Platform and retail portions of the Improvements are not open for business by the Scheduled Opening Date, Associates shall under certain circumstances as set forth in and subject to the provisions of the Contract, reimburse the City for a portion of such overtime and premium costs.

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Section 4. Payment for Construction; Cost Savings. Associates shall bear the cost of the Associates' Work respecting the Monorail Station Platform (not including costs incurred by the City respecting the City Work), until such time as the total cost of such construction (excluding design and engineering cost) is equal to $2,051,000. The City shall bear the balance of all such construction cost, if any, respecting the Monorail Station Platform in excess of $2,051,000.

The City shall bear the entire cost of construction respecting the Monorail Station, all other aspects of the Monorail System and its improvements to the Monorail Station Platform.

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Associates shall advise the City in writing no later than April 1, 1987 as to the estimated cost for the Associates' Work, which estimate shall be based on an allocation of Associates' overall estimated construction costs or guaranteed maximum cost contract for the Improvements, allowances for additional work and contingencies. Associates shall provide the amount of the guaranteed maximum cost for the Associates' Work by June 1, 1987. Following execution of a contract covering Associates' Work (which may be included in Associates' contract for the Improvements), Associates shall not enter into change orders increasing either the estimated or guaranteed maximum cost of the Associates' Work by more than $5,000, based on estimates provided by contractors and other parties performing work, unless the City consents to the same. During construction of the Monorail Station Platform, Associates shall pay for the cost thereof as invoiced, and on the Opening Date Associates shall advise the City of the estimated cost of construction with respect thereto. Within sixty (60) days following the Opening Date and completion of the Monorail System, Monorail Station and Monorail Station Platform, Associates shall certify to the City the actual cost respecting the Associates' Work and, within 30 days following such certification, the City shall advise Associates in writing whether it agrees that such cost, as certified, has been incurred in accordance with the Contract and this Agreement. If the City shall fail so to advise Associates of such agreement within such 30 day period, it shall be deemed conclusively that the City has agreed to the certification. Any bona fide dispute as to such certification shall be

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resolved by arbitration pursuant to Section 28 of this Agreement. Within 30 days following agreement as to such cost certification by Associates, (i) the City shall pay to Associates the entire amount by which such cost of Associates' Work, as certified and approved, exceeds $2,051,000 or (ii) if such Associates' Work costs, as certified and approved, is less than $2,051,000, Associates shall pay the City the entire difference between $2,051,000 and the cost of such Associates' Work as certified and approved. Associates shall keep adequate books and records with respect to the cost of construction of the Monorail Station Platform and the City shall have the right to inspect such books and records at Associates' regular place of business, during Associates' regular business hours and upon reasonable prior notice to Associates, and provided that Associates shall not be required to maintain separate books and records regarding such costs.

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Section 5. Temporary Monorail Station. The City shall be responsible, at its sole cost, for the demolition of any existing Monorail System tracks, equipment and improvements, including, without limitation, all piers, columns and supporting elements appurtenant to those portions of the existing Monorail System. The City may elect to leave the footings of the old monorail station in place, in which event Associates shall remove such footings and include the cost thereof in the scope of Associates' Work. The City shall further be responsible, at its sole cost, for the construction and demolition of a temporary monorail

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station to serve the Monorail System during construction of the Monorail Station and Monorail Station Platform.

Section 6. Quality of Construction; Mechanic's Liens. All construction respecting the Monorail System, Monorail Station and Monorail Station Platform shall be performed in a good and workmanlike manner, and Associates and the City will coordinate their construction respecting the Monorail Station and Monorail Station Platform so as to facilitate their respective construction activities. The City recognizes and agrees that Section 20.46 of the Seattle Municipal Code does not apply to construction of the Monorail Station Platform. However, Associates agrees to seek to involve minorities and women in its construction of the Monorail Station Platform, as part of the Improvements (but not as a separate construction item) in the manner set forth in Section 42B of the Contract. The City and Associates hereby give notice that neither party hereto shall be responsible or liable for the work performed pursuant to this Agreement by or for the other party or for any materials furnished to or for the other party, nor shall either party hereto be subject to a lien upon its property for the cost of any labor, services or materials provided to the other party in the performance of the other party's obligations, or the exercise of its rights, under this Agreement. If, in connection with any work done or claimed to have been done by or on behalf of a party hereto, or in connection with any material supplied to such party, any mechanic's, laborer's or materialman's lien shall be filed against the property of the other party, such party, at

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its cost and expense, within thirty (30) days after notice of the filing of such lien, shall, upon the demand of the party against whose property the lien was filed, either (a) cause the same to be discharged of record, or (b) cause the same to be insured over to the satisfaction of the party demanding such discharge; provided that, in the event of a bona fide dispute as to the propriety of the lien and if the property of the liened party is not threatened with foreclosure to satisfy the lien or otherwise jeopardized by the lien, the responsible party shall not be required to discharge or insure over the lien so long as it provides the liened party with a bond (naming the liened party as an obligee) in form and amount reasonably satisfactory to the liened party (provided that the amount of such bond shall be at least equal to 125% of the amount claimed under the lien) and issued by a surety licensed to do business in the State of Washington and reasonably satisfactory to the liened party and sufficient in all respects to protect the liened party's interest in its property affected by the lien, and shall also defend, at its sole cost and expense, any action, suit or proceeding which may be brought for the enforcement of such lien, and shall pay any damages suffered or incurred therein by the liened party, and shall satisfy and discharge any judgments entered therein, and shall save the liened party harmless from any claims or damage therefrom.

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Section 7. Alterations. Nothing contained in this Agreement, including, without limitation, the easements hereinafter granted, shall be construed to limit or restrict Associates'

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rights or ability to alter, modify, demolish, rebuild or reconstruct all or portions of the Improvements; provided and for so long as the same shall be consistent with the applicable provisions of this Agreement with respect to the Monorail Station Platform, access to the Monorail Station (following completion of such alteration, modification, demolition, rebuilding or reconstruction) pursuant to the easements hereinafter granted, and otherwise be in accordance with any applicable provisions of the Contract. In the event Associates undertake to alter, modify, demolish, rebuild or reconstruct all or portions of the Improvements, the following conditions shall apply:

(a) Associates shall not close at the same time both the Interior Accessway and Exterior Accessway, except as described in Section 9 hereof or unless both Accessways are damaged or destroyed.

(b) If either Accessway is to be closed for seven (7) days or less, (i) Associates shall notify the City in writing at least thirty (30) days in advance; (ii) the City shall have the right to reasonably disapprove the scheduled closure dates by a demonstration of a significant scheduling conflict and written notice of such disapproval shall be delivered to Associates within five (5) days of the receipt of the Associates' notice; (iii) in the event of such disapproval, the City shall provide Associates with alternate closure dates, which dates shall be within thirty (30) days of the scheduled closure dates; and (iv) Associates

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shall pay for and place signage at both terminals of the Monorail System notifying the ridership about the Accessway closure.

(c) If either Accessway is to be closed for more than seven (7) days, (i) Associates shall notify the City in writing at least ninety (90) days in advance; (ii) the City shall have the right to reasonably disapprove the scheduled closure dates by a demonstration of a significant scheduling conflict and written notice of such disapproval shall be delivered to Associates within five (5) days of the receipt of the Associates' notice; (iii) Associates shall pay for and place signage at both terminals of the Monorail System notifying the ridership about the Accessway closure; and (iv) Associates shall compensate the City for any loss of income due to any ridership loss as a result of such Accessway closure, unless such closure is due to damage or destruction to the Accessway. Loss of income for this purpose shall be determined by multiplying the average number of riders from the prior three years during the same period of time as the closure by the current average ticket rate. The City shall send Associates an invoice for the loss of income so calculated within thirty (30) days of re-opening the Accessway and Associates shall tender payment within thirty (30) days of receiving the invoice.

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Section 8. Easements and Ramp Modifications.

(a) For the purpose of this Section the following will apply:

(i) A party granting an easement is called a "Grantor".

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(ii) A party to whom an easement is granted is called a "Grantee".

(iii) The word "in" with respect to an easement granted "in" a particular parcel or property means, as the context may require, "in", "to", "on", "over", "through", "upon", "across" and "under", or any one or more of the foregoing.

(iv) The grant of an easement by a Grantor shall bind and burden its property to the extent of its interest therein, which for purposes of the granting of any easement under this Agreement shall be deemed to be the servient estate, and any such grant shall survive the total or partial destruction of the subject matter of the easement and extend for such period as is hereinafter provided and shall run with the land.

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(v) The grant of an easement to a Grantee shall benefit the Grantee and its property (including, but not limited to, any leasehold, fee or real property interest of a Grantee), which property shall, for the purpose of this Agreement, be deemed to be a dominant estate without payment of any fee or other charge therefor.

(vi) Unless provided otherwise, all easements granted hereunder are irrevocable and non-exclusive and may be used in common by the Associates and the City and their successors and assigns, and by the tenants, subtenants, concessionaires, invitees and licensees of Associates, and by

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the City's invitees, employees, and contractors retained to repair the Monorail System, Monorail Station Platform and Exterior Accessway, and passengers utilizing the Monorail System.

(vii) All easements granted hereunder shall exist by virtue of this Agreement and the Exhibits hereto, without the necessity of confirmation by any other document and shall be binding upon each Grantor, its successors and assigns, for the benefit of each Grantee, its successors and assigns. Upon the termination or release of any easement (in whole or in part) in respect of all or any part of the property burdened thereby, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the request of any Grantor or Grantee, each other Grantor and Grantee will execute and acknowledge an appropriate document memorializing the existence (including the location and any conditions) or the termination or release (in whole or in part), as the case may be, of any easement.

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(b) Associates, as Grantor, hereby grants to the City, as Grantee, for the benefit of the Monorail Station, an easement in the Monorail Station Platform and those portions of the Improvements shown on Exhibit D as the Interior Accessway and Exterior Accessway (as the same may be actually constructed pursuant to this Agreement and the Contract) (collectively "Accessways") for the purpose of pedestrian access between the

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Improvements and Monorail Station, in accordance with the purpose for which such Accessways are designed and subject to the provisions of Section 9 below. In addition, the City shall have the right of access to the vault and electrical switches through the Improvements relating to the operation of the Monorail System, Monorail Station Platform and Exterior Accessway.

(c) The City shall not modify, redesign or replace the Monorail Station Platform ramps or install any other system of pedestrian access between the Improvements and the Monorail Station without the written consent of Associates.

Section 9. Restrictions Respecting Easement Areas. The areas burdened by the easements granted pursuant to Section 8 above are hereinafter referred to as the "Easement Areas". Each of the parties hereto will take such action as may be reasonable under the circumstances to regulate the Easement Areas in accordance with those uses and purposes for which the Easement Areas are intended, and neither of the parties shall authorize the use of the same by anyone other than those persons to whom the easements are granted under Section 8. Notwithstanding the foregoing, nothing herein shall be construed to provide less rights of use than those which now or in the future shall be required under local, state and federal law.

(a) Unless required by law, no person shall be permitted to do any of the following in or about any part of the Easement Areas without the consent of both of the parties:

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(i) (A) With respect to the Accessways, parade, rally, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of the Accessways or Monorail Station Platform by persons entitled to use the same, create a disturbance, attract attention or harass, disparage or be detrimental to the interests of any of the retail or business establishments within the Improvements; and (B) with respect to the Monorail Station Platform, parade, rally, patrol, picket, demonstrate or engage in any conduct that would tend to obstruct, hinder or impede the egress or ingress to the Monorail System or Accessway; or

(ii) Deface, damage or demolish any sign, light standard or fixtures, or other improvement on or within the Improvements or Monorail Station; or

(iii) Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind; or

(iv) Use any sound making device of any kind;

provided, that with respect to paragraphs (i) through (iv) above, neither of the parties hereto shall be deemed to be in default hereunder so long as such party uses reasonable effort to halt or prevent any such act or acts from taking place on property under its control. To the extent permitted by law, each of the parties shall have the right to deny access to or exclude from the Easement Areas any person engaged in the commission of any such act or

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acts or to restrain any such person from coming upon the Easement Areas. In so acting, such party shall not be deemed to be the agent of any other party, unless expressly authorized or directed in writing to do so by such other party.

(b) In addition to the foregoing restrictions, the parties' use of the Easement Areas shall be subject to and in accordance with the following:

(i) The City covenants and agrees that the Monorail System shall be in operation and open to public ridership and shall keep the Monorail Station open for pedestrian access between the Westlake Project and the Monorail Station during the hours that the retail portions of the Westlake Project are open or from 10:00 a.m. to 9:00 p.m. Monday through Saturday and 12:00 noon to 5:00 p.m. on Sunday, whichever is shorter.

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(ii) The Monorail Station Platform and Exterior Accessway shall be open for pedestrian access one-half hour before and one-half hour after the regular operating hours of the Monorail System. Regular operating hours shall be provided in writing to the manager designated by Associates, but shall not exceed the time period from 6:00 a.m. to 1:00 a.m. each day. The initial regular operating hours are described in Exhibit E. Written notice of any change to the regular operating hours shall be delivered to the Associates' manager not less than thirty (30) days in advance of the effective date of any such change. Any change in the regular

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operating hours whereby the Monorail System would commence operations earlier than 6:00 a.m. or terminate operations later than 1:00 a.m. shall be subject to approval by Associates which shall not be unreasonably withheld. If the Monorail System is operating beyond its regular operating hours as a result of special events or circumstances, the Exterior Accessway shall be open one-half hour before and one-half hour after such extended hours, provided that the City shall give Associates 24-hour advance written notice of such extended hours. Any day in which the Monorail System is not in operation, Associates may close the Monorail Station Platform and Exterior Accessway to pedestrian access, but not for access by the City or its agents at any time.

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(iii) Associates shall keep open the Interior Accessway and Queueing Area whenever the retail portions of the Westlake Project are open for business or at least from 10:00 a.m. to 7:00 p.m. Monday through Saturday and from 12:00 noon to 5:00 p.m. on Sunday. At all other times, Associates shall have the right to close access to the Interior Accessway and Queueing Area. If the Monorail System is in operation as a result of special events or circumstances beyond the regular operating hours, Associates shall keep open the Interior Accessway and Queueing Area upon written notice from the City not less than 24 hours in advance. In such event, the City shall pay Associates an hourly fee of $50.00 per hour for each hour of extended

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operation by the City. Such fee shall be increased annually pursuant to an adjustment based on the Consumer Price Index, which adjustment is more fully describd in Exhibit F. In addition, such fee may be increased by Associates, with the approval of the City, which approval shall not be unreasonably withheld, due to extra security costs as may be required by experience and over time. If the Interior Accessway and Queueing Area is open for such special events or circumstances, Associates may restrict access over any other portions of the Westlake Project.

(iv) In addition to and notwithstanding the foregoing, emergency access through the Easement Area shall be available on a 24-hour basis.

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(v) Associates shall be entitled to install doors, security grilles and fire doors and/or fire protection devices on the Easement Areas in order to secure its property at times during which the Easement Areas are not open for pedestrian access and to protect its property against damage by fire.

(vi) In addition and notwithstanding anything contained in this Agreement to the contrary, Associates may temporarily deny access to and upon the Easement Area to the extent reasonably necessary for security purposes, fire or other emergencies.

(vii) The City shall be entitled to access to the Monorail Station Platform for construction and testing

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purposes at least five (5) months prior to the Scheduled Opening Date, provided Associates shall have completed its work respecting the Monorail Station Platform sufficient to allow such access safely and conveniently (and Associates shall use its reasonable efforts so to complete its work at least five (5) months prior to the Scheduled Opening Date). Associates shall give the City written notice at least sixty (60) days in advance of the commencement date of such five-month period. In the event Associates are unable to provide access on the designated commencement date, the time during such five-month period in which the City is to complete its obligations shall be extended for the same time period as the delay in providing access. During the construction of the Monorail Station and Monorail Station Platform, Associates shall, with assistance from the City, apply in a timely fashion for street use or other applicable permits in order to obtain temporary access to the sidewalk and street below the Monorail Station for the purpose of constructing piers, columns, vaults and other improvements in connection with the completion of the Monorail Station or Monorail Station Platform. Associates' application for such permits shall be considered and decided upon expeditiously by the City's Board of Public Works ("Board"), although nothing provided herein shall be construed to obligate the Board to issue such permits. If the Board does not issue such permits in a timely manner, Associates shall have the right to remove the

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work requiring such access from the scope of Associates' Work. Otherwise, neither party shall be entitled to access over those portions of the Easement Areas located on or above the property of the other until such time as work respecting the Easement Areas (including, in any event, the Monorail Station and Monorail Station Platform) shall have been completed pursuant to this Agreement and the retail portions of the Westlake Project are first open for business.

(viii) Associates shall not place any furniture, equipment or fixtures within or upon the Monorail Station Platform except as shown on the plans and specifications approved hereunder, or as provided under the Contract, or otherwise without the consent of the City. Associates shall have the right to merchandise the Monorail Station Platform and to grant concessions thereon; provided, however, that Associates shall remove such concessions upon the City's request pursuant to the same conditions described in Section 9(b)(ix). The City shall have the right to approve the location of any concessions by Associates on the Monorail Station Platform to the extent that the location of such concessions may adversely affect the use of the Platform as a public transportation terminal. The City shall have no right to grant any concessions on the Monorail Station Platform.

(ix) Associates will not place any permanent furniture, fixtures or equipment within that portion of the Accessways designated on Exhibit D as "Queueing Area"

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consisting of approximately 1,700 square feet, except to the extent shown on such plans and specifications or as otherwise agreed by the City. Associates may merchandise the Queueing Area pursuant to movable kiosks, pushcarts, displays and other movable merchandizing fixtures and means, which shall not take more than 500 square feet of space in the Queueing Area, and Associates may install movable furniture, seating, fixtures and equipment within the Queueing Area, all without the consent of the City; provided, however, that upon not less than twenty-four (24) hours written notice from the City (which notice shall state that the City reasonably expects that the Queueing Area must be cleared in order to accommodate an anticipated high ridership volume and state the duration of time during which the City requires that the Queueing Area be cleared), Associates shall remove such movable furniture, equipment and the like from the Queueing Area for so long as the same shall be necessary to accommodate the City's request. At the end of the fifth (5th) year following the Opening Date, the City and Associates shall endeavor in good faith to agree as to whether the Queueing Area has been reasonably necessary for the efficient and orderly use of the Monorail Station. If the Queueing Area has not been so necessary on a consistent basis, the parties shall either remove the Queueing Area from the Easement Area or modify and/or reduce the size of the Queueing Area to accommodate the reasonably necessary needs of the Monorail

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Station (but the Queueing Area shall in no event be relocated or expanded without the consent of Associates, in its sole and absolute discretion), and the parties shall execute such release of easement or other document or instrument reasonably requested by either party to effectuate the same. Any bona fide dispute respecting whether the Queueing Area is reasonably necessary, on a consistent basis, for the efficient and orderly use of the Monorail Station shall be determined at the sole and absolute discretion of the City; provided that the City shall reasonably demonstrate to Associates the reasonable necessity of the Queueing Area.

(x) Provided that the Interior Accessway to the Monorail Station Platform shall include the main vertical accessway through the retail portions of the Westlake Project, Associates may, from time to time, reconfigure and/or relocate those portions of the Accessways (but not the Monorail Station Platform), in which event the easements created under this Agreement in and over the Accessways shall apply to and encumber the same, as reconfigured and/or relocated, but shall not apply to any portion of the Improvements no longer used as Accessways, and provided that Associates shall not reconfigure or relocate the Exterior Accessway or Queueing Area without the prior written consent of the City (which consent shall not be unreasonably withheld).

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(xi) Associates reserve the right to close off those portions of the Easement Areas for the installation of utilities or improvements or for the repair or restoration of its property; provided, however, that before closing off any part of the Easement Areas as provided above, Associates shall give written notice to the City, pursuant to Section 7, of its intention to do so and shall coordinate its closing with the activities of the City so as to minimize interference with the operation of the Monorail System.

Section 10. Associates' Use and Operating Covenant. Commencing on the date on which the retail portions of the Westlake Project are first open for business and continuing for so much of the Term of this Agreement as the City shall be complying with its obligations hereunder, and subject to discontinuances of use due to damage or destruction of all or portions of the Westlake Project or condemnation, and provided compliance is not rendered impossible by unavoidable delay, by action or inaction of the City or by persons or events over which Associates has no control, Associates shall keep the Interior Accessway in good, clean operating condition and repair, generally in accordance with the maintenance standards attached hereto as Exhibit C, and shall at its cost and expense make all needed repairs thereto and shall restore the same and all systems, facilities or equipment therein as often as the same shall be worn out, damaged or obsolete. Any dispute as to compliance with the provisions of this Section 10

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shall be resolved by arbitration in accordance with the provisions of Section 28.

Section 11. Use and Operating Covenant of the City.

(a) Commencing on the date on which the retail portions of the Westlake Project are first open for business and continuing for so much of the Term of this Agreement as Associates shall be complying with its obligations hereunder, and subject to discontinuances of use due to damage or destruction of all or portions of the improvements of the City respecting the Monorail System (including, without limitation, the Monorail Station) or condemnation, and provided compliance is not rendered impossible by unavoidable delay by action or inaction of Associates or by persons or events over which it has no control, the City shall continuously manage and operate the Monorail System (including, without limitation, the Monorail Station and all fixtures, equipment and/or systems installed by the City upon or within the Monorail Station Platform, Accessways and/or Improvements) as a first-class, clean, safe and efficient public transportation system with appurtenant systems and facilities. Without limiting the generality of the foregoing, commencing on the date on which the retail portions of the Westlake Project are first open for business, and continuing during the Term of this Agreement, subject to the provisions set forth above, the City shall keep the Monorail System, the Monorail Station, and all such fixtures, equipment and/or systems installed by the City upon or within the Monorail Station Platform, Accessways and/or Improvements in good,

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clean operating condition and repair, and shall at its cost and expense make all needed repairs thereto and shall restore the same and all systems, facilities or equipment therein as often as the same shall be worn out, damaged or obsolete.

(b) The City shall, at its sole cost, be responsible for all operation, cleaning, repair and maintenance of equipment and/or systems installed by the City, within or upon the Monorail Station Platform, Accessways, Ramps or Improvements.

(c) The City covenants and agrees to manage and operate the Monorail System with the Monorail Station in accordance with this Section 11 hereof for not less than twenty (20) years after the Opening Date. Notwithstanding any other provision herein to the contrary, if the City defaults under this covenant, the damages to be paid to Associates shall be determined in accordance with Section 18(b). The City may sell, transfer, or convey any of its rights, title or interests in and to the Monorail System (including its current management rights) to any governmental entity without the Associates' consent, but shall not sell, transfer or convey any of its rights, title or interests in and to the Monorail System (including its current management rights) to any non-governmental entity without the written consent of Associates, which shall not be unreasonably withheld.

(d) The City shall not extend, expand or substantially alter the Monorail System in any manner which would increase on a consistent basis above the peak base ridership volume passenger use of the Monorail Platform and/or Accessways without the prior

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written consent of Associates. For purposes of this provision, the peak base ridership volume is 6,000 passengers per hour. Any dispute as to compliance with the provisions of this Section 11 shall be resolved by arbitration in accordance with the provisions of Section 28.

Section 12. Maintenance, Security and Utilities.

(a) The City shall be responsible at all times for providing security services to and securing the Monorail Station Platform, Ramps and Exterior Accessway. Associates shall be responsible at all times for providing security services to and securing the Interior Accessway. Associates shall have the right to protest the insufficiency of security for the Platform and Exterior Accessways and the City shall have the same right with respect to the Interior Accessway. Upon the occurrence of such protest, the City or Associates, in cooperation with the other party, shall promptly and reasonably endeavor to develop and implement a revised schedule and standard of security services as may be reasonably necessary under the circumstances.

(b) The City shall be responsible before and after the regular operating hours of the retail portions of the Westlake Project for providing overnight and routine cleaning and maintenance services and all other maintenance services not otherwise the responsibility of Associates for the Monorail Station Platform, Ramps and Exterior Accessway. Such routine cleaning and maintenance services shall be in accordance with the schedule and standards for such services described in Exhibit H. The regular

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operating hours of the retail portion of the Westlake Project for the purposes of this Section shall be at a minimum 10:00 a.m. to 7:00 p.m. Monday through Saturday, and 12:00 noon to 5:00 p.m. on Sunday. During the regular operating hours of the retail portions of the Westlake Project, Associates shall be responsible for providing routine spot cleaning and maintenance services for the Monorail Station Platform and Exterior Accessway in accordance with the schedule and standards for such services described in Exhibit I. If either party fails to provide their respective required cleaning and maintenance services described in this Section for the Monorail Station Platform and Exterior Accessway, the other party shall so notify the responsible party for such failure. If after 24 hours, the responsible party has not corrected the default, the other party may provide such required maintenance services at the expense of the defaulting responsible party until such time as the responsible party provides the required level of service. Any dispute arising in connection with this Section 12 shall be resolved by arbitration in accordance with the provisions of Section 28.

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(c) The City shall be responsible for all capital improvements, replacements and major maintenance on the Monorail Station Platform, Ramps and Exterior Accessway. Prior to the commencement of any such capital improvement, replacement or maintenance, the City shall first obtain the written approval of Associates, which shall not be unreasonably withheld. All replacements of such capital improvements, equipment or fixtures

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shall be, at least, of equivalent quality as the original. The City shall maintain the Monorail Station Platform and Exterior Accessway, including without limitation, any mechanical systems thereon, in a first-class and sound operating condition, except the routine repair and maintenance of the elevator in the Exterior Accessway. The City shall provide Associates in advance with a copy of the annual capital budget which covers the Monorail System and Monorail Station. Any dispute under this Section shall be resolved by arbitration as provided in Section 28.

(d) The City shall pay all utility charges in connection with the Monorail Station Platform, Ramps and Exterior Accessway. Associates shall pay all utility charges in connection with the Interior Accessway.

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Section 13. Payment. In order to reimburse in part Associates' costs in providing cleaning and maintenance services, in keeping open the Interior Accessway and in providing other non-routine services more fully described in Exhibit I, for the Monorail Station Platform and Exterior Accessway, the City shall pay Associates $2,583.33 per month. Such amount shall be increased annually pursuant to an adjustment based on the Consumer Price Index, which adjustment is more fully described in Exhibit F. Such amount may, also, be increased, with the approval of the City, in accordance with insurance premium increases directly related to claims experience on the Monorail Station Platform, Ramps and Exterior Accessway.

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Section 14. Liability Insurance.

(a) Upon the execution of this Agreement, Associates shall obtain and file with the City evidence of its policy of comprehensive general liability insurance. Such policy shall specifically name the City as an additional insured thereunder. This insurance shall be maintained by Associates during the term of this Agreement.

(b) The City is not insured by any independent insurance carrier and is self-insured at this time. Should the City, at its sole discretion, obtain any applicable independent insurance coverage on the Monorail Station and Platform, then the City agrees that it shall notify Associates immediately in writing and shall specifically name Associates as an additional insured thereunder. The parties recognize that under current law, including Article VIII, Section 6 of the Constitution of the State of Washington and RCW 39.36.020, 6.04.140 and 6.04.150, there is a limit upon the amount of public indebtedness which may be incurred by the City, upon which Associates have relied, as a material part of this Agreement, and agreed to the City's self-insurance as it impacts the Monorail Station and Platform. Should there be a material change to the current law in this respect during the period of time in which the City remains self-insured, then upon reasonable notice from either party, the parties shall endeavor in good faith to renegotiate this section of the Agreement.

Section 15. General Contractor's Insurance. Each party shall require that their respective general contractors,

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performing any of the construction work contemplated under this Agreement, name Associates and the City as additional insureds on the general contractors' policies of comprehensive general liability insurance. Each general contractor shall, at its own expense, obtain and shall file with Associates and the City appropriate evidence in the form of a Certificate of Insurance of a policy of comprehensive general liability insurance (including contractual and automobile coverages). Such Certificates are subject to approval by Associates and the City as to insurer, form and coverage. Such policies shall provide minimum limits of $1,000,000 combined single limit per occurrence and annual aggregate with no deductible amounts. Associates and the City shall be given thirty (30) days prior written notice of any material change, cancellation, expiration or non-renewal of each such policy.

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Section 16. Indemnity. To the extent permitted by law, the City shall indemnify, save harmless, and defend Associates from all claims and liability due either to the negligent acts, errors or omissions of the City, its agents and employees, or from anyone arising on or within the area of the Monorail System, Monorail Station Platform, Ramps or Exterior Accessway, except to the extent such claims and liability relate to cleaning and maintenance services provided by Associates pursuant to Section 12 in such areas. In the same manner, Associates shall indemnify, save harmless and defend the City from all claims and liability due either to the negligent acts, errors or omissions of Associates,

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its tenants, subtenants, agents and employees, or from anyone arising on or within the Interior Accessway. Each party shall be responsible proportionately for their own negligent acts, errors or omissions and claims and liability arising therefrom as governed by the laws of the State of Washington. Each party shall bear its own defense costs, including attorneys' fees, statutory and other costs for defending a claim.

Section 17. Damage and Destruction. In the event of the destruction of or damage to any portion of the property of either party hereto located upon or adjacent to Block 1 (the Improvements in the case of Associates and the Monorail Station in the case of the City), and if such party elects to rebuild, restore or repair the same (it being understood that, pursuant to the Contract Associates may be obligated to rebuild the Improvements or portions thereof), such party shall promptly rebuild, restore and repair the same, or cause such rebuilding, restoration and repair, in a good and workmanlike manner. Any such rebuilding, restoration and repair shall include:

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(a) In the case of damage to or destruction of any portion of the property of Associates, and at the option of the City, the rebuilding, restoration and repair (as necessary) of the Monorail Station Platform and such portions of the Easement Areas as are located upon or above the Westlake Property to as good a condition, to the same general appearance, and on the same level or levels as existed prior to such damage or destruction; and

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(b) In the case of damage to or destruction of the Monorail System, and at the option of Associates, the rebuilding, restoration and repair (as necessary) of the Monorail System and Monorail Station to the same general quality, performance and operation standards, and appearance and in the same level or levels as existed prior to such damage or destruction.

Section 18. Election Not to Rebuild.

(a) Following completion of construction of the Westlake Project and continuing until the Termination Date, provided the Monorail System and Monorail Station are in operation in accordance with this Agreement and the City is otherwise in compliance with its obligations hereunder, and subject to the rights, if any, of the City under the Contract, any Mortgagees or other third parties, Associates may, at its sole option, within a reasonable period of time, elect not to rebuild or restore the Improvements (including, but not limited to the Monorail Station Platform), in which event the following shall occur:

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(i) Associates shall grant the City the right to build, at the City's sole expense, a temporary monorail station platform with an accessway to the sidewalk on Associates' property in substantially the same space occupied by the Monorail Station Platform and Exterior Accessway. The City shall promptly remove, at the City's sole expense, such temporary platform and accessway upon the request of Associates when Associates commence construction on the Property.

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(ii) The access easement granted to the City in Section 8 shall continue in accordance with this Agreement.

(iii) Associates and the City shall negotiate in good faith the terms of a new operating agreement for the Monorail System, if Associates elect to re-develop the Property.

(iv) The City shall waive all damages and claims against Associates in connection with any interruption of Monorail System service.

(v) Associates shall clear away any ruins resulting from damage or destruction.

(b) Following completion of construction of the Westlake Project and continuing until the termination date, provided the Westlake Project is in operation in accordance with this Agreement and Associates are otherwise in compliance with its obligations hereunder, the City may, at its sole discretion, within a reasonable period of time, elect not to rebuild or restore the Monorail Station or System, in which event the City shall undertake the following:

(i) During the initial twenty (20) years of this Agreement, the City shall pay Associates an amount equal to $2,051,000 less $102,550 for every year after the first year of this Agreement until the year the Monorail System suffers such damage or destruction.

(ii) The City shall remove all fixtures, systems and equipment relating to the operation of the Monorail System, Monorail Station, Ramps, and Monorail Station Platform from the

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Monorail Station Platform, Exterior Accessway and Interior Accessway.

(c) If any portion of the Improvements, including the Easement Areas, and the Monorail System or Station are damaged or destroyed at the same time, either party may elect not to rebuild or restore, respectively, the Improvements or the Monorail System or Station. Each party shall waive any damages or claims against the other party in connection with the damage or destruction, at the same time, of the Improvements and Monorail System or Station. If the City elects to rebuild or restore the Monorail Station and Associates does not elect to rebuild or restore the Improvements, then Associates shall perform the undertakings described in Section 18(a). If the Associates elect to rebuild or restore the Improvements and the City does not elect to rebuild or restore the Monorail Station, then the City shall perform the undertakings described in Section 18(b).

Section 19. Mortgages. At any time and from time to time during the Term of this Agreement, Associates may assign or encumber its interest in this Agreement by way of a Mortgage or Mortgages containing such terms and provisions as Associates shall, in its sole discretion, deem fit and proper (but subject to the provisions, as applicable, of the Contract), and no Mortgagee of Associates shall be bound by the provisions of this Agreement as a result of any such Mortgage. Notwithstanding the foregoing, following completion of construction of the Improvements should any such Mortgagee of Associates otherwise succeed to the interest

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of Associates in this Agreement pursuant to foreclosure, assignment or deed in lieu of foreclosure, such Mortgagee, and any party who acquires Associates' interest in this Agreement through such Mortgagee shall be bound by the provisions of this Agreement; provided, however, that a Mortgagee of Associates which succeeds to the interest of Associates in this Agreement and the Improvements pursuant to foreclosure, assignment or deed in lieu of foreclosure prior to completion of the Improvements shall only be required to complete construction of the Improvements (including, without limitation, the Monorail Station Platform and Easement Areas located on the Westlake Property) to the extent required under the Contract.

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As used herein the term "Mortgage" means any one or more mortgages, deeds of trust, deeds to secure debt, loan deeds, trust indentures, owner's interest in a sale-leaseback, lessor's interest in a lease-sublease back, security agreements or any similar security or title retention device, including without limitation any leasehold mortgage, which shall, from time to time, create a lien upon the estate of any Associates in property and which shall be security for one or more notes, bonds or other evidences of indebtedness issued by Associates. The term "Mortgagee" means the holder of a Mortgage or the lender in whose favor the Mortgage was created, together with its successor, assignee or designee selected by the Mortgagee to take title to the property encumbered by the Mortgage upon foreclosure or assignment or deed in lieu of foreclosure.

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Section 20. Release Upon Transfer. If at any time, either party shall sell, assign, transfer or convey the entirety of its interest in the property which is the subject of this Agreement, other than by the execution of a Mortgage, such party shall be relieved of all further liability hereunder accruing from and after the date of transfer. Such party shall, however, as a condition of such transfer, cause the transferee expressly to assume and be bound by all the terms, covenants and conditions in this Agreement contained and to be performed on the part of the transferring party.

Section 21. Rights of Self-Help.

(a) If any party (the "Defaulting Party") fails to perform any of the provisions, covenants or conditions of this Agreement on its part to be performed (including, without limitation, the making of any payment which the Defaulting Party has agreed herein to make) at the time and in the manner herein provided for the performance thereof, or if any provision, covenant or condition in this Agreement requires the diligent pursuit of a conduct or a course of work and if the Defaulting Party shall fail to pursue it diligently, then, in addition to any other remedies at law or in equity or as otherwise provided in this Agreement, the other Party (the "Non-Defaulting Party") may, upon 24 hour notice with respect to physical security devices on the Monorail Station Platform or Exterior Accessway or securing the access between the Monorail Station Platform and the Interior Accessway, or to cleaning and maintenance services described in

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Section 12, or upon reasonable notice not to exceed sixty (60) days with respect to matters involving a material visual impact on equipment, fixtures or other improvements installed by Associates on the Monorail Station Platform or Exterior Accessway, or involving public safety or unsafe conditions, or upon such other notice as may be specifically provided herein, cure or prosecute the curing of such default and all reasonable expense incurred in connection therewith, including legal fees, together with interest thereon at the Default Rate shall promptly be paid by the Defaulting Party to the Non-Defaulting Party effecting such cure. Neither party shall have the right to enter upon the property of the other party, except the Easement Areas, or to operate or cause the operation of the property of such other party in order to undertake any such cure.

(b) In addition, with respect to the events described herein, Associates may deny access to the property of Associates, including the Easement Areas, after Associates have notified the City in writing not less than thirty (30) days in advance. Such denial of access shall continue during the period of any default by the City in its obligations hereunder until such time as the default is cured (including such time as any amounts owed to Associates by the City shall have been paid in full, with interest thereon at the Default Rate from the time the amounts became due) and shall only occur upon the happening of the following events:

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(i) Failure by the City to satisfy promptly any judgment rendered against the City or against Associates, if Associates is protected by the City's indemnity in Section 16;

(ii) Failure by the City to comply promptly with any arbitral award or decision rendered pursuant to Section 28; or

(iii) Failure by the City to pay promptly the obligations described in Section 13 and 9(b)(iii), in which event, the denial of access is limited to the Interior Accessway.

(c) The term "Default Rate" means the annual rate of interest equal to the lesser of (i) the rate of interest announced from time to time by The Chase Manhattan Bank (National Association) (or some other bank agreed upon by the Parties) for short term loans to large businesses having the highest credit standing or (ii) the highest rate of interest allowed by law.

Section 22. Duration of Rights. The rights given by either party to the other to act as a Non-Defaulting Party under Section 21 shall endure until the Termination Date, provided that if and to the extent that any right or obligation of any party under this Agreement endures beyond such Termination Date, the rights provided in this Agreement shall likewise endure. Nothing in this Agreement shall act to terminate or limit any right of any Party to receive payment of any amount accrued at or before the Termination Date until it has been paid in full.

Section 23. No Termination and Re-negotiation Rights.

(a) The parties expressly agree that any provision of law or equity to the contrary notwithstanding, in the event of any

default hereunder, such default shall not give rise to a right to terminate this Agreement, and the parties expressly understand and agree that this Agreement shall continue in effect through its Term, notwithstanding any default by any party.

(b) On the twentieth (20th) and fortieth (40th) anniversary of the date of this Agreement, either party may request the other party to re-negotiate the financial terms of this Agreement in order to reflect any changed circumstances. Each party shall negotiate in good faith and shall reasonably take into account any changed circumstances.

Section 24. Remedies Not Exclusive. The remedies provided for in this Agreement are not the sole remedies of a party and shall not be construed to be, by way of limitation, the only remedies available to the parties, but in addition either party shall be entitled to all remedies available in law or equity for breach by the other party.

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Section 25. Rights of Mortgagees. The City agrees to accept performance and compliance by any Associates' Mortgagee of and with any term, covenant, agreement, provision or limitation on the part of Associates to be kept, observed or performed by the Associates under this Agreement. Without limiting the generality of the foregoing, in the event Associates shall be a Defaulting Party under this Agreement, the City shall not exercise its rights or remedies provided in Section 21 unless it shall first give to each of the Associates' Mortgagees whose name and address shall have been provided to the City pursuant to Section 29 notice of

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the event or events giving rise to Associates' default hereunder and stating the City's intention to exercise its remedies hereunder on a date specified in such notice. Notwithstanding such notice, the City shall not exercise its remedies hereunder if (i) such default by the Associates can be cured by the payment of a fixed monetary amount and within thirty (30) days after the date on which such notice is given, such Mortgagee shall make such payment or (ii) such default can be cured with the exercise of reasonable diligence by such Mortgagee, and such Mortgagee, within sixty (60) days after the date such notice is given, commences such proceedings (including, without limitation, the filing of a petition for the appointment of a receiver) as it may deem necessary to succeed to Associates interest under this Agreement and thereafter diligently pursues the curing of such default. Upon request, the City will enter into an agreement with any Mortgagee of Associates granting to the Mortgagee the rights set forth in this Section 25. This Agreement shall not be modified, amended, surrendered, cancelled or wholly terminated by Associates, nor shall any waiver of Associates' rights hereunder be effective, without the written consent of such Associates' Mortgagees whose name and address shall have been furnished to the City pursuant to Section 29.

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Section 26. Termination Date.

(a) This Agreement shall remain in full force and effect and binding upon each party hereto and its property to the extent herein provided until the occurrence of the Termination

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Date. On the date of the first to occur of the following events (the "Termination Date"), this Agreement shall terminate in its entirety:

(i) The fiftieth (50th) anniversary of the date of this Agreement, except as provided in Section 26(c);

(ii) Upon the condemnation of all or substantially all of the Improvements (provided that such termination shall not be effective until such time as title to the condemned property vests in the condemning authority and the City (if not the condemning authority) shall be entitled to claim compensation from the condemning authority on account of its lost easements or easement rights hereunder) or the destruction of all or substantially all of the Improvements not followed by commencement of restoration within one (1) year;

(iii) Upon the unanimous consent of the City, Associates and Associates' Mortgagees;

(iv) At the option of Associates and following sixty (60) days written notice to the City, at such time as operation of the Monorail System shall be discontinued for reasons other than those necessary for the repair and maintenance of the Monorail System for a continuous period in excess of sixty (60) days or for any non-consecutive sixty (60) days total in any calendar year; or

(v) At the option of the City and following sixty (60) days written notice to the Associates, at such time as operation of the retail portions of the Westlake Project shall be

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discontinued, for reasons other than those necessary for the repair, maintenance or renovation of the Improvements, for a continuous period in excess of twenty-four (24) months.

(b) On the Termination Date each party shall be released from each covenant, provision and condition to be performed by it under this Agreement (including, without limitation, those respecting easements), which is not by its terms, to extend beyond or survive the Termination Date (except that the parties shall not be released from any liability incurred prior to the Termination Date). Upon the request of a party, both parties shall sign and exchange an instrument in recordable form evidencing the termination of this Agreement.

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(c) Provided the Monorail System and Monorail Station are in operation in accordance with this Agreement and the City is otherwise in compliance with its obligations hereunder, on the fiftieth (50th) anniversary of the date of this Agreement, either party may request the other party to re-negotiate the terms of this Agreement. Each party shall negotiate in good faith. If the parties are unable to reach agreement on the new terms of the Agreement within two (2) years of the fiftieth (50th) anniversary date, such disputed terms shall be submitted to arbitration as provided in Section 28. In any event, the City shall retain, at its sole and absolute discretion, the right to an access easement on the Property to operate the Monorail Station; provided that, any calculation of any arbitral award or decision shall disregard the City's right to retain such an access easement. During the

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time the parties continue to negotiate in good faith or the arbitration process is in operation, the terms of this Agreement as of the fiftieth (50th) anniversary date shall continue with full force and effect.

Section 27. Compliance with Laws. At all times during the Term, the parties shall comply with all laws then in effect respecting the performance of their respective obligations and the exercise of the respective rights hereunder.

Section 28. Arbitration.

(a) If a dispute shall arise between the parties, and if, pursuant to any express provision of this Agreement, such dispute is to be resolved by arbitration, then any such dispute shall be resolved by arbitration. Except to the extent expressly provided otherwise herein, any such arbitration shall be in accordance with the commercial arbitration rules of the American Arbitration Association then obtaining and shall commence within thirty days of the date arbitration was invoked.

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(b) The arbitrators shall be sworn faithfully and fairly to determine the question(s) at issue, and shall afford each party a hearing and the right to submit evidence, with the privilege of cross-examination on the question(s) at issue, and shall, with all possible speed, make their determination in writing, and shall give the parties notice of such determination. Any Mortgagee of Associates shall be entitled to participate fully in such hearing. All fees and costs of any such arbitration shall be paid as provided in the commercial arbitration rules of the

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American Arbitration Association or as determined by the arbitrators. Each arbitrator shall be independent of any affiliation or interest with either of the parties and shall be experienced in the development and operation of high quality, mixed-use real estate projects and public transportation systems. In any proceeding conducted pursuant to this Section, the award of the arbitrators shall be final and binding and enforceable in any court of competent jurisdiction.

(c) Except the arbitration described in Section 26(c), if either party reasonably and in good faith believes that an arbitral award or decision of a dispute would involve damages in excess of $25,000, then such dispute shall not be subject to arbitration. Once the parties submit a dispute to arbitration, the arbitral award or decision shall be final, binding and enforceable, regardless of the amount of any damages.

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Section 29. Notices. Every notice, demand, consent, approval or other communication which either party is required or desires to give or make or communicate upon or to the other party shall be in writing and shall be sent by mailing the same by registered mail or certified mail, postage prepaid, return receipt requested, as follows:

IF TO THE CITY: Director of Seattle Center
Seattle Center
305 Harrison Street
Seattle, Washington 98109

or to such other address or addresses as the City shall from time to time and at any time designate by notice to Association.

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IF TO ASSOCIATES: Westlake Center Associates
Limited Partnership
Associates-Seattle, Inc.,
General Partner
c/o The Rouse Company
10275 Little Patuxent Parkway
Columbia, Maryland 21044
Attention: General Counsel

or to such other address or addresses as Associates shall from time to time and at any time designate by notice to the City.

Every notice, demand, request, or other communication sent in the manner aforesaid shall be deemed to have been given, made or communicated, as the case may be, and shall be effective on the second business day after the same has been deposited, registered or certified, properly addressed as aforesaid, postage prepaid, in the United States mail, except that any notice, demand, request, or other communication to a party (but not to any Mortgagee) may be personally delivered, and in such event shall be deemed to have been given on the date the same shall have been personally delivered to the officer or representative of the Party (as identified above) to whom such notice, demand, request or other communication is addressed. Each party shall designate an officer or representative to receive such personal notice.

Either party may require, at any time, that additional copies of any notice, be sent to such person(s), not, as to each notice, in excess of three (3) copies at any one time, as shall from time to time be designated in any notice from such party as to such requirement.

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Section 30. Section Headings. The section headings in this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

Section 31. Successors. Subject to the other provisions of this Agreement, all of the terms, covenants, obligations and conditions of this Agreement shall inure to the benefit of and shall bind as the case may be, the parties hereto, and their respective heirs, executors, administrators, legal representatives, successors and assigns.

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Section 32. Real Estate Commissions. Each of the parties represents and warrants unto the other that there are no commissions, charges or other compensation due any broker, agent or finder with respect to this Agreement or the negotiations thereof, and each of the parties covenants and agrees with the other that if either party hereto utilizes an agent, broker, or finder, the party so using an agent, broker or finder or incurring such commissions, charges, fees or similar expenses will pay, hold harmless and indemnify the other party from and against all claims, costs, expenses or liability (including, without limitation, the cost of counsel fees in connection therewith) for any such compensation, commissions, charges or other compensation claimed by any such broker, agent or finder.

Section 33. Estoppel Certificates. Each party agrees that at any time and from time to time at reasonable intervals, within

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thirty (30) days after written request by the other party, such party will execute, acknowledge and deliver to the requesting party or to any prospective Mortgagee of Associates, assignee or tenant or subtenant, a certificate stating (i) that the Agreement is unmodified and in force and effect (or if there have been modifications, that this Agreement is in force and effect as modified, and identifying the modification agreements, or if the Agreement is not in force and effect the certificate shall so state; (ii) whether or not there is any existing default by either party under the Agreement with respect to which a notice of default has been served, and if there is any such default, specifying the nature and extent thereof; and (iii) whether or not, to the best knowledge of the certifying party, there are any setoffs, defenses or counterclaims against enforcement of the obligations of the certifying party hereunder.

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Section 34. No Waiver. No failure of either party hereto to exercise any power given it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

Section 35. Partial Invalidity. In any term, covenant, or condition of this Agreement or the application thereof to any person, party or circumstances shall, to any extent, be illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity or becomes

unenforceable because of judicial construction, the remaining terms, covenants and conditions of this Agreement, or the application of such term, covenant or condition to persons, parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 36. Rights Cumulative. All rights, powers and privileges conferred herein upon the parties shall be cumulative but not restrictive to those given by law.

Section 37. Waivers and Consents. One or more waivers of any covenant, term or condition of this Agreement by either party shall not be construed as a waiver of subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waiver or render unnecessary consent to or approval of any subsequent similar act. The Director of the Seattle Department of Community Development is authorized to act for and on behalf of the City in connection with this Agreement and in determining Associates' compliance with its obligations hereunder, and to extend the time for the performance of any of Associates' obligations under this Agreement, and to grant any consents, waivers or approvals on behalf of the City hereunder, except where action by another party is required by law or this Agreement.

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Section 38. Entire Agreement. This Agreement and all the Exhibits attached hereto contains the entire agreement of the parties with respect to the subject matter hereof, and no representations or agreements, oral or otherwise, between the Parties not embodied herein, attached hereto or hereinabove referenced shall be of any force and effect. Any additions or amendments to this Agreement subsequent hereto shall be of no force and effect unless in writing and signed by the parties hereto.

Section 39. Transfer: Binding Nature. Except as provided in Section 19 (Mortgages), any sale, transfer or conveyance of any property subject to this Agreement or any part thereof or interest therein shall be subject to this Agreement, and it shall be deemed construed without further agreement that the purchaser or grantee at any such sale, transfer or conveyance has assumed and agreed to carry out any and all obligations of the transferor in this Agreement so long as such purchaser or grantee shall be the owner of the interest so transferred. As a condition of any such sale, transfer or conveyance, the transferee thereunder shall execute such instruments as the other party may reasonably require confirming the foregoing, and each party represents and covenants that it will not make any such sale, transfer or conveyance except in accordance with the provisions of this Section. In addition to and without limiting the generality of the foregoing, the City shall not, without the prior written consent by Associates, sell, transfer or convey the Monorail System or Monorail Station or its

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interest therein, or any part thereof, to any party which is not a governmental entity or agency.

Section 40. No Partnership. Nothing herein and no subsequent acts of any of the parties shall be deemed or construed by the parties hereto, nor by any third party, as creating or authorizing the creation of the relationship of principal and agent or of partnership or joint venture between the parties, or any of them.

Section 41. Expense of Obligations. Where this Agreement imposes obligations or responsibilities upon either party hereto, such obligations and responsibilities shall be performed at the expense of such party responsible therefore except where otherwise specifically provided.

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Section 42. Unavoidable Delay. Except as otherwise expressly provided, each party hereto shall be excused from performing any of its obligations or undertakings provided in this Agreement (except any of its obligations to pay any sums of money under the applicable provisions hereof) for so long as the performance of such obligation is prevented or delayed by any cause which is beyond the reasonable control of such party, including but not limited to such of the following as may be beyond the reasonable control of such party: Act of God; fire; earthquake; flood; explosion; action of the elements; war; invasion; insurrection; riot; mob violence; sabotage; malicious mischief; inability to procure or general shortage or rationing or regulation of labor, equipment, facilities, sources of energy

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(including, without limitation, electricity, gas, gasoline or steam), materials or supplies in the open market; failure of transportation; strikes; lockouts; action of labor unions; condemnation; requisition; order of government or civil or military or naval authorities; litigation involving a party or others relating to zoning, subdivision, or other governmental action or inaction; or any other cause, whether similar or dissimilar to the foregoing, not reasonably within the control of such party; provided, however, that neither party shall be entitled to relief under this Section by reason of any event unless such party shall have given the other party notice of such event and the nature of such event within a reasonable time after the occurrence of such event, and unless such party uses reasonable prudence and diligence (without unreasonable expense) to avoid or mitigate the delay caused by such event.

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Section 43. Recordation. This Agreement or a memorandum hereof shall be recorded among the land records of the City of Seattle. All costs and expenses of such recording shall be shared equally by the parties.

Section 44. Number and Gender. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and vice versa, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include corporation, firm or association.

Section 45. No Third Party Rights. Nothing in this Agreement shall be construed to permit anyone other than the parties

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hereto and Associates' Mortgagees, and their successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third-party beneficiary or otherwise) on account of any nonperformance hereunder.

Section 46. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Washington and venue shall lie with the appropriate court in King County.

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IN WITNESS WHEREOF, the parties have caused these presents to be executed, acknowledged and delivered in form and manner proper and sufficient in law, all as of the day and year first above written.

ATTEST:

THE CITY OF SEATTLE

By: _____
Director, Seattle Center

By: _____
Director, Department of Community Development

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WESTLAKE CENTER ASSOCIATES
LIMITED PARTNERSHIP

ATTEST:

By: Rouse-Seattle, Inc., General Partner

By: _____
Its Vice President

By: WESTLAKE 7 BUILDING PARTNERS LIMITED PARTNERSHIP, General Partner

ATTEST:

By: Koehler, McFadyen & Company, General Partner

By: _____
Its President

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STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this day personally appeared before me Ewen C. Dingwall David Mosely and — Committee, to me known to be the Seattle Director and Director respectively of the municipal corporation that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath stated that they are authorized to execute said instrument and that the seal affixed is the corporate seal of said municipal corporation.

WITNESS my hand and seal this 10th day of February, 1987.

[signature]
NOTARY PUBLIC in and for the State of Washington, residing at [illegible]
Commission expires [illegible]

8702170365

STATE OF Washington
) ss
COUNTY OF King)

I hereby certify that on this 12th day of February 1987 personally appeared before me Darrell M Vange and _____, to me known to be the Vice President and _____ respectively of Rouse-Seattle, Inc., a corporation executing the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said corporation as general partner of Westlake Center Associates Limited Partnership for the uses and purposes therein mentioned and on oath stated that they are authorized to execute said instrument.

WITNESS my hand and official seal this 12th day of February, 1987

[signature]
NOTARY PUBLIC in and for the State of Wash., residing at [illegible]
Commission expires [illegible]

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STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I hereby certify that on this 12th day of February 1987, personally appeared before me Stephen K. Koehler and _____, to me known to be the President and _____ respectively of Koehler, McFadyen & Company, a corporation executing the within and foregoing instrument as general partner of Westlake 7 Building Partners Limited Partnership and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath stated that they are authorized to execute said instrument.

WITNESS my hand and official seal this 12th day of Feb, 1987.

Robin Bushnell
NOTARY PUBLIC in and for the State of Washington residing at Seattle
Commission expires 1/1/90

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EXHIBIT A

LOT 1: Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington:

EXCEPT the Westerly 12 feet of said lot condemned by the City of Seattle in King County Superior Court cause No. 52280, for the widening of Fourth Avenue, as provided by Ordinance 13778 of said City; and

EXCEPT the Southeasterly 7 feet of said lot condemned by the City of Seattle, in King County Superior Court Cause No. 57057 for the widening of Pine Street as provided by Ordinance 14500 of said City; and

EXCEPT the portion of said lot condemned by the City of Seattle, in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance No. 7733 of said City.

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LOT 2: Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington:

EXCEPT the Westerly 12 feet of said Lot 2 condemned by the City of Seattle in King County Superior Court Cause No. 52280 for the widening of Fourth Avenue, as provided by Ordinance 13778 of said City:

AND EXCEPT that portion of said Lot 2 condemned by the City of Seattle in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance No. 7733 of said City.

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LOT 3: Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to the plat recorded in Volume 1 of Plats, page 103, in King County, Washington;

EXCEPT the Westerly 12 feet of said Lot condemned by the City of Seattle in King County Superior Court Cause No. 52280 for the widening of Fourth Avenue, as provided by Ordinance 13776 of said City.

LOT 7: Block 1, ADDITION TO THE TOWN OF SEATTLE, as laid off by the heirs of Sarah A. Bell, deceased (commonly known as Heirs of SARAH A. BELL'S ADDITION TO THE CITY OF SEATTLE), according to the plat recorded in Volume 1 of Plats, page 103, in King County, Washington;

EXCEPT the portion of said Lots condemned by the City of Seattle in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance No. 7733 of said City.

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LOTS 8, 9, 10 and 11: All those portions of Lots 8, 9 10 and 11, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington; lying Westerly of the West line of Westlake Avenue, as condemned by the City of Seattle in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance 7733 of said City.

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LOTS 10, 11 and 12	Those portions of Lots 10, 11 and 12, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased, (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington, lying Easterly of the East line of Westlake Avenue as condemned by the City of Seattle in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance 7733 of said City; EXCEPT the southeasterly 7 feet of said Lot 12 condemned by the City of Seattle in King County Superior Court Cause No. 57057 for the widening of Pine Street as provided by Ordinance 14500 of said City. TOGETHER WITH those portions of Westlake Avenue and the alley lying within said Block 1 which attached to the above-described Lots 1, 3, 8, 9, 10, 11 and 12 by operation of law upon the vacation thereof.

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Exhibit A

Property Interest

Fee Simple Estates in:

Lot 1, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington;
EXCEPT the Westerly 12 feet of said lot condemned by the City of Seattle in King County Superior Court Cause No. 52280, for the widening of Fourth Avenue, as provided by Ordinance 13778 of said City; and
EXCEPT the Southeasterly 7 feet of said lot condemned by the City of Seattle, in King County Superior Court Cause No. 57057 for the widening of Pine Street as provided by Ordinance 14500 of said City; and
EXCEPT the portion of said lot condemned by the City of Seattle, in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance No. 7733 of said City.

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Lot 3, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to the plat recorded in Volume 1 of Plats, page 103, in King County, Washington;
EXCEPT the Westerly 12 feet of said Lot condemned by the City of Seattle in King County Superior Court Cause No. 52280 for the widening of Fourth Avenue, as provided by Ordinance 137376 of said City;

All those portions of Lots 8, 9, 10 and 11, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, Page 103, in King County, Washington; lying Westerly of the West line of Westlake Avenue, as condemned by the City of Seattle in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance 7733 of said City.

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Those portions of Lots 10, 11 and 12, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 120J, in King County, Washington, lying easterly of the east line of Westlake Avenue as condemned by the City of Seattle in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance 7733 of said City)
EXCEPT the southeasterly 7 feet of said Lot 12 condemned by the City of Seattle in King County Superior Court Cause No. 57057 for the widening of Pine Street as provided by Ordinance 14500 of said City.

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Also subject to all of the terms and conditions of this Agreement, the City agrees to sell and assign to Purchaser and Purchaser agrees to purchase and take from the City all of the City's right, title and interest in and to the hereinafter described Lot 2, Block 1, including but not limited to, the City's right, title and interest in and to that certain Statement of Lease Agreement dated November 15, 1945 by and between F. S. Stimson Corporation, as lessor, and Ellison Washington Stores, Inc., as lessee, as assigned to the City by Assignment of Ground Lease dated August 27, 1980 by and between Joseph W. Lund, Ross J. Beatty, John T. Fallon, Alfred C. Linklatter and William G. Myers as Trustees of Bradley Real Estate Trust and the City and that certain Assignment of Leases, Subleases and Tenancies and Assumption Agreement dated August 27, 1980 between the aforesaid Trustees and the City (herein collectively called "Ground Lease"), a copy of which is attached hereto as Exhibit C, which Ground Lease has a term expiring on July 31, 1998 (subject to extension by the lessee thereunder to a term expiring on July 31, 2028) and which conveys to

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the City a leasehold interest in and to that certain real property located in the City of Seattle and more particularly described as follows:

Lot 2, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington;
EXCEPT the Westerly 12 feet of said lot condemned by the City of Seattle in King County Superior Court Cause No. 52280 for the widening of Fourth Avenue, as provided by Ordinance 13776 of said City; and EXCEPT the portion of said lot condemned by the City of Seattle in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance No. 7733 of said City.

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Exhibit B
Site Plan

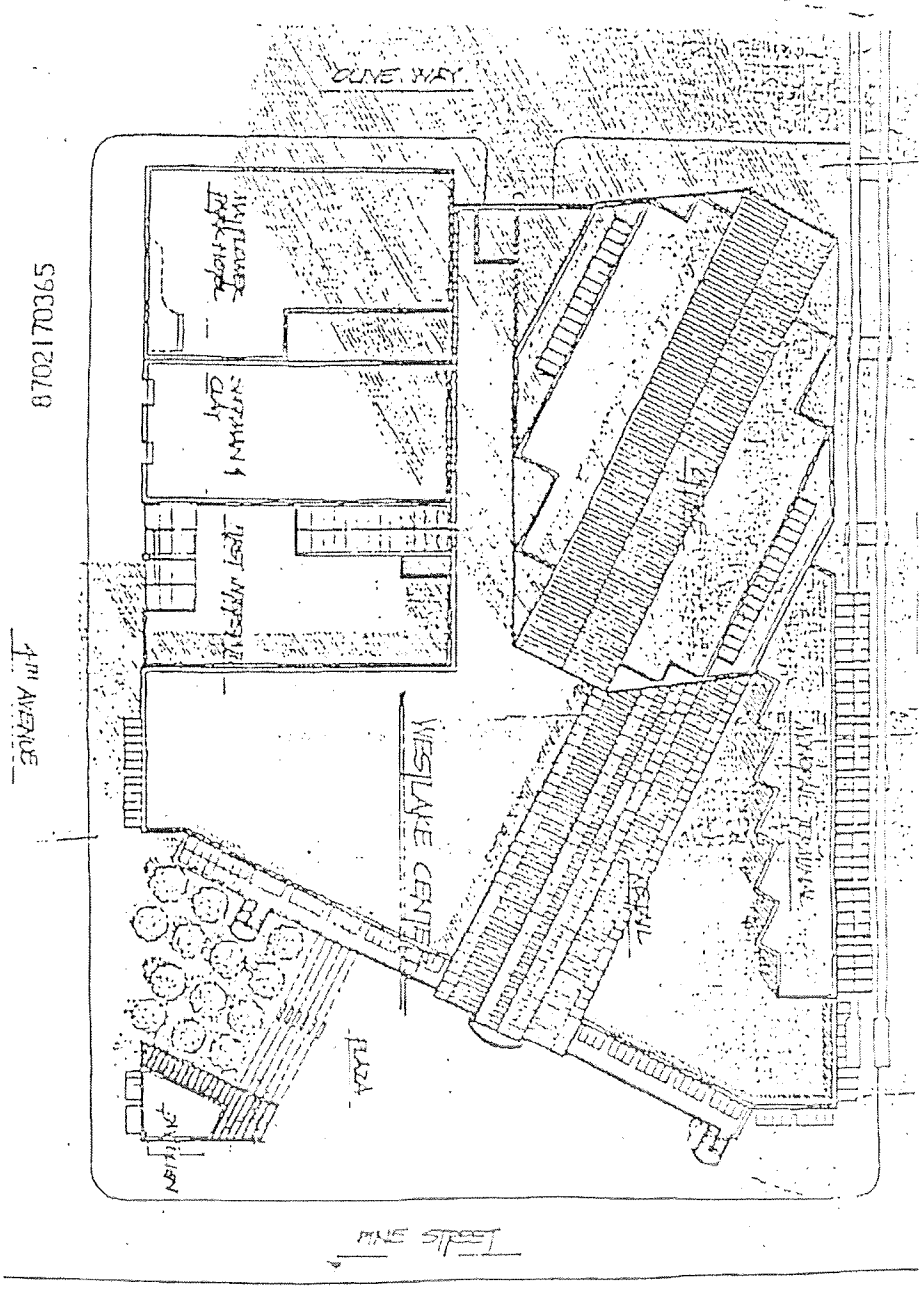

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Exhibit B
Monorail Reimbursement Scope

The following list sets out the rules for allocation of monorail construction costs between Rouse and the City of Seattle, as well as establishing methods for allocating broader project costs to the station construction:

Group 1: designed and constructed by Rouse within the monorail easement area; fully allocable as specified in Section 7.A.

a. station platform
b. canopy
c. 50% of common walls and 100% of station and exterior access walls.
d. all platform doors and sliders
e. 5th Avenue elevator
f. 5th Avenue stairwell
g. platform, elevator and stairwell finishes
h. platform, elevator and stairwell lighting
i. station graphic design and production and installation
j. removal of existing monorail footings and piers
k. monorail columns and vaults if built by Rouse
l. platform furniture, if provided by Rouse
m. any other work requested in writing by City and accepted by Rouse.
n. sprinkler system
o. emergency lighting
p. ticket kiosk enclosure

Group 2: designed and constructed by Rouse, not within the monorail easement area; partially allocable to the Rouse monorail commitment as specified Section 7.A.

a. steel structural framing; amount allocated to monorail represented by fraction of total structural cost where the numerator is the gross building area of the monorail platform including elevator and stairwell, and the denominator is the gross building area of the entire Westlake Center project.

b. foundations: allocated in the same fashion as (a) above.

c. central electrical service: amount allocated to monorail will be based on the estimated percentage of total project capacity required by monorail as determined by Rouse's engineers, reviewed and approved by monorail.

d. mall escalators; amount allocated to monorail will be the incremental cost, if any, of escalators sized to handle the monorail exiting capacity over the cost of escalators that would otherwise be provided to serve mall customers, to be reviewed and approved by monorail.

Group 3: designed and constructed by the City of Seattle. Costs associated with these items will be assigned to Rouse's monorail obligation only to the extent that the City specifically requests, and Rouse agrees, that Rouse should perform the work.

a. hydraulic or electric moving platforms

b. ticket kiosk

c. platform, cab or guideway electrical service

d. guideway system

e. vault equipment

f. ticket dispensing equipment (location and placement is subject to approval by Rouse).

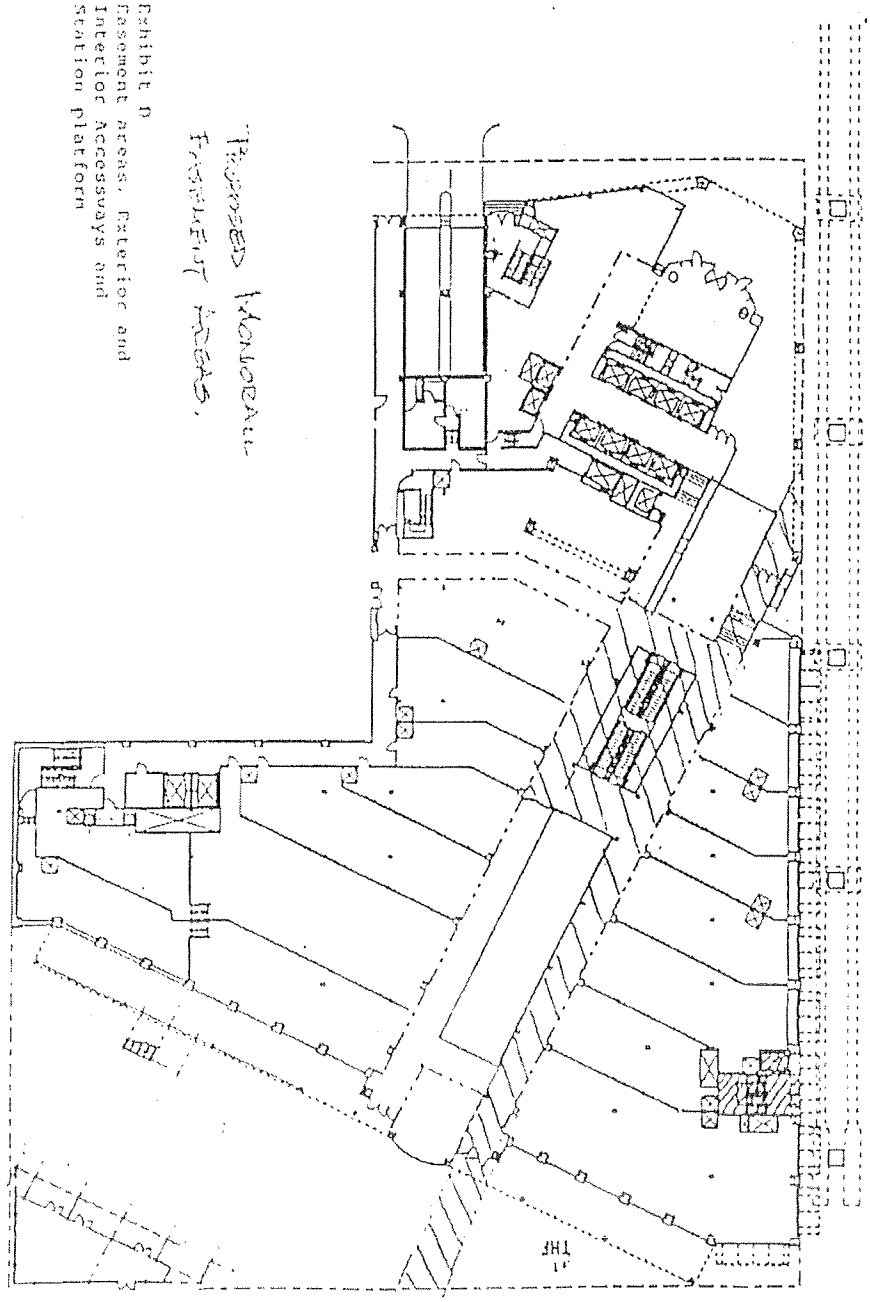
g. handrails/gates along platform edge

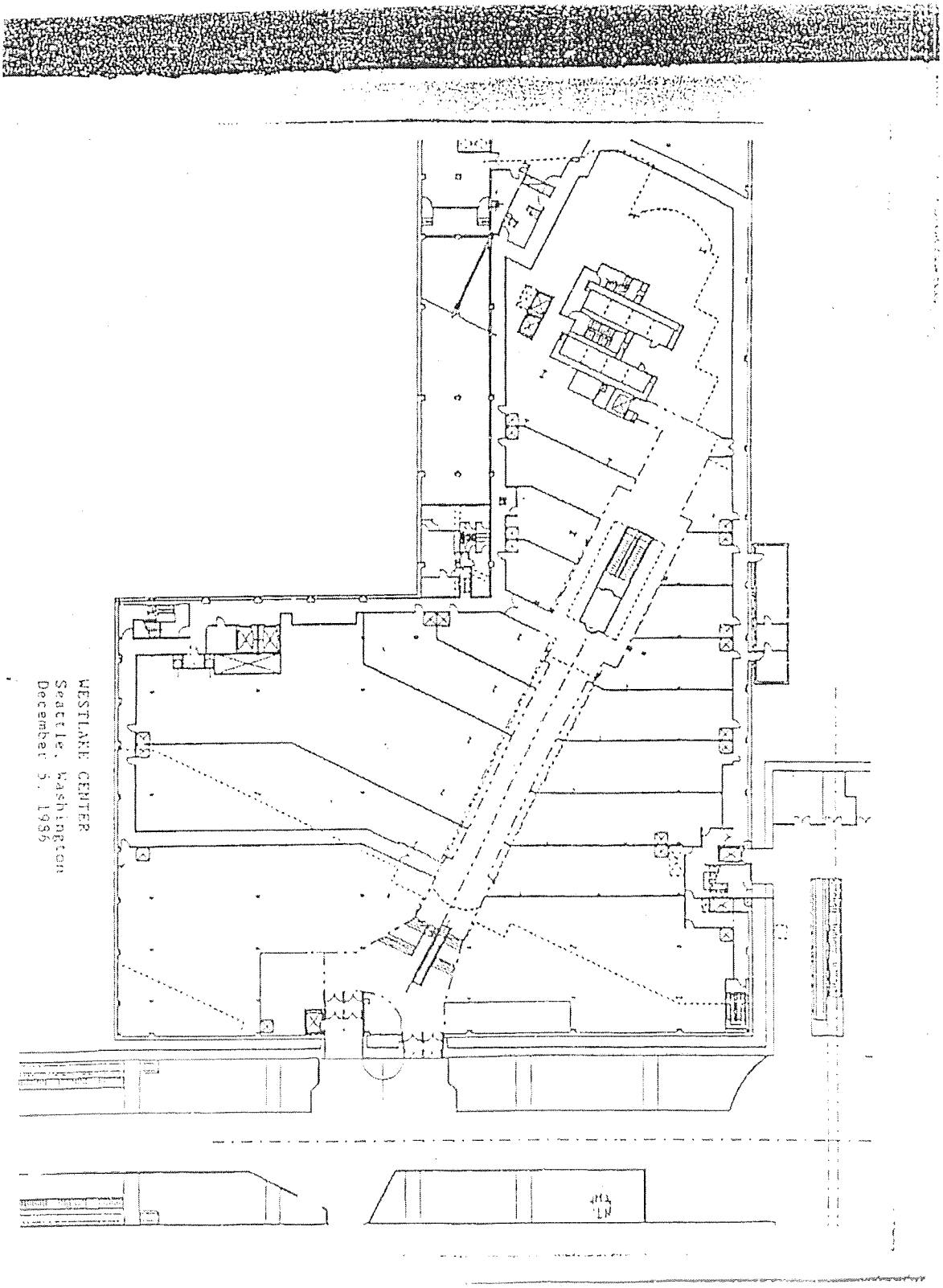
h. PA system

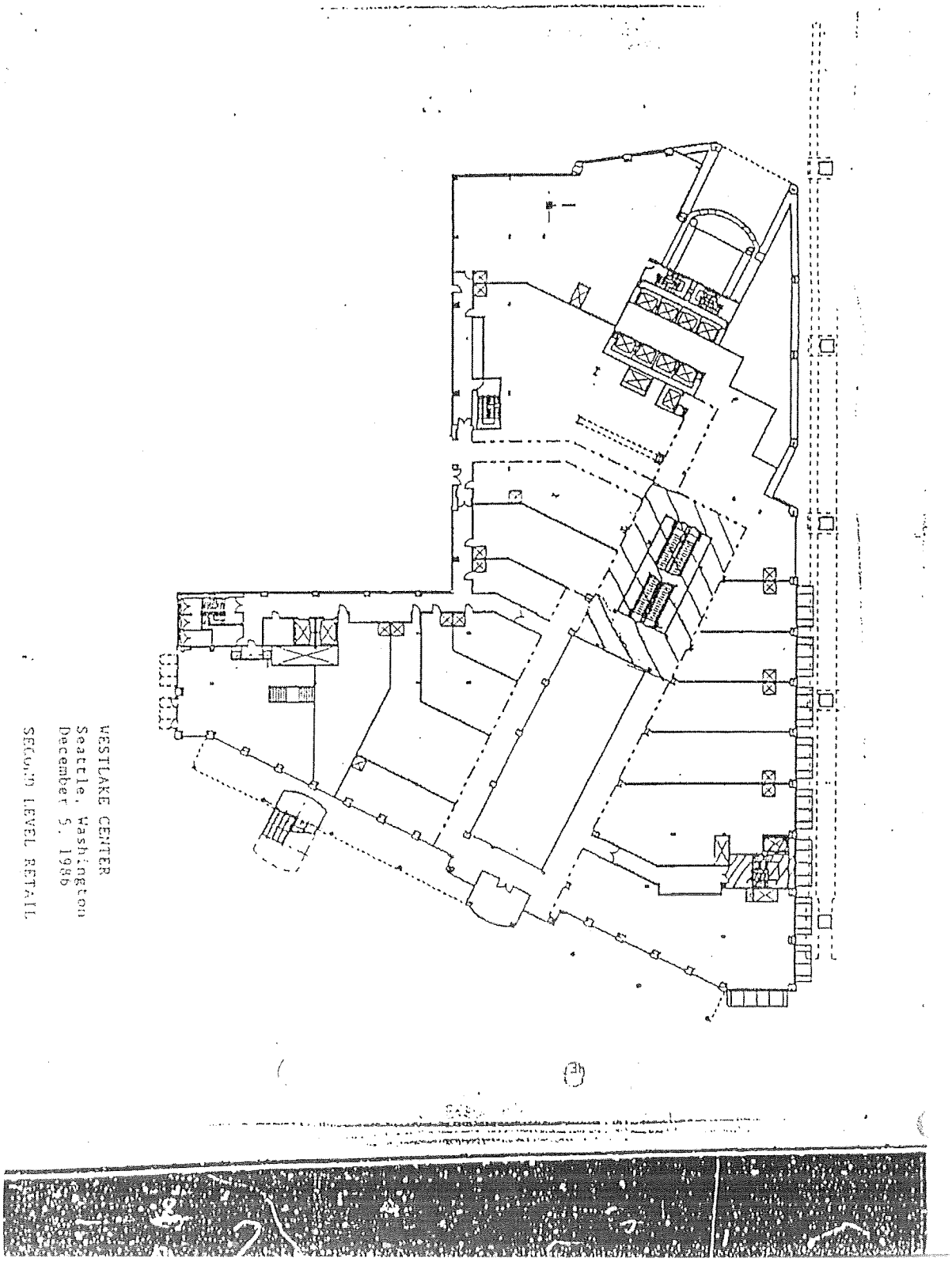
Group 4: designed by the City of Seattle and constructed by Rouse. Design costs will be paid by the City. Construction costs will be fully allocated to the Rouse Monorail commitment.

a. Power supply vault, equipment vault and all ducts and related appurtenances

b. Monorail foundations and columns (Piers 60-63).


PROPOSED MONORAIL
FACILITY AREAS,
Exhibit D
Basement Areas, Exterior and
Interior Accessways and
Station platform
WESTLAKE CENTER
Seattle, Washington
December 5, 1986
Main Level Retail


WESTLAKE CENTER
Seattle, Washington
December 5, 1986


WESTLAKE CENTER
Seattle, Washington
December 5, 1986
SECOND LEVEL RETAIL

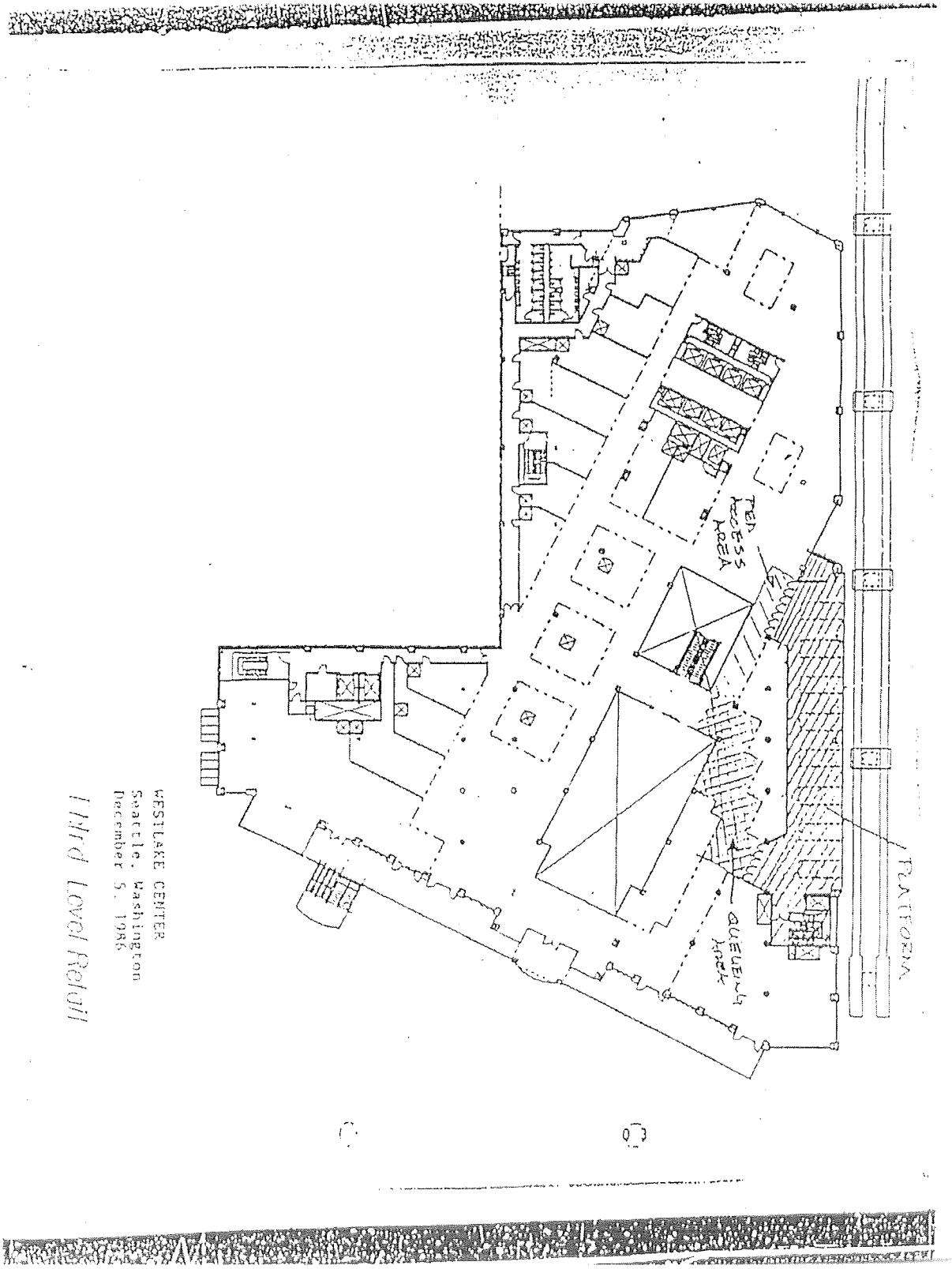

PLATFORM
QUEUEING AREA
TEN ACCESS AREA
WESTLAKE CENTER
Seattle, Washington
December 5, 1986
Third Level Retail

EXHIBIT E

Seattle Center Monorail
Regular Operating Hours

Summer -- Memorail Day through Labor Day

10:00 A.M. - 12:30 A.M. All Week

Winter -- Day after Labor Day to day before Memorail Day

10:00 A.M. - 9:00 P.M. Sunday-Thursday
10:00 A.M. - 12:00 A.M. Friday and Saturday

Special Events, School Breaks and Festivals

10:00 A.M. - 12:30 A.M.

New Years Eve

10:00 A.M. - 2:30 A.M.

EXHIBIT F

CONSUMER PRICE INDEX ADJUSTMENT
AND
PAYMENT TERMS

(a) As of each January 1st following the date that the payment first becomes due and payable, the payment shall be increased or decreased in proportion to the percentage change in the CPI that has occurred since January 1st of the year in which any payment first became due and payable. For the purposes of this Agreement, all references to the "CPI" as the basis for adjustments to be made to various amounts to be paid or credited by one party to the other shall mean the Consumer Price Index for All Urban Consumers for the Seattle-Everett Metropolitan Area as published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor; provided, that the CPI published for the calendar year shall be deemed to be the CPI as of January 1st of that year; provided further, that in the event the aforementioned index is discontinued, the parties shall select another, similar index that reflects consumer price changes; and provided, further, that in the event of a change in the index base (1967 = 100), the parties hereto shall utilize such index base during the period it is used by the federal government and shall apply whatever conversion factor is necessary to establish the percentage change in the CPI in or between any year(s) during which the index base is changed.

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(b) After publication of the CPI for the immediately preceding calendar year, the Associates shall notify the City of the amount(s) of any increase(s) or decrease(s) in the City's payment. Any amounts due to the Associates as a result of such notification, should such notification occur after January 1st, shall be paid or credited, as appropriate, within ten (10) days after the date of said notification. Until the date of such notice, the City shall pay the same payment as was due and payable for the immediately preceding December.

(c) Payment shall be due and payable on the tenth (10th) day of each month.

(d) A payment shall be delinquent if not paid within ten (10) days after the date due; delinquent sums shall bear interest at a rate of twelve percent (12%) per annum from the date of delinquency to the date paid.

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EXHIBIT C

INTERIOR ACCESSWAY MAINTENANCE STANDARDS

Daytime Maintenance

Trash pick-up and gum removal
Trash removal
Graffiti removal
Spill mop-up
Monitoring of escalators and elevators

Pre-opening Maintenance

Floor washed every day
Floors waxed when required
Cleaning of all glass surfaces
Cleaning of all other decorative materials
Replacement of lamps and ballasts
Cleaning of elevators and escalators
High dusting as required

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EXHIBIT H

The Seattle Center Schedule and Standards
for Routine Maintenance, Cleaning

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Daily Cleaning

Sweep and mop floor on platform, stairs and elevator
~~Vacuum elevator if it is carpeted~~
Clean all glass surfaces
Dust surfaces and decorative materials
Pick up trash and replace trash liners
Remove gum and other material from surfaces
Remove debris from all areas
Remove graffiti

Weekly or As-Needed Cleaning

Strip and wax floors
Thoroughly clean surfaces and decorative materials
~~Clean elevator floor carpet — if carpeted~~
Wash elevator walls
Clean furniture
Clean trash containers

Routine Maintenance — As Needed

Relamp fixtures
Remove graffiti
Replace/restore vandalized items
Replace anti-slick surfaces on stairway
Repair signage
Repair equipment

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EXHIBIT I

ASSOCIATE SERVICES

The following services and access will be provided to the City by Associates on an on-going basis, for which payment is made pursuant to Section 13.

A. Platform Cleaning:

Associates will:
- mop and clean spills
- spot clean glass and surfaces.
- empty trash cans, replace trash bags and pick up floor trash.

Frequency:
- during mall operating hours or at least from 10:00 A.M. - 7:00 P.M., Monday-Saturday and 12:00 P.M. - 5:00 P.M. Sunday.
- as required over the course of the day.
- in response to specific calls from Monorail personnel.
- estimated to be for 15 minutes each 2 hours throughout the day.

Service Does Not Include:
- surface (floor, wall and glass) cleaning from routine daily traffic.
- replacement of light bulbs.
- cleaning of kiosk interior.
- extraordinary ticket stub pick up from Monorail patron abuse of ticket procedures.

B. Periodic painting of platform and exterior accessway wall surfaces, on a schedule equivalent to the repainting program for the public space within the mall, excluding repainting made necessary because of vandalism.

C. Routine repairs and maintenance by service contract of the passenger elevator in the exterior accessway, including a preventive maintenance program, at least equivalent to the elevator maintenance standards prevailing for the rest of the Westlake Center.

D. Comprehensive general liability insurance for the platform and exterior accessway, with the City as an additional insured.

E. Interior access through the public areas of Westlake Center during mall operating hours (or at least 10:00 A.M. - 7:00 P.M., Monday-Saturday and 12:00 P.M. - 5:00 P.M. Sunday) including access to the restrooms and retail passenger elevator. The interior accessway shall be clean and safe, lit and environmentally controlled, with operable escalators and elevators, subject to the provisions of Section 7 (Alterations) of this agreement.

F. Periodic cleaning of platform canopy and skylight.

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ADDENDUM NO. 1

to the

WESTLAKE STATION DESIGN CRITERIA REPORT

Exhibit C

Design Standards &
Scope of Work

Prepared for: SEATTLE ENGINEERING DEPARTMENT

Submitted by: *KAISER ENGINEERS, INC.*

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WESTLAKE STATION DESIGN CRITERIA
ADDENDUM NO. 1

Background

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The City of Seattle entered into an agreement (No. YB4-8) with Raymond Kaiser Engineers on November 2, 1984 to identify Rehabilitation and Upgrading needs of the existing Seattle Monorail system. Amendment No. 1 called for an Alternatives Analysis to generate and evaluate possible arrangements for the relocated southern terminus (Westlake Station) which is to be integrated into the new Westlake Mall Development. As a result of these analyses, Alternative VII (The George Benson Alternative) was selected.

It was considered practical to have the Mall Developer design the Westlake Station as it is to be an integral part of the Mall. To aid in this design, as part of Supplemental Agreement No. 1, the Westlake Station Design Criteria Report (Task 9.2) was prepared. An errata to the Design Criteria Report was issued and circulated on October 18, 1985 (a copy of which is included in Appendix B). The report provided transit-related station design criteria for use by the Westlake Mall Developer.

The City has decided that the Design Criteria Report is to be a working paper which is to be updated and revised by Kaiser Engineers at significant stages of the project. The updating process is to be accomplished through addenda to the original Westlake Station Design Criteria Report. This Addendum No. 1 is the first such update/revision to the original document. It is prepared as part of Task 15.7 of Supplemental Agreement No. 7 and addresses comments and questions received as of December 4, 1985. Subsequent addenda are expected to be prepared at the end of the Schematic Design Phase, the Design Development Phase and when Construction Documents are issued.

Addendum Procedure

This addendum is a compilation of Items, each of which is the result of a specific comment or question received from the reviewing parties. These Items are used to document "changes" to the original Design Criteria Report, to make

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"remarks" supplying supplemental information to further explain a particular part of the criteria or a combination of the two. "Remarks" are also used to explain how a change is to be incorporated into the original Design Criteria.

Most of the comments received pertain to specific sections or criteria from the original Design Criteria Report and have generated individual addendum items. Those comments not concerned with a specific section of the Report have been incorporated as addendum items for inclusion in the Design Criteria Report at the locations deemed most appropriate. Some, which address new criteria not in the Report, are indicated in the Section reference as "NEW CRITERIA".

Three categories of resolution have been established. One, the comment/issue is resolved and the solution is agreed to by all (KE, SED, DCD, and TRC). Two, the comment/issue cannot be resolved at this time with the presently available information, thus it is an open item to be decided on later. Many of these items require action on the part of some party and this action is documented as a "Remark" in the Addendum rather than a "Change" to the Design Criteria. The third category of comment/issue is an unresolved issue requiring negotiation or agreement between the parties involved. For the most part, changes to the Design Criteria are the result of category One comments, the resolutions to which have been fully discussed and agreed to by all. Item numbers which are followed by two asterisks (**) are thus flagged to identify a change to the Criteria which is recommended by KE and is not considered to be controversial, but has not been formally agreed to by all parties.

The addendum is organized into three groups of Items corresponding to their category of status. Items within each group are organized in a consecutive manner as they apply to the original Design Criteria Report. Each Item has a unique addendum item number. The units digit of the number reflects the category in which the Item belongs (1.n = resolved, 2.n = open and 3.n = unresolved). The decimal portion is a sequential identifier which numbers the addendum items consecutively within each category. Sources of comments and resolutions/responses are referenced, by numbers, to the references listed in the table of references in Appendix A. Many of the changes suggested in the TRC Revised Copy of the Westlake Station Design Criteria Report (Ref. No. C7) are considered to be merely editorial in nature and do not alter the criteria. Comments such as those are not included in this addendum.

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Dummy Layout

Below is a dummy layout for addendum Items. Material in *italics* are explanations of the type of content found under each heading.

Item Number: *Sequential decimal number within each group of addendum items. Units digit indicates category, decimal portion is sequential identifier. (xx indicates KE suggested change)*

Page: *Page number reference to the Design Criteria Report.*

Section: *Section number and title from the Design Criteria Report.*

Paragraph: *Paragraph number from the start of the referenced section of the Design Criteria Report.*

Reference Comment: *Reference number identifying the source document(s) which generated the need for criteria change or clarification.*

Reference Resolution/Response: *Reference number of source document(s) on which the change/comment is based.*

Change: *Proposed revision or addition to the Westlake Station Design Criteria.*

Remark: *Clarification of original criteria or explanation of proposed criteria change.*

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Addendum Items
1.0 Resolved Changes/Comments

Item Number: 1.1

Page: 1
Section: 1.1 Background
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: SED is KE's "client" within the City of Seattle. SED has been attending all meetings between KE and The Rouse Company and will continue to do so.

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Item Number: 1.2

Page: 1
Section: 1.1 Background
Paragraph: 2

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: The Benson Alternative was chosen because of the relative risk between a monorail switch and the preferred option with the ramps. There are a greater variety of options for solution of ramp problems than for the switch problems.

Remark: None.

Item Number: 1.3

Page: 1
Section: 1.1 Background
Paragraph: 4

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The "works" are defined as the guideway relocation and new monorail station.

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Item Number: 1.4

Page: 2
Section: 1.2 Objective
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R2

Change: As part of the Contract of Sale with The Rouse Company, the City of Seattle is obligated to develop a mutually acceptable scope of work and performance standards (design criteria) for the relocated monorail station. This scope of work includes the design of new piers, columns, track, station platform, et al. This document, after acceptance by the City of Seattle and The Rouse Company, shall serve as the basis for development of an easement agreement pursuant to Section 7c of the Contract of Sale.

Remark: None.

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Item Number: 1.5

Page: 2
Section: 1.2 Objective
Paragraph: 2

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The very nature of a design criteria report inevitably results in some constraining of design. Most of the specific criteria are flexible and negotiable.

Item Number: 1.6 **

Page: 3
Section: 1.3.1 Existing System
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Remark: Requested documentation on the history of the monorail covering issues of patronage history, capacity requirements, original platform and revisions, etc., will not be provided as part of the Criteria. This information has been provided separately.

Item Number: 1.7

Page: 4
Section: 2.1.1 Passenger Demand
Paragraph: 2

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: "Incontrovertible" is defined as indisputable or unquestionable.

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Item Number: 1.8

Pages: 9 & 11
Section: 2.1.4 Platform Arrangement
Paragraph: Plan Sketches

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The 24-foot overrun was revised by an errata dated 10-18-85 (ref. Appendix B, this addendum). The correct overrun is 20 feet. The overrun is needed as a safe stopping buffer for the monorail trains between the planned train stopping point and the end of line train bumper assembly.

Item Number: 1.9 as

Page: 13
Section: 2.1.5 Clearance Requirements
Paragraph: 1

Reference Comment: C4
Reference Resolution/Response: N/A

Change: None required.

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Remark: Minimum net platform area and minimum platform length and width are the required minimum clearances for each individual dimension established by their own specific constraints. They do not necessarily relate to each other. For instance the minimum platform length is controlled by the train length while the minimum platform area is constrained by capacity requirements.

Item Number: 1.10

Page: 13 & 14
Section: 2.1.5 Clearance Requirements & Typical Section
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: The column near the platform edge in the sketch (page 14) may be integrated into the platform edge railings; however it (or anything else) must be arranged to provide at least 7 feet 4 inches of clear passageway along the platform edge to permit free movement of passengers.

Remark: None.

Item Number: 1.11

Page: 14
Section: Sketch of Typical Section
Paragraph: N/A

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: The pier setback from the curb edge will be 18 inches, not 3 feet as indicated in the sketch.

Remark: None.

Item Number: 1.12 **

Page: 14
Section: Sketch of Typical Section
Paragraph: N/A

Reference Comment: C7
Reference Resolution/Response: N/A

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Change: Monorail Station - Westlake, Typical Section

Remark: Reidentify the sketch as above.

Item Number: 1.13

Page: 14 & 34
Section: Typical Section Sketch & 2.3.4 Guideway Support Structure Concept Options (Support Bents)
Paragraph: 4

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: The latest pier/column sizing is approximately 4.5 feet by 4.5 feet.

Remark: These reduced dimensions for the columns eliminate the need to consider alternative pier designs or arrangements.

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Item Number: 1.14

Page: 15
Section: 2.2.0 General (NEW CRITERIA)
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: The architectural quality of the monorail station will be equal to the mall project. Rouse should take the lead in establishing the architectural character of the platform.

Remark: None.

Item Number: 1.15

Page: 15
Section: 2.2.0 General (NEW CRITERIA)
Paragraph: 2

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: The underside of the train will be as at present. There will be no safety ledge.

Remark: None.

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Item Number: 1.15

Page: 15
Section: 2.2.1 Pertinent Code Requirements and Analysis
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: Although the new edition of the Uniform Building Code (UBC) has been completed, it has not yet been accepted by the Seattle City Council. Therefore, the 1982 UBC will apply until Council approval of the new edition at which time The Rouse Company will be informed of the change.

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Item Number: 1.17 **

Page: 16
Section: 2.2.1 Pertinent Code Requirements and Analysis
Paragraph: 1, IV. Exit Requirements

Reference Comment: C5
Reference Resolution/Response: N/A

Change: None required.

Remark: There are no specific UMTA standard accessibility requirements for the elderly and the handicapped. The Seattle Building Code will be the governing Code on accessibility.

Item Number: 1.18

Page: 16
Section: 2.2.2 Circulation (Horizontal)
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1

Change: The design should also permit the emptying of the cars and clearing of the boarding areas as safely and attractively as possible.

Remark: None.

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Item Number: 1.19

Page: 17
Section: 2.2.2 Circulation (Vertical)
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R2

Change: The vertical circulation between the Monorail Station, Westlake Mall and METRO Tunnel Station will be multi-modal. Design of the vertical circulation must consider this aspect as being of prime importance.

Remark: None.

Item Number: 1.20

Page: 18
Section: 2.2.2 Circulation (Vertical)
Paragraph: 4

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: Minimum stair width of 5 feet 6 inches results from application of NFPA 101 Code. RTKL will check this.

Item Number: 1.21

Page: 19
Section: 2.2.3 Entrances and Exits
Paragraph: 2

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The location of exit stairs must satisfy the requirements of all referenced codes. The most stringent of which shall be used as criteria for design. The Seattle Code is only one of several which may apply in this case. DCLU has expressed the opinion that the exit stairs can be no closer than one half the platform's diagonal dimension as stated in the original criteria.

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Item Number: 1.22 **

Page: 19
Section: 2.2.3 Entrances and Exits
Paragraph: 4

Reference Comment: C7
Reference Resolution/Response: N/A

Change: Emergency exits must be accessible whenever the Monorail is operating whether the Mall is open or closed.

Remark: None.

Item Number: 1.23

Page: 22
Section: 2.2.8 Roof Covering
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: The Rouse Company will generate roof covering alternatives which are compatible with their retail mall project.

Remark: The Design Criteria Report was reflecting the then current Rouse roof design.

Item Number: 1.24 **

Page: 22
Section: 2.2.8 Roof Covering
Paragraph: 1 (4th sentence)

Reference Comment: C7
Reference Resolution/Response: N/A

Change: ... station will be temporarily changing ...

Remark: The word "temporarily" shall be added to the text as shown.

Item Number: 1.25 **

Page: 22
Section: 2.2.8 Roof Covering
Paragraph: 3

Reference Comment: C7

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Reference Resolution/Response: N/A

Change: Translucent or transparent roof materials will require access or other provisions for cleaning and maintenance.

Remark: None.

Item Number: 1.26 **

Page: 23
Section: 2.2.9 Seating and Other Station Furniture
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R2

Change: Seating in the platform/station area (if any) will be movable, limited and will not compete with Hall seating. A minimum of 60 lineal feet of fixed seating shall.

Remark: Delete the underlined material from the Report.

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Item Number: 1.27

Page: 25
Section: 2.2.11 Electrical and Automatic Train Protection Vaults
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: Access to the vaults will be from the lower retail level as shown in the sketch on page 14. Access will be for personnel and equipment transportable by hand truck.

Remark: None.

Item Number: 1.28

Page: 28
Section: 2.2.13.1 Platform
Paragraph: 1

Reference Comment: C1
Reference Resolution/Response: R1

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Change: The passenger boarding ramp mechanisms will be accessed through removable panels in the station platform. It may be necessary to bring equipment through the project during working hours. Lifting of heavy ramp parts will be by small mobile crane.

Remark: None.

Item Number: 1.29 **

Page: 28
Section: 2.2.13.2 Stair Elevator Well
Paragraph: 1

Reference Comment: C6
Reference Resolution/Response: N/A

Change: Open staircases will not comply with the building codes. Doors which penetrate between the stairways and other building spaces require a one and one half hour fire resistance.

Remark: The staircases are essentially exits from a third floor which necessitates a minimum two-hour fire wall separation between the stairs and other building spaces.

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Item Number: 1.30 **

Page: 29
Section: 2.2.13.4 Partition Wall Separating Platform from Mall.
Paragraph: 1

Reference Comment: C3 & C6
Reference Resolution/Response: N/A

Change: None required.

Remark: The Seattle Fire Department had in their review recommended that the tenant wall between the station platform and the Mall be fire-rated for two hours and windowless. DCLU has since waived the requirement on the condition that the platform and mall building are sprinklered.

Item Number: 1.31

Page: 40
Section: 2.5.1 Passenger Boarding Ramp Operation/Mechanical
Paragraph: 1

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Reference Comment: C1
Reference Resolution/Response: R1

Change: The ramps will not be extended or retracted while the train is waiting in the station.

Remark: Positioning the ramps when the train is out of the station provides more time for these operations. This allows them to take place at lower speeds with greater reliability. The potential for reliability problems has been considered, and, although risks do exist with this alternative, they have been weighed against the risks that would have resulted from a track switch. The ramp system was considered favorable. Failure management schemes are possible to mitigate the potential problems and failures.

Item Number: 1.32

Page: 47
Section: 2.6.2.3 Materials - Electrical Equipment (Uninterruptible Power Supply)
Paragraph: 1

Reference Comment: C1
Reference Resolution/Response: R1

Change: The uninterruptible power supply will include batteries. The space required to house them is less than 8 square feet.

Remark: None.

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Addendum Items
2.0 Open Items Requiring Additional Information

Item Number: 2.1

Page: 1
Section: Contents
Paragraph: N/A

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: Pier design alternatives have been eliminated. The requested Urban Design Criteria are expected to be resolved later in sync with the design of both projects and will be addressed in other documents.

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Item Number: 2.2

Page: 7
Section: 2.1.3 Platform Location (Longitudinally)
Paragraph: 2

Reference Comment: C1
Reference Resolution/Response: R1

Change: None required.

Remark: The ramp envelop specified in the design criteria is considered to be adequate. RTKL should investigate the impact of these ramps on the mall building design.

Item Number: 2.3

Pages: 16 & 17
Section: 2.2.2 Circulation (Horizontal)
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: A separate write-up prepared by KEEJ has been provided to Rouse containing documentation and graphics on passenger exiting and entering flow scenarios at the station.

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WESTLAKE DESIGN CRITERIA - Open Items

Item Number: 2.4

Page: 20
Section: 2.2.4 Fare Collection Equipment
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The 30 feet as used in the report is a worse case scenario. Locations of ticketing machines are not firm and will be established as the design progresses.

Item Number: 2.5 as

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Page: 20
Section: 2.2.4 Fare Collection Equipment
Paragraph: 1

Reference Comment: C4
Reference Resolution/Response: N/A

Change: None required.

Remark: The required number and location of fare collection machines will depend on the chosen method of fare collection and the final platform configuration, both yet to be determined.

Item Number: 2.6

Page: 20
Section: 2.2.4 Fare Collection Equipment
Paragraph: 1

Reference Comment: C1
Reference Resolution/Response: R1

Change: None required.

Remark: C. Blackmer's proposal for fare collection only at the Seattle Center Station will be considered together with other fare collection methods later during the design of the fare collection system.

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WESTLAKE DESIGN CRITERIA - Open Items

Item Number: 2.7

Page: 21
Section: 2.2.6 Kiosk
Paragraph: Entire section

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The kiosk will be clarified later in the design process.

Item Number: 2.8

Pages: 37 & 38
Section: 2.4.2 Project-Specific Baselines
Paragraph: 1

Reference Comment: C1
Reference Resolution/Response: R1

Change: None required.

Remark: RTKL will need to decide whether proposed baselines are acceptable to the Mall project.

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Addendum Items

3.0 Unresolved Issues Requiring Negotiation

Item Number: 3.1

Page: 5
Section: 2.1.2 Platform Area
Paragraph: 4

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The major limitation of a 2800 square foot platform is the lack of queueing space at peak times. The situation of dedicated versus non-dedicated platform area is to be considered by a Rouse reconfiguration investigation for decision at a later date.

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Item Number: 3.2

Page: 6
Section: 2.1.2 Platform Area (NEW CRITERIA)
Paragraph: 3

Reference Comment: C2
Reference Resolution/Response: R1, R2 & R3

Change: A concept of "shared usage" has been proposed which will combine dedicated station platform area with non-dedicated Mall atrium queueing space to accommodate the peak capacity demands. Total available area for Monorail Station use will be 4500 square feet with a minimum of 2800 square feet dedicated to station platform. The remaining area (4500 - 2800 = 1700 square feet) will be provided by readily clearable space in the Mall atrium.

Remark: A Monorail usage "trigger-value" should be specified in the Monorail Easement Agreement between Rouse and The City. If Monorail usage exceeds this value then a greater percentage of Mall area would be dedicated for Monorail station platform use. Likewise, if this "trigger-value" is consistently not met over several years then, at Rouse's discretion, some of the Mall space reserved for Monorail queueing could be converted to traditional retail space.

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WESTLAKE DESIGN CRITERIA - Unresolved Issues

Item Number: 3.3

Page: 18
Section: 2.2.2 Circulation (Vertical)
Paragraph: 4

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The shallower than maximum allowed slope of the stairs reflects the use of this stairway as the primary monorail entrance during times when the Mall is closed. The shallower stairs would be easier to climb. If the Mall is open at all times of Monorail operation then these stairs could be as steep as code permits.

Item Number: 3.4

Page: 19
Section: 2.2.3 Entrances and Exits
Paragraph: 3

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The Rouse Company will investigate reconfiguring the platform to include an effective entrance/exit of 32 feet between the Monorail platform and the Mall. This reconfiguration must be approved by the City. The non-dedicated platform area will be activated in nonpeak times with kiosks and other festival retailing. The phrase "movable wall-front glazed panels furnished with doors" refers to the segmented, sliding glass doors/walls that are frequently used by retailers in shopping malls. A better name for these units may be "sliding wall front doors". The use of sliding wall front doors would enable the entrance to the Monorail to be opened to its full extent during periods of heavy usage or closed down partially or completely during periods of low usage.

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WESTLAKE DESIGN CRITERIA - Unresolved Issues

Item Number: 9.5

Page: 29
Section: 2.2.13.3 Entrance Doors From Mall
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: Panic bars openable from the station side will be discussed and resolved later in the design process. Emergency entrance into the Mall must be available at all times during Monorail operation. Rouse should address their security needs in light of this requirement. If exit into the Mall is not available, then a second exit to the street will be needed. Also refer to Item Number 1.22.

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APPENDIX A

REFERENCES

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REFERENCES

Comments:

C1. TRC Intra-Office Memo from J. Diefenbach to C. Blackmer, dated 11-4-85.

C2. TRC Intra-Office Memo from C. Blackmer to P. Page, dated 11-5-85.

C3. Seattle Fire Department Memo from B. L. Hansen, Fire Marshal to Ted Rees, SED, dated 10-28-85.

C4. Seattle Center Memo from Anne Nelson to Ted Rees, SED, dated 11-12-85.

C5. Office of Planning memo from Don Carr to Ted Rees, SED, dated 11-15-85.

C6. Department of Construction and Land Use Memo from Tom Kinsman to Ted Rees, SED, dated 11-18-85.

C7. TRC Revised (Marked-Up) Copy of the Westlake Station Design Criteria Report, dated 12-4-85.

Responses:

R1. XE Meeting Notes from November 14, 1985 Meeting with SED, DCD and TRC, dated 11-20-85.

R2. DCD Meeting Notes from November 14, 1985 Meeting with XE, SED and TRC, dated 12-4-85.

R3. DCD Letter from David Moseley to Perry Page, TRC, dated 2-28-86.

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APPENDIX B

ERRATA TO

DESIGN CRITERIA REPORT

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Raymond Kaiser Engineers

Raymond Kaiser Engineers Inc
A Raymond International Company
710 Second Avenue
Seattle, Washington 98104
(206) 624-0004

RKS - 103

October 18, 1985

Mr. Ted Rees, P.E.
Project Manager
Seattle Engineering Department
Room 910, Seattle Municipal Building
600 Fourth Avenue
Seattle, WA 98104

Subject: Revised Sketches to The Westlake Station Design Criteria Report
Monorail Rehabilitation/Upgrading Project

Ref.: RKS-99, dated 10-14-85

Dear Mr. Rees:

Attached are revised copies of three of the sketches that are part of the Westlake Design Criteria Report. These sketches are pages 9, 11 and 42.

Pages 9 and 11 are revised to reflect an overrun allowance, between the train and the bumper, of 20 feet. The sketches had a distance of 24 feet. The 20 foot dimension is consistent with station and column locations used in the report and with the present overrun allowance being used.

Page 42 is revised to reflect the distance from the end of station platform to the train and first ramp and be consistent with the rest of the report.

We expect that the correction of pages 9 and 11 will be of minimum interest/effect to the Rouse Company. The ramp location from the platform's northern end will be important to the Rouse Company in the design of the platform support structure and slab.

We regret having to correct these sketches, however we believe that we are all best served by making these corrections as soon as possible.

Very truly yours,

R. H. Line, P.E.
Project Manager
Monorail Rehabilitation/Upgrading Project

Attachments

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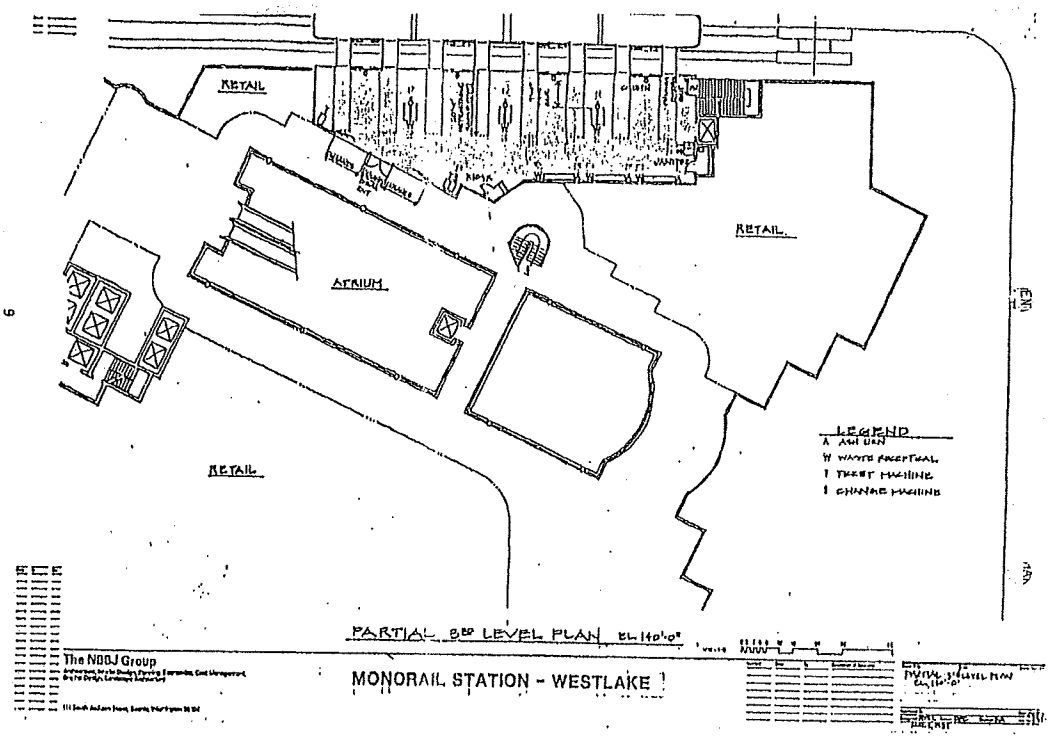
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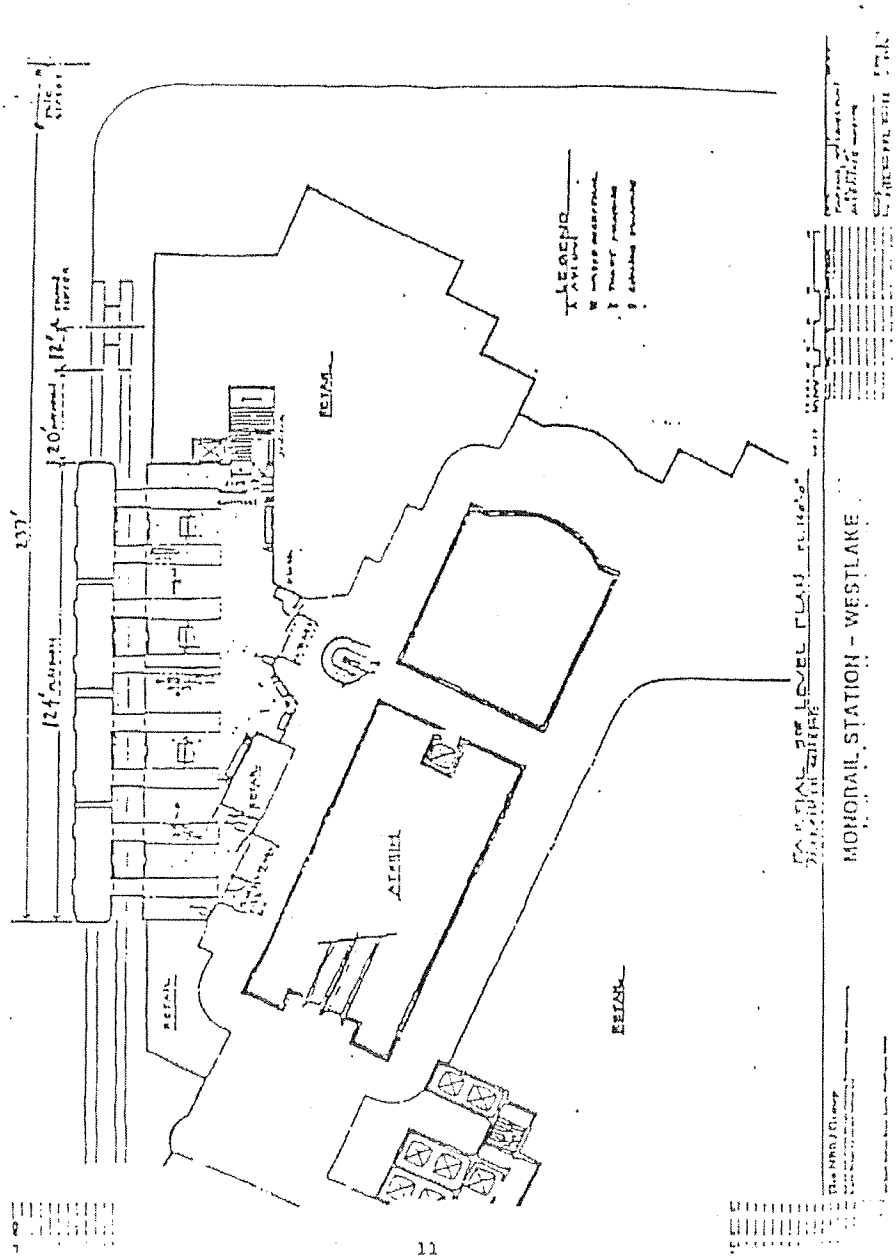
LEGEND
PARTIAL 3RD LEVEL PLAN EL 140'-0"
The NBBJ Group
MONORAIL STATION - WESTLAKE



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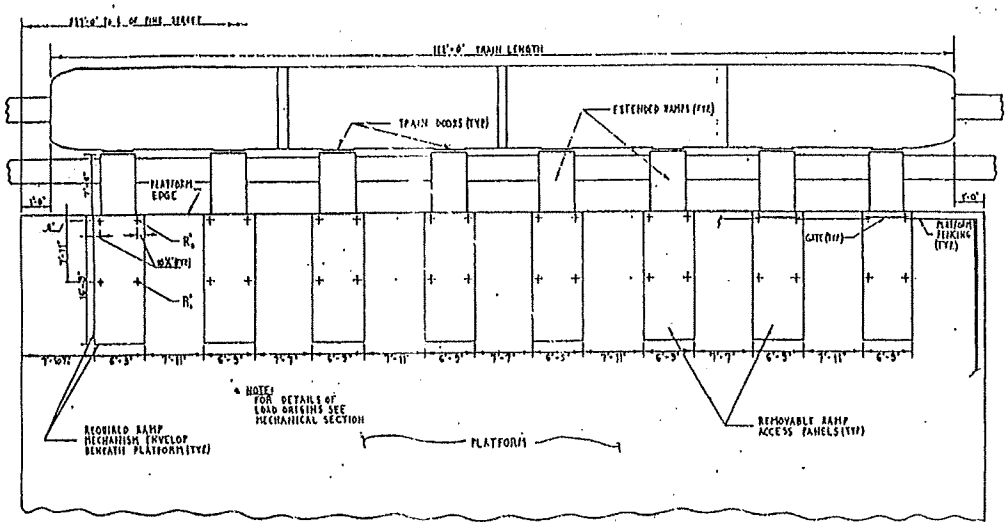

RAMP/DRAWER-SLIDE CLEARANCE ENVELOPE BENEATH PLATFORM PLAN VIEW

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ADDENDUM NO. 2

to the

WESTLAKE STATION DESIGN CRITERIA REPORT

Prepared for: SEATTLE ENGINEERING DEPARTMENT

Submitted by: *KAISER ENGINEERS, INC.*

FEB 17 1987 FILED BY STI

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WESTLAKE STATION DESIGN CRITERIA
ADDENDUM NO. 2

Background

The City of Seattle entered into an agreement (No. T84-8) with Kaiser Engineers on November 2, 1984 to identify Rehabilitation and Upgrading needs of the existing Seattle Monorail system. Amendment No. 1 called for an Alternatives Analysis to generate and evaluate possible arrangements for the relocated southern terminus (Westlake Station) which is to be integrated into the new Westlake Mall Development. As a result of these analyses, Alternative VII (The George Benson Alternative) was selected.

It was considered practical to have the Mall Developer design the Westlake Station as it is to be an integral part of the Mall. To aid in this design, as part of Supplemental Agreement No. 1, the Westlake Station Design Criteria Report (Task 9.2) was prepared. An errata to the Design Criteria Report was issued and circulated on October 18, 1985. The report provided transit-related station design criteria for use by the Westlake Mall Developer.

The City has decided that the Design Criteria Report is to be a working paper which is to be updated and revised by Kaiser Engineers at significant stages of the Westlake Center project. The updating process is to be accomplished through addenda to the original Westlake Station Design Criteria Report. This Addendum No. 2 is the second update/revision to the original document. It is prepared as part of Task 15.7 of Supplemental Agreement No. 8 and addresses design questions and issues raised since Addendum No. 1 and through the Schematic Design Phase, Revision No. 1 review. Subsequent addenda are expected to be prepared at the end of the Design Development Phase and when Construction Documents are issued.

Addendum Procedure

This addendum is a compilation of Items, each of which is the result of specific or general comments raised by various reviewing parties in response to the Westlake Center Schematic Design, Revision No. 1. These Items are used to document "changes" to the original Design Criteria Report and its subsequent Addenda, to make "remarks" supplying supplemental information to further explain or reiterate a particular part of the criteria or as a combination of the two. "Remarks" are also used to explain how a change is to be incorporated into the original Design Criteria.

Many of the comments pertain to elements in the Schematic Design which were previously addressed in the original

Design Criteria Report and these comments have generated individual addendum items. Those comments not concerned with a specific section of the Report have been incorporated as addendum items for inclusion in the Design Criteria Report at the locations deemed most appropriate. Some, which address new criteria not in the Report or subsequent addenda, are indicated in the Section reference as "NEW CRITERIA".

Three categories of resolution have been established. Category one, the comment/issue raised has been resolved since the schematic design phase and the solution is agreed to by all (KE, SED, DCD, and TRC). Category two, the comment/issue cannot be resolved at this time with the presently available information or has not yet been addressed in the schematic design. These are open items to be decided on later. Many of these items require action on the part of some party and this action is documented as a "Remark" in the Addendum rather than a "Change" to the Design Criteria. The third category of comment/issue is an unresolved issue requiring negotiation or agreement between the parties involved. For the most part, changes to the Design Criteria are the result of Category One comments, the resolutions to which have been fully discussed and agreed to by all. Item numbers which are followed by two asterisks (**) are thus flagged to identify a change to the Criteria which is recommended by KE and is not considered to be controversial, but has not been formally agreed to by all parties.

The addendum is divided into three groups corresponding to their category. Items within each group are organized in a consecutive manner as they apply to the original Design Criteria Report. Each Item has a unique addendum item number. The units digit of the number reflects the category in which the Item belongs (1.n = resolved, 2.n = open and 3.n = unresolved). The decimal portion is a sequential identifier which numbers the addendum items consecutively within each category. Sources of comments are usually referenced to the Rouse drawing number from which the comment arises. Resolutions and/or responses are referenced by numbers to the references listed in the table in Appendix A.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Dummy Layout

Below is a dummy layout for addendum Items. Material in *italics* are explanations of the type of content found under each heading.

Item Number: *Sequential decimal number within each group of addendum items. Units digit indicates category, decimal portion is sequential identifier. (xx indicates XX suggested change)*

Page: *Page number reference to the Design Criteria Report.*

Section: *Section number and title from the Design Criteria Report.*

Paragraph: *Paragraph number from the start of the referenced section of the Design Criteria Report.*

Drawing Reference: *References drawing number identifying the source Rouse drawing which generated the need for criteria change, clarification or reiteration.*

Resolution/Response Reference: *Reference number of source document(s) on which the change/comment is based.*

Change: *Proposed revision or addition to the Westlake Station Design Criteria.*

Remark: *Clarification or reiteration of original criteria or explanation of proposed criteria change.*

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Addendum Items
1.0 Resolved Changes/Comments

Item Number: 1.1

Page: 7
Section: 2.1.3 Platform Location (Longitudinally)
Paragraph: 6

Drawing Reference: Sheets 4, 6 & 16
Resolution/Response Reference: R1 & R3

Change: None required.

Remark: The southernmost pier centerline, i.e. the end column, has been established as being 81'-0" north of the centerline intersection of Pine Street and 5th Avenue. (See Page 39 of Criteria, Preliminary Westlake Station Alignment.) South edge of the station platform is to be 113 feet north of the centerline intersection of Pine Street and 5th Avenue.

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Item Number: 1.2

Page: 8
Section: 2.1.3 Platform Location (Vertically)
Paragraph: 1

Drawing Reference: Sheets 4, 6 & 16
Resolution/Response Reference: R1 & R3

Change: The platform finished elevation is determined by the elevation of the third retail level of the Mall Building, i.e. 141.5'.

Remark: Monorail vertical alignment will be revised to accommodate this elevation change. Top of the rail will be 139.25'.

Item Number: 1.3

Page: 13
Section: 2.1.5 Clearance Requirements
Paragraph: 2

Drawing Reference: Sheet 16
Resolution/Response Reference: R3

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Change: None required.
Remark: Platform edge to west guidebeam centerline (horizontal) must be 8'-7". Sheet 16 scales 6'-5".

Item Number: 1.4

Page: 13
Section: 2.1.5 Clearance Requirements
Paragraph: 2

Drawing Reference: Sheet 16
Resolution/Response Reference: R3

Change: None required.

Remark: Top of platform (El. = 141.5) to top of guidebeam (vertically) must be 2'-3". Sheet 16 scales 2'-0".

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Item Number: 1.5

Pages: 14 (Criteria) / 8 (Addendum No. 1)
Section: Sketch of Typical Section / Item Number 1.11
Paragraph: N/A

Drawing Reference: Sheet 17
Resolution/Response Reference: R3

Change: None required.

Remark: Column set backs from the curb should be 18 inches rather than the approximate 9 inches shown.

Item Number: 1.6

Page: 14
Section: Sketch of Typical Section
Paragraph: N/A

Drawing Reference:
Resolution/Response Reference: R5

Change: See Appendix B for updated dimensions and clearances.

Remark: Appendix B contains a marked up copy of the original Design Criteria sketch.

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Item Number: 1.7

Page: 17
Section: 2.2.2 Circulation (Vertical)
Paragraph: 1

Drawing Reference:
Resolution/Response Reference: R2

Change: Suggested high-quality materials are stone or terra cotta rather than ceramic tile, concrete or GFRC.

Remark: A sense of real quality for the project should be maintained through the public access between 6th Avenue and the Monorail.

Item Number: 1.8 ##

Page: 18
Section: 2.2.2 Circulation (Vertical)
Paragraph: 4

Drawing Reference: Sheets 3, 4, 5, 6 & 17
Resolution/Response Reference: R3

Change: A security gate should be provided at the base of the stairs leading up to the Monorail platform to prevent unauthorized access after train operating hours.

Remark: None.

Item Number: 1.9 ##

Page: 18
Section: 2.2.2 Circulation (Vertical)
Paragraph: 4

Drawing Reference: Sheets 2, 3, 4, 5, 6, 9, 10, 11, 15 & 17
Resolution/Response Reference: E3

Change: None required.

Remark: Intermediate stair landings are needed at 5 foot intervals to accommodate current 9 foot runs & floor to floor height of 15 feet.

Item Number: 1.10

Page: 23
Section: 2.2.5 Roof Covering
Paragraph: 4

ADDENDUM NO. 2, PAGE 6

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Drawing Reference: Sheets 1, 7, 9, 10, 11, 16 & 17
Resolution/Response Reference: R3

Change: None required.

Remark: Coverage for rain protection should be carried out at least to one (1) foot over the train door entrances for the East Train.

Item Number: 1.11 **

Page: 25
Section: 2.2.11 Electrical and Automatic Train Protection Vaults
Paragraph: 1

Drawing Reference:
Resolution/Response Reference: R1

Change: Two (2) egress connections are required from the lower concourse level retail to the Monorail underground electrical vault.

Remark: None.

Item Number: 1.12 **

Page: 29
Section: 2.2.13.3 Entrance (and Exit) Doors from Mall
Paragraph: 2

Drawing Reference:
Resolution/Response Reference: R3

Change: Entrance and exit doors should swing 180 degrees so as not to obstruct the pedestrian flows, especially at the two (2) entries to the north.

Remark: The present 90 degree swing appears particularly impeding.

Item Number: 1.13

Page: 30
Section: 2.2.13.5 Roof Support Structure
Paragraph: 1

Drawing Reference: Sheets 3, 4, 5, 6, 10 & 17 (5th Ave. Elev.)
Resolution/Response Reference: R3

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WESTLAKE DESIGN CRITERIA - Resolved Changes Comments

Change: Column locations must be coordinated with the ramp mechanism envelops within the platform to avoid any conflict between the two.

Remark: 3rd & 4th columns from the south currently conflict with the Monorail ramps.

Item Number: 1.14

Page: 34
Section: 2.3.4 Guideway Support Structure - Support Bents (NEW CRITERIA)
Paragraph: 4

Drawing Reference: None.
Resolution/Response Reference: R1

Change: Column dimensions will be typically 4'-0" square for maximum bent spacing (87 feet) and maximum column height (30 feet). Any additional decorative cladding application to the piers should be considered a thickness increase to the nominal 4 foot column width.

Remark: Delete existing paragraph 4 and replace with above changes.

Item Number: 1.15

Page: 64
Section: 2.7.5 General Lighting Criteria
Paragraph: 3

Drawing Reference:
Resolution/Response Reference: R2

Change: Natural lighting shall be provided whenever possible.

Remark: None.

IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Addendum Items
2.0 Open Items Requiring Additional Information

Item Number: 2.1

Page: 20
Section: 2.2.4 Fare Collection
Paragraph: 1

Drawing Reference:
Resolution/Response Reference: R4

Change: Machines shall be located adjacent to platform entrance doors and out of anticipated pedestrian flow lanes. At least one will need to be available for use when the Hall is closed.

Remark: KE, Seattle Center and TRC need to coordinate efforts and needs in this area as criteria for these machines becomes available.

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Item Number: 2.2

Page: 21
Section: 2.2.6 Kiosk
Paragraph: 3

Drawing Reference:
Resolution/Response Reference: R3 & R4

Change: Floor space for the kiosk on the station platform shall be in addition to the 2800 square feet of dedicated platform queing area.

Remark: Provision for the station kiosk should be included at this point in the design and it shall be clearly shown that platform area does not include kiosk.

Item Number: 2.3

Page: 23
Section: 2.2.8 Roof Covering
Paragraph: 4

Drawing Reference: Sheets 1, 7, 9, 10, 11, 16 & 17
Resolution/Response Reference: R3

Change: None required.

Remark: Drainage for the cantilevered roofing out over the

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trains should be carried back to within the building property line.

Item Number: 7.4

Page: 23
Section: 2.2.B Roof Covering
Paragraph: 4

Drawing Reference: Sheets 1, 7, 9, 10, 11, 16 & 17
Resolution/Response Reference: R3

Change: None required.

Remark: Prevention of pigeon habitation must be considered.

Item Number: 7.5

Page: 23
Section: 2.2.B Roof Covering
Paragraph: 4

Drawing Reference: Sheets 1, 7, 9, 10, 11, 16 & 17
Resolution/Response Reference: R3

Change: None required.

Remark: Design should address method of ventilation, mechanical or natural, at the top of the roof cavity to eliminate smoke accumulation.

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Addendum Items

3.0 Unresolved Issues Requiring Negotiation

Item Number: 3.1

Page: 1
Section: 1.1 Background (NEW CRITERIA)
Paragraph: 4

Drawing Reference: None.
Resolution/Response Reference: R1

Change: It has also been proposed that the Mall Developer Construction Contractor build the Monorail piers, footings (5 locations) and the underground electrical vault.

Remark: None.

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Item Number: 3.2

Page: 17
Section: 2.2.2 Circulation (Vertical)
Paragraph: 2

Drawing Reference: Sheet 17
Resolution/Response Reference: R4

Change: "The Fifth Avenue entrance needs a more visible presence to constitute a public access and egress from the street. The Monorail is to be a public amenity and should be treated as one. The portal should be very visible, bright attractive and inviting."

Remark: The currently designed firestair and elevator door do not satisfy the above criteria.

Item Number: 3.3

Page: 17
Section: 2.2.2 Circulation (Vertical) (NEW CRITERIA)
Paragraph: 2

Drawing Reference: Sheets 2, 3, 4, 5, 6, 9, 10, 11, 15 & 17
Resolution/Response Reference: R3

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WESTLAKE DESIGN CRITERIA - Unresolved Issues

Change: The Fifth Avenue level elevator landing should be set back within the building property line to act as a transitional space for elevator passengers off the limited sidewalk area.

Remark: The proposed set-back would also alleviate the need for front and rear opening elevator doors.

Item Number: 3.4

Page: 18
Section: 2.2.2 Circulation (Vertical)
Paragraph: 4

Drawing Reference:
Resolution/Response Reference: R3

Change: None required.

Remark: Stair width of 5'-6" is minimum for Monorail direct entrances only. Use of stairwell for emergency exiting from second level retail should be considered as additional.

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Item Number: 3.5

Page: 18
Section: 2.2.2 Circulation (Vertical)
Paragraph: 4

Drawing Reference:
Resolution/Response Reference: R3

Change: None required.

Remark: Scaled slope is 0.8 (rise/run). Kaiser recommends 1.5 slope. Maximum UBC/SBC is 0.75.

Item Number: 3.6

Page: 19
Section: 2.2.3 Entrances and Exits
Paragraph: 5

Drawing Reference: Sheets 3, 4, 5, 6 & 17
Resolution/Response Reference: R3 & R4

Change: None required.

ADDENDUM NO. 2, PAGE 12

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WESTLAKE DESIGN CRITERIA - Unresolved Issues

Remark: Current design shows 30 feet of doorway space (about 28 feet clear). Criteria calls for 32 feet of clear space. The clear travelway is needed for passenger flows.

Item Number: 3.7

Page: 22
Section: 2.2.7 Janitor's Closet
Paragraph: 1

Drawing Reference: Sheets 3 & 6
Resolution/Response Reference: R3 & R4

Change: Floor space for a janitor's closet shall not be included within the 2800 square feet of dedicated platform queing area.

Remark: Provision for a janitor's closet should be included at this point in the design and it shall be clearly shown that its floor area is additional to the 2800 square feet of station platform area.

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Item Number: 3.8

Page: 19 (Addendum No. 1)
Section: Item Number 3.2
Paragraph: N/A

Drawing Reference:
Resolution/Response Reference: R4

Change: Permanent specialty kiosks should not be located within the non-dedicated Mall atrium queing space. They will impede pedestrian traffic flows.

Remark: Peak crowds will require the entire queing area. Movement around these kiosks would be particularly difficult for wheelchairs and people on crutches.

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APPENDIX A

REFERENCES

8702170365

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RESPONSE REFERENCES

R1. RTKL Meeting Notes from 3 April 1986 Meeting with KE, Tudor Eng. Co., DCD and SED, dated 4-10-86.

R2. DCD Memo from Rebecca Barnes to David Moseley (DCD), Review Comments from 19 May 1986 Meeting, dated 5-27-86.

R3. KE Drawing Review Comments, RKS-173, dated 6-2-86.

R4. DCD Letter from David Moseley to Perry Page (TRC), dated 5-30-86.

R5. Tudor Revised Sketch of Typical Cross-Section thru Station, revised 10-1-86.

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APPENDIX B

SKETCH OF TYPICAL SECTION

REVISION NUMBER 1

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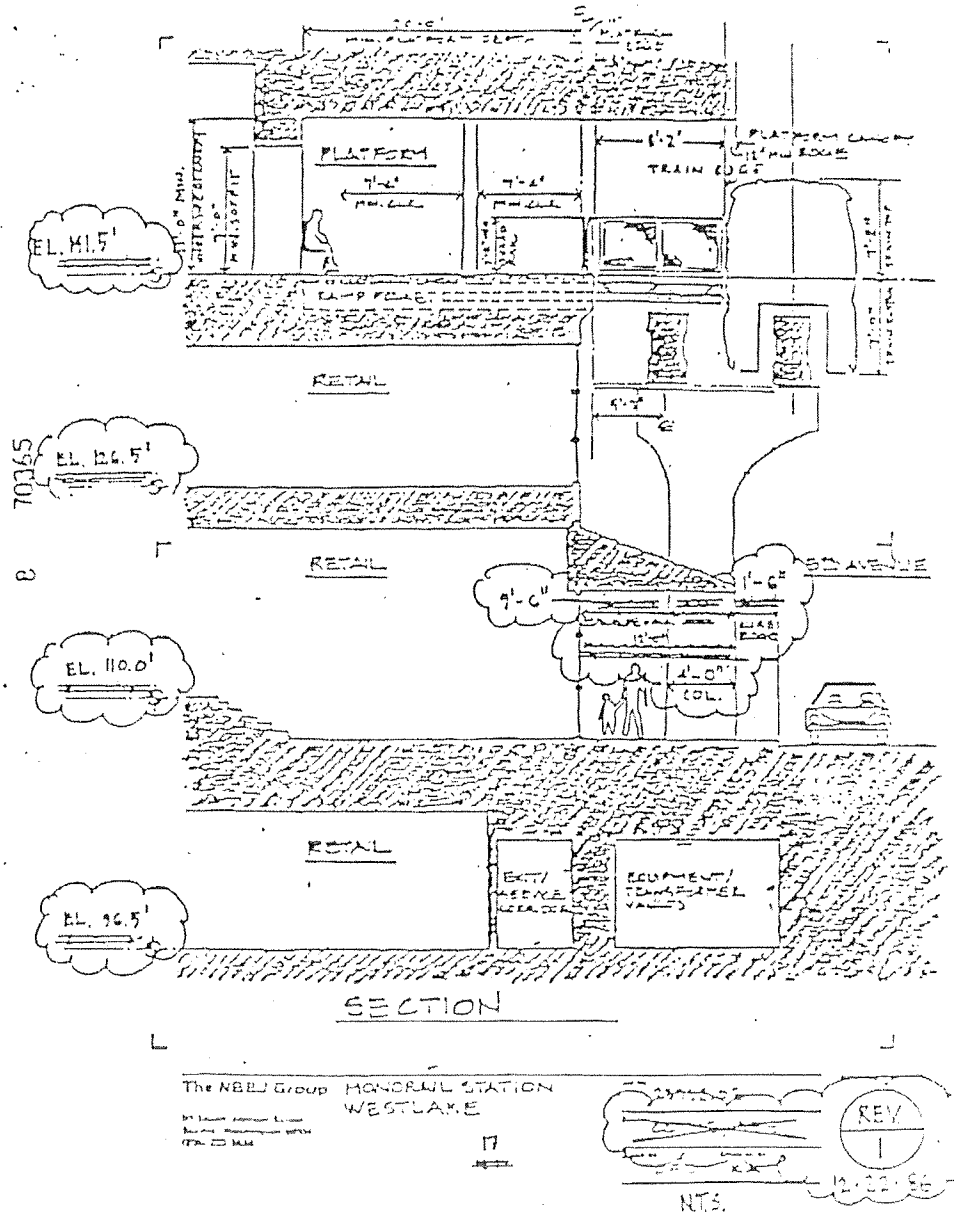

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ADDENDUM NO. 3

to the

WESTLAKE STATION DESIGN CRITERIA REPORT

Prepared for: SEATTLE ENGINEERING DEPARTMENT

Submitted by: KAISER ENGINEERS, INC.

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WESTLAKE STATION DESIGN CRITERIA
ADDENDUM NO. 3

Background

The City of Seattle entered into an agreement (No. TB4-8) with Kaiser Engineers on November 2, 1984 to identify Rehabilitation and Upgrading needs of the existing Seattle Monorail system. Amendment No. 1 called for an Alternatives Analysis to generate and evaluate possible arrangements for the relocated southern terminus (Westlake Station) which is to be integrated into the new Westlake Mall Development. As a result of these analyses, Alternative VII (The George Benson Alternative) was selected.

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The City has decided that the Design Criteria Report is to be a working paper which is to be updated and revised by Kaiser Engineers at significant stages of the Westlake Center project. The updating process is to be accomplished through addenda to the original Westlake Station Design Criteria Report. This Addendum No. 3 is the third update/revision to the original document. It is prepared as part of Task 15.7 of Supplemental Agreement No. 8 and addresses design questions and issues raised since Addendum No. 2 and through the Design Development Phase review ending 18 December 1986. A final addendum is expected to be prepared when Construction Documents are issued.

Addendum Procedure

This addendum is a compilation of Items, each of which is the result of specific or general comments raised by various reviewing parties in response to the Westlake Center Design Development submittal. These Items are used to document "changes" to the original Design Criteria Report and its subsequent Addenda, to make "remarks" supplying supplemental information to further explain or reiterate a particular part of the criteria or as a combination of the two. "Remarks" are also used to explain how a change is to be incorporated into the original Design Criteria.

Many of the comments pertain to elements in the Design Development which were previously addressed in the original Design Criteria Report and these comments have generated

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individual addendum items. Those comments not concerned with a specific section of the Report have been incorporated as addendum items for inclusion in the Design Criteria Report at the locations deemed most appropriate. Some, which address new criteria not in the Report or subsequent addenda, are indicated in the Section reference as "NEW CRITERIA".

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Dummy Layout

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Item Number: *Sequential decimal number within each group of addendum items. Units digit indicates category, decimal portion is sequential identifier. (xx indicates XX suggested change)*

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Page: *Page number reference to the Design Criteria Report.*

Section: *Section number and title from the Design Criteria Report.*

Paragraph: *Paragraph number from the start of the referenced section of the Design Criteria Report.*

Drawing Reference: *References drawing number identifying the source Rouse drawing which generated the need for criteria change, clarification or reiteration.*

Resolution/Response Reference: *Reference number of source document(s) on which the change/comment is based.*

Change: *Proposed revision or addition to the Westlake Station Design Criteria.*

Remark: *Clarification or reiteration of original criteria or explanation of proposed criteria change.*

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Addendum Items
1.0 Resolved Changes/Comments

Item Number: 1.1

Page: 17
Section: 2.2.2 Circulation (Horizontal)
Paragraph: 1

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1

Change: None required.

Remark: The additional fixed retail area added in the middle of the platform lengthens the path from the primary vertical circulation (Hall escalators) to the Monorail platform entrances.

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Item Number: 1.2 ##

Page: 17
Section: 2.2.2 Circulation (Vertical)
Paragraph: 2

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1

Change: Station-dedicated vertical circulation off Fifth Avenue should be made as distinguishable as possible from the rest of the building elevation.

Remark: Elimination of the last section of platform sheltering canopy detracts from the stairs expression of vertical circulation.

Item Number: 1.3 ##

Page: 17
Section: 2.2.2 Circulation (Vertical)
Paragraph: 2

Drawing Reference: 30.09
Resolution/Response Reference: R2

Change: The elevator need not stop on the second floor level.

Remark: None.

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WESTLAKE DESIGN CRITERIA - Resolved Criteria Comments

Item Number: 1.4

Page: 17
Section: 2.2.2 Circulation (Vertical)
Paragraph: 3

Drawing Reference: 30.09
Resolution/Response Reference: R2

Change: None required.

Remark: The elevator capacity should be indicated, 3000 pounds is recommended.

Item Number: 1.5

Page: 21
Section: 2.2.6 Kiosk (NEW CRITERIA)
Paragraph: N/A

Drawing Reference: None.
Resolution/Response Reference: R3

Change: See Appendix B for KE letter to John Diefenbach transmitting expanded kiosk design criteria.

Remark: Kiosk criteria stated in the letter should expand upon or supersede that previously published in the original Design Criteria Report.

Item Number: 1.6

Page: 21
Section: 2.2.6 Kiosk (NEW CRITERIA)
Paragraph: 1

Drawing Reference: None.
Resolution/Response Reference: R4

Change: The kiosk design should consider its intended use as a place to locate required equipment and to provide limited material storage. The kiosk should not be considered an office for platform attendants to remain in.

Remark: None.

Item Number: 1.7

Page: 21
Section: 2.2.6 Kiosk (NEW CRITERIA)

ADDENDUM NO. 3, PAGE 5

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WESTLAKE DESIGN CRITERIA - Results - Changes/Comments

Paragraph: 1

Drawing Reference: None.
Resolution/Response Reference: R4

Changes: (a) Ventilation and tempered air shall be provided from the Mall even when the Mall is closed. Separate control of heating will not be required.

(b) The pass through hole needs to be securable.

Remarks: None.

Item Number: 1.8

Page: 23
Section: 2.2.E Roof Covering (NEW CRITERIA)
Paragraph: 4

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1

Change: Platform roof canopy should extend south to shelter the Fifth Avenue entrance stairwell/elevator landing.

Remark: Vertical circulation from Fifth Avenue to the Monorail platform needs to be perceived as part of the platform as a whole.

Item Number: 1.9 xx

Page: 25 (Criteria) / 5 (Addendum No. 2)
Section: 2.2.11 Electrical and Automatic Train Protection Vaults / Item Number 1.6, App. B
Paragraph: 1

Drawing Reference: 32.08
Resolution/Response Reference: None.

Change: Delete the following, "The floor of the vaults will align with the floor elevation of the lower shopping mall and the METRO tunnel mezzanine."

Remark: Changes in the Westlake Center concourse elevation and the METRO tunnel mezzanine elevation (see Addendum No. 2) result in the floor elevation of the vaults being below the Westlake Center concourse floor elevation.

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Item Number: 1.10 xx

Page: 25 Criteria / B (Addendum No. 2)
Section: 2.2.11 Electrical and Automatic Train Protection Vaults / Item Number 1.11
Paragraph: N/A

Drawing Reference: 30.06
Resolution/Response Reference: None.

Change: Three (3) egress connections are required from the Monorail underground electrical vault to the lower concourse level retail.

Remark: Delete Addendum No. 2, Item Number 1.11

Item Number: 1.11 xx

Page: 29
Section: 2.2.13.3 Entrance (and Exit) Doors from Mall
Paragraph: 1

Drawing Reference: 30.09
Resolution/Response Reference: R1

Change: All emergency exit doors should swing in the direction of emergency egress.

Remark: Doors located at the north end of the platform should swing out into the Mall.

Item Number: 1.12

Page: 29
Section: 2.2.13.3 Entrance (and Exit) Doors from Mall
Paragraph: 1

Drawing Reference: 30.09
Resolution/Response Reference: R2

Change: None required.

Remark: A third pair of swinging doors previously shown in the schematic design would satisfy the clear entrance/exit requirements.

Item Number: 1.13

Page: 30
Section: 2.2.13.5 Roof Support Structure (NEW CRITERIA)
Paragraph: 3

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Item Number: 1.10 **

Page: 25 Criteria / B (Addendum No. 2)
Section: 2.2.11 Electrical and Automatic Train Protection Vaults / Item Number 1.11
Paragraph: X/X

Drawing Reference: 30.06
Resolution/Response Reference: None.

Change: Three (3) access connections are required from the Monorail underground electrical vault to the lower concourse level retail.

Remark: Delete Addendum No. 2, Item Number 1.11

Item Number: 1.11 **

Page: 29
Section: 2.2.13.3 Entrance (and Exit) Doors from Mall
Paragraph: 1

Drawing Reference: 30.09
Resolution/Response Reference: R1

Change: All emergency exit doors should swing in the direction of emergency egress.

Remark: Doors located at the north end of the platform should swing out into the Mall.

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Page: 29
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Paragraph: 1

Drawing Reference: 30.09
Resolution/Response Reference: R2

Change: None required.

Remark: A third pair of swinging doors previously shown in the schematic design would satisfy the clear entrance/exit requirements.

Item Number: 1.13

Page: 30
Section: 2.2.13.5 Roof Support Structure (NEW CRITERIA)
Paragraph: 3

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Drawing Reference: 33.03
Resolution/Response Reference: R1

Change: Roofing support columns located on the platform shall not provide for unintended trash collection.

Remark: Current cruciform shape of the column near the midpoint of the platform would create a problem.

Item Number: 1.14 ##

Page: 40
Section: 2.5.1 Passenger Boarding Ramp Operation/Mechanical
Paragraph: 2

Drawing Reference: 33.03
Resolution/Response Reference: R1 & R2

Change: The panels should be comprised of several individual panels to facilitate removal. One of these panels will need to be hinged and have a spring or counterweight assist to be readily operable by one person.

Remark: None.

Item Number: 1.15

Page: 67
Section: 2.7.5 General Lighting Criteria (NEW CRITERIA)
Paragraph: 1

Drawing Reference: None.
Resolution/Response Reference: R5

Change: The lighting system shall be controlled from the Mall's light panel, but a separate timer control will be used such that the platform's lighting can be controlled separately from the Mall's in the event that the Monorail operation does not coincide with the Mall's open hours.

Remark: None.

Item Number: 1.16

Page: 68
Section: 2.7.6 Specific Lighting Requirements By Area (NEW CRITERIA)
Paragraph: 8

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Drawing Reference: 33.03
Resolution/Response Reference: R1 & R2

Change: Light fixtures at the platform edge shall be at least 8'-3" clear above the platform finished elevation to allow for possible future modifications to the trains' ventilation systems.

Remark: None.

Item Number: 1.17

Page: 4 (Addendum No. 2)
Section: Item Number 1.1
Paragraph: N/A

Drawing Reference: 30.09
Resolution/Response Reference: R2

Change: None required.

Remark: Ind column number 64 is shown about 5 feet too far south.

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Addendum Items

2.0 Open Items Requiring Additional Information

Item Number: 2.1

Page: 20
Section: 2.2.4 Fare Collection Equipment
Paragraph: 1

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1

Change: None required.

Remark: Provisions for fare collection not included, but should be included in the design at this point.

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Item Number: 2.2

Page: 20
Section: 2.2.4 Fare Collection Equipment
Paragraph: 1

Drawing Reference: 30.09
Resolution/Response Reference: R2

Change: None required.

Remark: Before electrical plans are completed information will be available indicating ticket and change machine locations. This will be needed for electrical conduiting and stub outs.

Item Number: 2.3

Page: 20
Section: 2.2.5 Public Address System
Paragraph: 1

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1

Change: None required.

Remark: Provisions for the audio system should be included at this point in the design.

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WESTLAKE DESIGN CRITERIA - Item Index

Item Number: 2.4

Page: 21
Section: 2.2.8 Kiosk
Paragraph: 3

Drawing Reference: 30.09
Resolution/Response Reference: R1

Change: None required.

Remark: Total area for the kiosk is being evaluated as to the amount of space required by the equipment and personnel.

Item Number: 2.5

Page: 23
Section: 2.2.9 Seating and Other Station Furniture
Paragraph: 1

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1

Change: None required.

Remark: Station platform amenities should be included in the design at this time, especially locational information.

Item Number: 2.6

Page: 24
Section: 2.2.10 Typical Barricades
Paragraph: 1

Drawing Reference: 33.03
Resolution/Response Reference: R1 & R2

Change: (a) In order to maximize the visibility...cannot pass through any opening.
(b) In order to maximize the visibility of the platform from the surroundings, a transparent panelized design is recommended. The material choice and design concept should remain consistent with the vocabulary of the rest of the Westlake Center.

Remark: Delete (a) and replace with (b). Solid panels are needed to prevent trapping fingers, etc. at the sliding gates.

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WESTLAKE DESIGN CRITERIA - Open Items

Item Number: 2.7

Page: 25
Section: 2.2.12 Graphic Design
Paragraph: N/A

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1

Change: None required.

Remark: Major signage locations have not been indicated but should be included at this point in the design.

Item Number: 2.8

Page: 20 (Addendum No. 1)
Section: Item Number 3.4
Paragraph: N/A

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1

Change: None required.

Remark: The advantageous sliding wall front doors previously indicated have been replaced with swinging doors. Effective clear width for doorways will not effectively clear the platform during peak flows, 32' of effective entrance/exit is needed.

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Addendum Items
3.0 Unresolved Issues Requiring Negotiation

Item Number: 3.1

Page: 17
Section: 2.2.2 Circulation (Vertical)
Paragraph: 4

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1 & R5

Change: None required.

Remark: Stair slope of 7 and 1/2 inch rise in a 10 inch run is still too steep and uncomfortably proportioned.

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Item Number: 3.2

Page: 12 (Addendum No. 2)
Section: Item Number 3.2
Paragraph: N/A

Drawing Reference:
Resolution/Response Reference: R2 & R5

Change: None required.

Remark: Entrance to stairwell and elevator at Fifth Avenue still needs to be enhanced with a greater public identity.

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APPENDIX A

REFERENCES

8702170365

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RESPONSE REFERENCES

R1. KE Drawing Review Comments, RKS - 215, dated 10-6-86.

R2. DCD Letter from David Moseley to Perry Page (TRC), dated 10-8-86.

R3. KE Letter to J. Diefenbach (TRC), Kiosk Design Criteria, dated 10-22-86.

R4. KE Letter to P. Frederick (SED), Kiosk Design Criteria Responses, RKS - 221, dated 11-14-86.

R5. KE Meeting Notes from 25 August 1986 Meeting with TRC and others, dated 12-8-86.

R6. KE Meeting Notes from 17 December 1986 Meeting with TRC, SED, DCD, Seattle Center and KE, dated 12-18-86.

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APPENDIX B

SUPPLEMENTAL KIOSK CRITERIA

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KAISER ENGINEERS

KAISER ENGINEERS, INC
1444 DEXTER MORTON BUILDING
710 SECOND AVENUE
SEATTLE WASHINGTON 98104
(206) 624-0004

October 22, 1986

John S. Diefenbach
Senior Project Manager
The Rouse Company
395 Santa Monica Place Management
Santa Monica, CA 90401

8702170365

Subject: Westlake Monorail Station, Kiosk Design Criteria

Dear Mr. Diefenbach:

The kiosk for the Monorail Station at Westlake Center is to be designed and built by The Rouse Co., to criteria to be developed by KE. The installation of Monorail equipment into the kiosk will be performed by the Monorail contractor.

In order for your design work to proceed, we have developed the attached design criteria. This criteria has been developed with reference to RTXL's Design Development Drawings. The criteria is intended to provide functional criteria rather than dictate design details for the kiosk enclosure, therefore consider that you have freedom to alter the shape and appearance to suit the Center's design and appearance.

We have had some conversation with Chuck Blackmer concerning the kiosk and we believe that this criteria is consistent with those discussions.

Information for details, such as conduit sizes, equipment mounting, radio transmitter volume, etc. is still to be developed. It will be provided as it becomes available.

Please contact me with any questions.

Very truly yours,

R. A. Line, P.E.
Project Manager

Enclosure

cc: F. Fredericks SED J. Kilgore DCD

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KIOSK DESIGN CRITERIA

The final design for the kiosk will be developed by RTKL Associates Inc. with consideration of the following criteria and attached sketches.

1. The kiosk must accommodate the following items:

   * platform control equipment - 2' X 4' X 1'deep
   * radio transmitter
   * public address system
   * telephone
   * speak thru hole with screened grill in window at counter
   * storage for ticket stock, other fare collection support equipment and materials.
   * temporary storage for the cash box cart 2' X 3'

2. The kiosk will require connection to building HVAC, electrical, fire sprinkler, smoke detecting and alarm systems.

3. The door to the kiosk will have a closure and lock that will be coordinated with Seattle Center.

4. The interior finish of the kiosk shall match the standard for public space.

5. The kiosk shall have lighting sufficient to produce a illuminance of thirty foot candles.

6. The glazing shall provide an adequate level of security and vandal resistance.

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EXHIBIT C. INVENTORY OF SPARE PARTS

2014 SMS Spare Parts and Supplies Inventory

	Part Number	Description	Located	Used on	Manufacture or Supplier	Qty	Value	Total Value
1	A62453	Timer, Relay	ES	RampProtectSyst	GRS	1		
2	83052602	Power Supply	ES	RampProtectSyst	SOLA Electric	1		
3	A29·10-12V-AI0	Power Supply	ES	RampProtectSyst	Lamarsh	1	$400	$400
4		700v DC breaker	EV	Switch Gear	ABB	1	$13,000	$13,000
5		208v. 2500 Amp breaker	WV	Switch Gear	ABB	1	$9,500	$9,500
6	289B415A14A	Relay, Undervoltage, Phase Sequence, 140-240 Volt w/Target. Type CP, 240v, 3 Phase, 60H	? ES or WV	Switch Gear	ABB	2	$1,027	$2,054
7	443S3144	Relay, Overcurrent, 125 Volt DC Single Phase	ES & WV	Switch Gear	ABB	1	$643	$643
8	443T4340	Relay, Overcurrent, 125 Volt DC	ES	Switch Gear	ABB	1	$500	$500
9	C7710021CC10002	Switch. Control, Circuit Breaker	ES or WV	Switch Gear	ABB	4	$500	$2,000
10	0770BAAGLUSA	Ammeter. AC, 0-3000A	ES	Switch Gear	Crompton	1	$800	$800
11	163801	Relay. MG·6 Style	ES	Heater relay	General Electric	1	$750	$750
12	29BB363A 11	Relay, MG-6 Style	ES	Heater relay	General Electric	1	$750	$750
13	2201	Switch, Disconnect, 6 Form "CO Aux Contacts 2000 Amp, BOO Voll, SPST, MOT OF, SOL INT	ES	Switch Gear	Pringle	1	$1,000	$1,000

	Part Number	Description	Located	Used on	Manufacturer or Supplier	Qty	Value	Total Value
14		Switch, Disconnect, Live-Front, Key In. 2000 Amp, 800 Volt DC, 1 Form "C·Aux Contact	ES	Switch Gear	Pringle	1	$850	$850
15	606B029A09	Relay. Aux, High Speed, Front Connected, Type AR, 125 Volt DC, 4NO Contacts	? ES or WV	Switch Gear	Westinghouse	1	$540	$540
16	TTU1·AJ	Intercom Unit	MS	Ticket Booth	Norcon	1	$600	$600
17	custom	Compressor, Dryer, Filter, Tank assembly	CB	Train	Compressed Air	2	$15,230	$30,460
18	1250B	Traction Motor	MS	Train	General Electric	2	$38,000	$76,000
19		General Package Relays/Contacts	WS	Train	General Electric	1	$4,000	$4,000
20		Load Wheel Rims	MS	Train	Custom	5	$800	$4,000
21		Guide Wheel Rims	BB	Train	Custom	11	$200	$2,200
22	Q-125	Gear Box	MS	Train	Rockwell	2	$15,000	$30,000
23		Gear Box yoke	MS	Train	Rockwell	1	$435	$435
24	963-07-20-424	Low Speed Drive Shaft	MS	Train	Rockwell	4	$1,000	$4,000
25		92N Low speed shaft yoke	MS	Train	Rockwell	2	$440	$880
26	960-00-20-425	Brake Drive Shaft Assembly	CS	Train	Rockwell	2	$1,000	$2,000
27	959-04-20-426	High Speed Drive Shaft Assembly	MS	Train	Rockwell	1	$1,200	$1,200
28	U750DCI38DCIP/P3	DC-DC converter	EV	Train	Transtechnik	1	$13,200	$13,200
29		Emerson VFD	ES	Train	Emerson	1	$1,800	$1,800
30		Sine wave filter	ES	Train	MTE	1	$800	$800
31	460-0654-0-A	DC Power Converter 48-24V	ES	Train	Newmar	1	$805	$805
32		Radio transmitter	ES	Train		1	$1,200	$1,200
33		Cast & HT load spindle (not machined)	MS	Train	Bradken Atlas	1	$1,400	$1,400
34	406S	Gate Lock	CS	WLC	Locknetics	2	$415	$830

	Part Number	Description	Located	Used on	Manufacture or Supplier	Qty	Value	Total Value
35	4G5 111	Ramp Drive	CG	WLC	RACO International	1	$3,000	$3,000
36		Load Spindle Pattern	off site	being refabricated	Woodland Pattern	1	$2,500	$2,500
37		WLC Ramp Frame	CG	WLC		1	$8,000	$8,000
38		WLC Ramp Wall Glass	WV	WLC		6	$180	$1,080
	Total Value							**$223,177**

LOCATION KEY	
AO	Administrative Offices
BB	Blue Bay
BR	Bathroom
CB	Center Bay
CG	Cadillac Garage
CS	Center House Storage
ES	Electrical Storage
EV	Electrical Vault
GR	Gate Ramp
HW	Hallway
JC	Janitorial Closet
MO	Maintenance Office
MS	Mechanical Storage
RB	Red Bay
WS	Workshop
WV	Westlake Vault

Form revised: February 26, 2014

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Center	Kerry Smith, 206-615-0358 Ned Dunn, 206-684-7212 Rebecca Keith, Law, 206-684-8239	Ann Gorman, 206-684-5292

Legislation Title:
AN ORDINANCE relating to the Seattle Monorail; authorizing the Director of the Seattle Center to execute a concession agreement granting Seattle Monorail Services the right to operate and maintain the Monorail system for ten years, with an additional ten year extension by mutual agreement; authorizing the Director to enter into project agreements for Monorail capital improvements and major maintenance projects as provided for in the agreement; authorizing the Director to establish Monorail fares within the limitations provided in the agreement; and ratifying and confirming certain prior acts.

Summary of the Legislation:
This legislation authorizes execution of a ten year concession agreement with Seattle Monorail Services (SMS) for operation, maintenance, marketing, and administration of the Monorail System. The legislation also authorizes the Seattle Center Director to enter into capital improvement and major maintenance project agreements with SMS and establishes Monorail fare limits, within which the fares may be adjusted, subject to approval by the Seattle Center Director.

Background:
The Seattle Center Monorail provides a public transportation link between downtown Seattle and Seattle Center, carrying more than two million passengers annually. The Monorail system includes two trains, two stations, and the elevated guideways and supports on which the trains travel. The Monorail was originally constructed for the 1962 Seattle World's Fair. The original Monorail route and downtown station was modified for the construction of Westlake Center, and in 1987 the City and Westlake Center Associates Limited Partnership entered into a fifty year Monorail Operating and Easement Agreement under which the City utilizes the Westlake Center Monorail station for a fee.

Prior to 1994 Seattle Center operated the Monorail and hired Metro to perform the maintenance functions for the Monorail system. In 1993, Seattle Center issued a request for proposals for a concessionaire to maintain and operate the Monorail. Seattle Monorail Services (SMS) was selected as the concessionaire, and in May 1994 the City Council passed Ordinance 117123 authorizing execution of the Monorail Concession Agreement with SMS. SMS began operating the Monorail system in June 1994. During their tenure as concessionaire, SMS implemented a number of service improvements, increased hours of operation, managed, in conjunction with Seattle Center, an extensive renovation of the Monorail trains, and maintained a positive

financial return for both SMS and the City. That agreement expires December 31, 2014.

In October 2013, Seattle Center issued a Request for Proposals (RFP) for operation and maintenance of the Seattle Monorail and subsequently received three responses. The RFP Review Panel conducted an extensive analysis of the proposals, interviewed all three respondent teams, and in the end unanimously recommended to the Seattle Center Director the selection of SMS as the preferred provider.

Terms of Proposed Monorail Concession Agreement:

Term:
The agreement term is ten years, with an option to extend for one additional 10-year term on the same terms and conditions upon the mutual agreement of the concessionaire and the Director.

City Revenue:
Concession Fee - The City receives the greater of 2/3 of net operating income with a minimum guarantee of $550,000 per year. SMS retains the remaining 1/3 of net operating income.

City Management Fee - Seattle Center contract administration costs of up to $30,000 per year (increased annually by the CPI) will be reimbursed based on actual time and expenses.

City Services Fund - Seattle Center receives $60,000 per year as reimbursement for maintenance of the Seattle Center Monorail Station and Station Annex performed by Seattle Center staff.

Reserve Funds:
Irrevocable Reserve Account – The Concessionaire will hold 7.5% of Monorail ridership revenues in an Irrevocable Reserve Account (IRA) to fund mutually agreed upon capital improvements to the Monorail System. The funds may be used as the local match for Federal Transit Administration (FTA) grants for capital improvements and major maintenance for the Monorail System. In the final year of the term, any uncommitted funds in the IRA may be used to pay operating expenses.

Irrevocable Marketing Account - A reserve account of 0.6% of ridership revenues or $25,000 per year, whichever is greater, will go into an Irrevocable Marketing Account (IMA) reserve account to be used for mutually agreed upon joint Monorail – Seattle Center marketing initiatives. At the end of the term, any uncommitted funds in the account will be paid to Seattle Center.

SMS Revenue:
Management Fee - SMS receives a management fee of 5% of total revenues.

Net Operating Income - SMS retains 1/3 of net operating income.

Operations, Ordinary Maintenance, Major Maintenance and Capital Projects:
Operations and Ordinary Maintenance - SMS is responsible for all operating and ordinary maintenance activities for the Monorail System, except that the City, consistent with the City's labor agreements, is responsible for performing maintenance (including mechanical, structural,

painting, electrical, and plumbing work) on the Seattle Center Station and Annex. SMS will use the City Services fund to reimburse the City for this work.

The minimum operating hours remain unchanged. The current operating hours are Monday through Friday, 7:30 a.m. to 11:00 p.m. and Saturday and Sunday, 8:30 a.m. to 11:00 p.m. During the winter months the Monorail closes at 9 p.m. Sunday through Thursday, except when increased service hours are needed to support events. The hours can be modified with approval from the Seattle Center Director.

Major Maintenance and Capital Improvements – The City and SMS jointly develop a rolling five-year Capital and Major Maintenance Program (CMMP) plan to identify, sequence and prioritize current and future capital improvement and major maintenance projects for the Monorail System. For each project, the plan will identify the proposed funding source(s), contracting method, scope, budget, and schedule.

For each CMMP project to be carried out, Seattle Center and SMS will execute a separate Project Agreement detailing the project scope, schedule, budget, contracting method and all project-related requirements, including requirements for federally funded projects. Projects may be managed by the City or SMS. SMS will be reimbursed at cost for any project management services they provide, without any additional fees or overhead charges.

The Seattle Center Monorail receives Federal Transit Administration (FTA) funding for major maintenance and capital improvements. FTA funds require a 20% local match. As noted above, it is anticipated that the Irrevocable Renewal Account (IRA) will be a funding source for the local match.

Other Revenue Sources:
SMS has the right, subject to the Director's approval, to solicit and procure advertising and sponsorship agreements, and provide vending and concession services on the Monorail platform. Any revenues earned from these sources is included in total revenues.

Fares and Fare Adjustments:
No fare increases are proposed at this time. The current one-way fares, which went into effect November 1, 2011, are $2.25 for adults, with a $1.00 reduced rate for youth ages 5-12, seniors, persons with disabilities, Medicare card holders, and active duty US military. Children 4 and under ride free. Over the term of the agreement fare increases may be proposed by SMS, subject to the approval of the Seattle Center Director, up to a maximum of $4.00 one-way for regular fares and $2.00 one-way for discounted fares. Any fare increases above these amounts require Seattle City Council approval. It is intended that fares will generally keep pace with inflation.

COMPARISON OF PRIOR AND PROPOSED MONORAIL AGREEMENTS

Agreement Term	1994 Agreement	2015 Proposed Agreement
Length of Agreement	5 years with 3-5 year Concessionaire options	10 years with a possible 10 year extension by mutual agreement
City Concession Fee	50% of Net Operating Income, Minimum Guarantee of $299,051	66.67% of Net Operating Income, Minimum Guarantee of $550,000
City Management Fee	None	Up to $30,000/year
Reimbursement of City Services	None	$60,000/year
Capital Improvements Fund (IRA)	5% of Ridership Revenues, up to $150,000/year	7.5% of Ridership Revenues, no cap
Marketing Fund (IMA)	None	0.6% of Ridership Revenues or $25,000 whichever is greater
SMS Management Fee	7% of revenues	5% of revenues
Operations & Ordinary Maintenance	SMS Responsibility	SMS Responsibility
Capital and Major Maintenance Projects	If SMS manages project, SMS reimbursed at cost	If SMS manages project, SMS reimbursed at cost
Fares	SMS sets fare, subject to Seattle Center Director approval within City Council established limits	SMS sets fare, subject to Seattle Center Director approval with City Council established limits

Please check one of the following:

____ **This legislation does not have any financial implications.**

__X__ **This legislation has financial implications.**

Appropriations:

Fund Name and Number	Department	Budget Control Level*	2014 Appropriation	2015 Anticipated Appropriation
N/A				
TOTAL				

Appropriations Notes:
This legislation does not authorize an appropriation.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2014 Revenue	2015 Revenue
SCOF/S11410	Seattle Center			$900,000
TOTAL				

Revenue/Reimbursement Notes:
This legislation does not include an appropriation. The 2015 and 2016 Proposed Seattle Center budgets include Monorail revenue of $900,000 each year.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2014 Positions	2014 FTE	2015 Positions*	2015 FTE*
N/A							
TOTAL							

Position Notes:
This legislation does not create or abrogate positions.

Do positions sunset in the future?
N/A

Spending/Cash Flow:

Fund Name & #	Department	Budget Control Level*	2014 Expenditures	2015 Anticipated Expenditures
N/A				
TOTAL				

Spending/Cash Flow Notes:
Not applicable.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
The long-term implications include regular, recurring revenue for Seattle Center while preserving the valuable transportation service provided by the Seattle Center Monorail.

b) **What is the financial cost of not implementing the legislation?**
If this legislation is not approved, an alternative Seattle Monorail operator will need to be solicited. In the interim, per the terms of their current agreement, SMS could continue to operate the Monorail for the City for a fee.

c) **Does this legislation affect any departments besides the originating department?**
No, but the Seattle Department of Transportation in regards to FTA funding and the department of Finance and Administrative Services in regards to the Capital and Major Maintenance Program (CMMP) plan have an interest in the proposed Monorail Concession Agreement.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
The City could operate the Monorail and assume full responsibility for all maintenance, operations, marketing, capital improvements, and administration. This would require significant additional resources and staff.

e) **Is a public hearing required for this legislation?**
No.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.

g) **Does this legislation affect a piece of property?**
No

h) **Other Issues:**
None

List attachments to the fiscal note below:

City of Seattle
Office of the Mayor

October 28, 2014

Honorable Tim Burgess
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council Bill that authorizes a Concession Agreement with Seattle Monorail Services (SMS) to operate and maintain the Seattle Center Monorail.

The Monorail, constructed for the 1962 Seattle World's Fair, is both a treasured icon and a vital transportation link between downtown Seattle and Seattle Center and surrounding businesses. The Monorail carries over 2 million passengers annually, including commuters, event attendees at Seattle Center and the downtown stadiums, residents, tourists, and visitors connecting with light rail to the airport. Renovations to the Monorail over the last seven years have increased system reliability and helped ensure its continued operation for years to come.

Under the 10-year concession agreement authorized by the proposed legislation, the City will receive 2/3 of net operating income with a minimum guarantee of $550,000 per year. In addition, SMS will reserve 7.5% of gross revenues for capital improvement projects and the City will be reimbursed for the City's administrative and maintenance costs associated with the Monorail. SMS will operate and maintain the Monorail and receive 1/3 of net operating income and a concession management fee of 5% of gross revenues. Monorail fares will remain unchanged initially, but fares may be adjusted over the agreement term within identified limits and subject to approval by the Seattle Center Director.

For over fifty years, the Seattle Center Monorail has delighted locals and visitors alike and provided a key link in our local transportation system. This proposed new agreement will continue successful operation and careful stewardship of the Monorail for the next decade and beyond. Thank you for your consideration of this legislation. Should you have questions, please contact Kerry Smith at 615-0358.

Sincerely,

Ed Murray
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Ed Murray, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
ed.murray@seattle.gov

	Part Number	Description	Located	Used on	Manufacture or Supplier	Qty	Value	Total Value
35	4G5 111	Ramp Drive	CG	WLC	RACO International	1	$3,000	$3,000
36		Load Spindle Pattern	off site	being refabricated	Woodland Pattern	1	$2,500	$2,500
37		WLC Ramp Frame	CG	WLC		1	$8,000	$8,000
38		WLC Ramp Wall Glass	WV	WLC		6	$180	$1,080
	Total Value							**$223,177**

LOCATION KEY	
AO	Administrative Offices
BB	Blue Bay
BR	Bathroom
CB	Center Bay
CG	Cadillac Garage
CS	Center House Storage
ES	Electrical Storage
EV	Electrical Vault
GR	Gate Ramp
HW	Hallway
JC	Janitorial Closet
MO	Maintenance Office
MS	Mechanical Storage
RB	Red Bay
WS	Workshop
WV	Westlake Vault

THIS VERSION IS NOT ADOPTED

THIS VERSION IS NOT ADOPTED

	Part Number	Description	Located	Used on	Manufacturer or Supplier	Qty	Value	Total Value
14		Switch, Disconnect, Live-Front, Key In. 2000 Amp, 800 Volt DC, 1 Form "C·Aux Contact	ES	Switch Gear	Pringle	1	$850	$850
15	606B029A09	Relay. Aux, High Speed, Front Connected, Type AR, 125 Volt DC, 4NO Contacts	? ES or WV	Switch Gear	Westinghouse	1	$540	$540
16	TTU1·AJ	Intercom Unit	MS	Ticket Booth	Norcon	1	$600	$600
17	custom	Compressor, Dryer, Filter, Tank assembly	CB	Train	Compressed Air	2	$15,230	$30,460
18	1250B	Traction Motor	MS	Train	General Electric	2	$38,000	$76,000
19		General Package Relays/Contacts	WS	Train	General Electric	1	$4,000	$4,000
20		Load Wheel Rims	MS	Train	Custom	5	$800	$4,000
21		Guide Wheel Rims	BB	Train	Custom	11	$200	$2,200
22	Q-125	Gear Box	MS	Train	Rockwell	2	$15,000	$30,000
23		Gear Box yoke	MS	Train	Rockwell	1	$435	$435
24	963-07-20-424	Low Speed Drive Shaft	MS	Train	Rockwell	4	$1,000	$4,000
25		92N Low speed shaft yoke	MS	Train	Rockwell	2	$440	$880
26	960-00-20-425	Brake Drive Shaft Assembly	CS	Train	Rockwell	2	$1,000	$2,000
27	959-04-20-426	High Speed Drive Shaft Assembly	MS	Train	Rockwell	1	$1,200	$1,200
28	U750DCI38DCIP/P3	DC-DC converter	EV	Train	Transtechnik	1	$13,200	$13,200
29		Emerson VFD	ES	Train	Emerson	1	$1,800	$1,800
30		Sine wave filter	ES	Train	MTE	1	$800	$800
31	460-0654-0-A	DC Power Converter 48-24V	ES	Train	Newmar	1	$805	$805
32		Radio transmitter	ES	Train		1	$1,200	$1,200
33		Cast & HT load spindle (not machined)	MS	Train	Bradken Atlas	1	$1,400	$1,400
34	406S	Gate Lock	CS	WLC	Locknetics	2	$415	$830

THIS VERSION IS NOT ADOPTED

EXHIBIT C. INVENTORY OF SPARE PARTS

2014 SMS Spare Parts and Supplies Inventory

	Part Number	Description	Located	Used on	Manufacture or Supplier	Qty	Value	Total Value
1	A62453	Timer, Relay	ES	RampProtectSyst	GRS	1		
2	83052602	Power Supply	ES	RampProtectSyst	SOLA Electric	1		
3	A29·10-12V-AI0	Power Supply	ES	RampProtectSyst	Lamarsh	1	$400	$400
4		700v DC breaker	EV	Switch Gear	ABB	1	$13,000	$13,000
5		208v. 2500 Amp breaker	WV	Switch Gear	ABB	1	$9,500	$9,500
6	289B415A14A	Relay, Undervoltage, Phase Sequence, 140-240 Volt w/Target. Type CP, 240v, 3 Phase, 60H	? ES or WV	Switch Gear	ABB	2	$1,027	$2,054
7	443S3144	Relay, Overcurrent, 125 Volt DC Single Phase	ES & WV	Switch Gear	ABB	1	$643	$643
8	443T4340	Relay, Overcurrent, 125 Volt DC	ES	Switch Gear	ABB	1	$500	$500
9	C7710021CC10002	Switch. Control, Circuit Breaker	ES or WV	Switch Gear	ABB	4	$500	$2,000
10	0770BAAGLUSA	Ammeter. AC, 0-3000A	ES	Switch Gear	Crompton	1	$800	$800
11	163801	Relay. MG·6 Style	ES	Heater relay	General Electric	1	$750	$750
12	29BB363A 11	Relay, MG-6 Style	ES	Heater relay	General Electric	1	$750	$750
13	2201	Switch, Disconnect, 6 Form "CO Aux Contacts 2000 Amp, BOO Voll, SPST, MOT OF, SOL INT	ES	Switch Gear	Pringle	1	$1,000	$1,000

THIS VERSION IS NOT ADOPTED

KIOSK DESIGN CRITERIA

The final design for the kiosk will be developed by RTKL Associates Inc. with consideration of the following criteria and attached sketches.

1. The kiosk must accommodate the following items:

   * platform control equipment - 2' X 4' X 1'deep
   * radio transmitter
   * public address system
   * telephone
   * speak thru hole with screened grill in window at counter
   * storage for ticket stock, other fare collection support equipment and materials.
   * temporary storage for the cash box cart 2' X 3'

2. The kiosk will require connection to building HVAC, electrical, fire sprinkler, smoke detecting and alarm systems.

3. The door to the kiosk will have a closure and lock that will be coordinated with Seattle Center.

4. The interior finish of the kiosk shall match the standard for public space.

5. The kiosk shall have lighting sufficient to produce a illuminance of thirty foot candles.

6. The glazing shall provide an adequate level of security and vandal resistance.

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THIS VERSION IS NOT ADOPTED

KAISER ENGINEERS

KAISER ENGINEERS, INC
1444 DEXTER MORTON BUILDING
710 SECOND AVENUE
SEATTLE WASHINGTON 98104
(206) 624-0004

October 22, 1986

John S. Diefenbach
Senior Project Manager
The Rouse Company
395 Santa Monica Place Management
Santa Monica, CA 90401

8702170365

Subject: Westlake Monorail Station, Kiosk Design Criteria

Dear Mr. Diefenbach:

The kiosk for the Monorail Station at Westlake Center is to be designed and built by The Rouse Co., to criteria to be developed by KE. The installation of Monorail equipment into the kiosk will be performed by the Monorail contractor.

In order for your design work to proceed, we have developed the attached design criteria. This criteria has been developed with reference to RTXL's Design Development Drawings. The criteria is intended to provide functional criteria rather than dictate design details for the kiosk enclosure, therefore consider that you have freedom to alter the shape and appearance to suit the Center's design and appearance.

We have had some conversation with Chuck Blackmer concerning the kiosk and we believe that this criteria is consistent with those discussions.

Information for details, such as conduit sizes, equipment mounting, radio transmitter volume, etc. is still to be developed. It will be provided as it becomes available.

Please contact me with any questions.

Very truly yours,

R. A. Line, P.E.
Project Manager

Enclosure

cc: F. Fredericks SED J. Kilgore DCD

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APPENDIX B

SUPPLEMENTAL KIOSK CRITERIA

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RESPONSE REFERENCES

R1. KE Drawing Review Comments, RKS - 215, dated 10-6-86.

R2. DCD Letter from David Moseley to Perry Page (TRC), dated 10-8-86.

R3. KE Letter to J. Diefenbach (TRC), Kiosk Design Criteria, dated 10-22-86.

R4. KE Letter to P. Frederick (SED), Kiosk Design Criteria Responses, RKS - 221, dated 11-14-86.

R5. KE Meeting Notes from 25 August 1986 Meeting with TRC and others, dated 12-8-86.

R6. KE Meeting Notes from 17 December 1986 Meeting with TRC, SED, DCD, Seattle Center and KE, dated 12-18-86.

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APPENDIX A

REFERENCES

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Addendum Items
3.0 Unresolved Issues Requiring Negotiation

Item Number: 3.1

Page: 17
Section: 2.2.2 Circulation (Vertical)
Paragraph: 4

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1 & R6

Change: None required.

Remark: Stair slope of 7 and 1/2 inch rise in a 10 inch run is still too steep and uncomfortably proportioned.

8702170365

Item Number: 3.2

Page: 12 (Addendum No. 2)
Section: Item Number 3.2
Paragraph: N/A

Drawing Reference:
Resolution/Response Reference: R2 & R6

Change: None required.

Remark: Entrance to stairwell and elevator at Fifth Avenue still needs to be enhanced with a greater public identity.

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THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Open Items

Item Number: 2.7

Page: 26
Section: 2.2.12 Graphic Design
Paragraph: N/A

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1

Change: None required.

Remark: Major signage locations have not been indicated but should be included at this point in the design.

Item Number: 2.8

Page: 20 (Addendum No. 1)
Section: Item Number 3.4
Paragraph: N/A

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1

Change: None required.

Remark: The advantageous sliding wall front doors previously indicated have been replaced with swinging doors. Effective clear width for doorways will not effectively clear the platform during peak flows, 32' of effective entrance/exit is needed.

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THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Open Items

Item Number: 2.4

Page: 21
Section: 2.2.6 Kiosk
Paragraph: 3

Drawing Reference: 30.09
Resolution/Response Reference: R1

Change: None required.

Remark: Total area for the kiosk is being evaluated as to the amount of space required by the equipment and personnel.

Item Number: 2.5

Page: 23
Section: 2.2.9 Seating and Other Station Furniture
Paragraph: 1

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1

Change: None required.

Remark: Station platform amenities should be included in the design at this time, especially locational information.

Item Number: 2.6

Page: 24
Section: 2.2.10 Typical Barricades
Paragraph: 1

Drawing Reference: 33.03
Resolution/Response Reference: R1 & R2

Change: (a) In order to maximize the visibility...cannot pass through any opening.
(b) In order to maximize the visibility of the platform from the surroundings, a transparent panelized design is recommended. The material choice and design concept should remain consistent with the vocabulary of the rest of the Westlake Center.

Remark: Delete (a) and replace with (b). Solid panels are needed to prevent trapping fingers, etc. at the sliding gates.

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THIS VERSION IS NOT ADOPTED

Addendum Items
2.0 Open Items Requiring Additional Information

Item Number: 2.1

Page: 20
Section: 2.2.4 Fare Collection Equipment
Paragraph: 1

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1

Change: None required.

Remark: Provisions for fare collection not included, but should be included in the design at this point.

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Item Number: 2.2

Page: 20
Section: 2.2.4 Fare Collection Equipment
Paragraph: 1

Drawing Reference: 30.09
Resolution/Response Reference: R2

Change: None required.

Remark: Before electrical plans are completed information will be available indicating ticket and change machine locations. This will be needed for electrical conduiting and stub outs.

Item Number: 2.3

Page: 20
Section: 2.2.5 Public Address System
Paragraph: 1

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1

Change: None required.

Remark: Provisions for the audio system should be included at this point in the design.

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THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Drawing Reference: 33.03
Resolution/Response Reference: R1 & R2

Change: Light fixtures at the platform edge shall be at least 8'-3" clear above the platform finished elevation to allow for possible future modifications to the trains' ventilation systems.

Remark: None.

Item Number: 1.17

Page: 4 (Addendum No. 2)
Section: Item Number 1.1
Paragraph: N/A

Drawing Reference: 30.09
Resolution/Response Reference: R2

Change: None required.

Remark: End column number 64 is shown about 5 feet too far south.

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THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Drawing Reference: 33.03
Resolution/Response Reference: R1

Change: Roofing support columns located on the platform shall not provide for unintended trash collection.

Remark: Current cruciform shape of the column near the midpoint of the platform would create a problem.

Item Number: 1.14 xx

Page: 40
Section: 2.5.1 Passenger Boarding Ramp Operation/Mechanical
Paragraph: 2

Drawing Reference: 33.03
Resolution/Response Reference: R1 & R2

Change: The panels should be comprised of several individual panels to facilitate removal. One of these panels will need to be hinged and have a spring or counterweight assist to be readily operable by one person.

Remark: None.

Item Number: 1.15

Page: 67
Section: 2.7.5 General Lighting Criteria (NEW CRITERIA)
Paragraph: 1

Drawing Reference: None.
Resolution/Response Reference: R5

Change: The lighting system shall be controlled from the Mall's light panel, but a separate timer control will be used such that the platform's lighting can be controlled separately from the Mall's in the event that the Monorail operation does not coincide with the Mall's open hours.

Remark: None.

Item Number: 1.16

Page: 68
Section: 2.7.6 Specific Lighting Requirements By Area (NEW CRITERIA)
Paragraph: B

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THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Item Number: 1.10 **

Page: 25 Criteria / B (Addendum No. 2)
Section: 2.2.11 Electrical and Automatic Train Protection Vaults / Item Number 1.11
Paragraph: N/A

Drawing Reference: 30.06
Resolution/Response Reference: None.

Change: Three (3) egress connections are required from the Monorail underground electrical vault to the lower concourse level retail.

Remark: Delete Addendum No. 2, Item Number 1.11

Item Number: 1.11 **

8702170365

Page: 29
Section: 2.2.13.3 Entrance [and Exit] Doors from Mall
Paragraph: 1

Drawing Reference: 30.09
Resolution/Response Reference: R1

Change: [redacted]

Item Number: 1.12

Page: 29
Section: 2.2.13.3 Entrance [and Exit] Doors from Mall
Paragraph: 1

Drawing Reference: 30.09
Resolution/Response Reference: R2

Change: None required.

Remark: A third pair of swinging doors previously shown in the schematic design would satisfy the clear entrance/exit requirements.

Item Number: 1.13

Page: 30
Section: 2.2.13.5 Roof Support Structure (KEM CRITERIA)
Paragraph: 3

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THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Item Number: 1.10 xx

Page: 25 Criteria / B (Addendum No. 2)
Section: 2.2.11 Electrical and Automatic Train Protection Vaults / Item Number 1.11
Paragraph: N/A

Drawing Reference: 30.06
Resolution/Response Reference: None.

Change: Three (3) egress connections are required from the Monorail underground electrical vault to the lower concourse level retail.

Remark: Delete Addendum No. 2, Item Number 1.11

Item Number: 1.11 xx

Page: 29
Section: 2.2.13.3 Entrance (and Exit) Doors from Mall
Paragraph: 1

Drawing Reference: 30.09
Resolution/Response Reference: R1

Change: All emergency exit doors should swing in the direction of emergency egress.

Remark: Doors located at the north end of the platform should swing out into the Mall.

Item Number: 1.12

Page: 29
Section: 2.2.13.3 Entrance (and Exit) Doors from Mall
Paragraph: 1

Drawing Reference: 30.09
Resolution/Response Reference: R2

Change: None required.

Remark: A third pair of swinging doors previously shown in the schematic design would satisfy the clear entrance/exit requirements.

Item Number: 1.13

Page: 30
Section: 2.2.13.5 Roof Support Structure (NEW CRITERIA)
Paragraph: 3

ADDENDUM NO. 3, PAGE 7

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THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Results: Changes/Comments

Paragraph: 1

Drawing Reference: None.
Resolution/Response Reference: R4

Changes: (a) Ventilation and tempered air shall be provided from the Mall even when the Mall is closed. Separate control of heating will not be required.

(b) The pass through hole needs to be securable.

Remarks: None.

Item Number: 1.8

Page: 23
Section: 2.2.8 Roof Covering (NEW CRITERIA)
Paragraph: 4

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1

Change: Platform roof canopy should extend south to shelter the Fifth Avenue entrance stairwell/elevator landing.

Remark: Vertical circulation from Fifth Avenue to the Monorail platform needs to be perceived as part of the platform as a whole.

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Item Number: 1.9 xx

Page: 25 (Criteria) / 5 (Addendum No. 2)
Section: 2.2.11 Electrical and Automatic Train Protection Vaults / Item Number 1.6, App. B
Paragraph: 1

Drawing Reference: 32.08
Resolution/Response Reference: None.

Change: Delete the following, "The floor of the vaults will align with the floor elevation of the lower shopping mall and the METRO tunnel mezzanine."

Remark: Changes in the Westlake Center concourse elevation and the METRO tunnel mezzanine elevation (see Addendum No. 2) result in the floor elevation of the vaults being below the Westlake Center concourse floor elevation.

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THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Resolved Criteria Documents

Item Number: 1.4

Page: 17
Section: 2.2.2 Circulation (Vertical)
Paragraph: 3

Drawing Reference: 30.09
Resolution/Response Reference: R2

Change: None required.

Remark: The elevator capacity should be indicated, 3000 pounds is recommended.

Item Number: 1.5

8702170365

Page: 21
Section: 2.2.6 Kiosk (NEW CRITERIA)
Paragraph: N/A

Drawing Reference: None.
Resolution/Response Reference: R3

Change: See Appendix B for KE letter to John Diefenbach transmitting expanded kiosk design criteria.

Remark: Kiosk criteria stated in the letter should expand upon or supersede that previously published in the original Design Criteria Report.

Item Number: 1.6

Page: 21
Section: 2.2.6 Kiosk (NEW CRITERIA)
Paragraph: 1

Drawing Reference: None.
Resolution/Response Reference: R4

Change: The kiosk design should consider its intended use as a place to locate required equipment and to provide limited material storage. The kiosk should not be considered an office for platform attendants to remain in.

Remark: None.

Item Number: 1.7

Page: 21
Section: 2.2.6 Kiosk (NEW CRITERIA)

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THIS VERSION IS NOT ADOPTED

Addendum Items
1.0 Resolved Changes/Comments

Item Number: 1.1

Page: 17
Section: 2.2.2 Circulation (Horizontal)
Paragraph: 1

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1

Change: None required.

Remark: The additional fixed retail area added in the middle of the platform lengthens the path from the primary vertical circulation (Mall escalators) to the Monorail platform entrances.

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Item Number: 1.2 **

Page: 17
Section: 2.2.2 Circulation (Vertical)
Paragraph: 2

Drawing Reference: 30.06, 30.07, 30.08 & 30.09
Resolution/Response Reference: R1

Change: Station-dedicated vertical circulation off Fifth Avenue should be made as distinguishable as possible from the rest of the building elevation.

Remark: Elimination of the last section of platform sheltering canopy detracts from the stairs expression of vertical circulation.

Item Number: 1.3 **

Page: 17
Section: 2.2.2 Circulation (Vertical)
Paragraph: 2

Drawing Reference: 30.09
Resolution/Response Reference: R2

Change: The elevator need not stop on the second floor level.

Remark: None.

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THIS VERSION IS NOT ADOPTED

Dummy Layout

Below is a dummy layout for addendum Items. Material in *italics* are explanations of the type of content found under each heading.

Item Number: *Sequential decimal number within each group of addendum items. Units digit indicates category, decimal portion is sequential identifier. (xx indicates XX suggested change)*

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Page: *Page number reference to the Design Criteria Report.*

Section: *Section number and title from the Design Criteria Report.*

Paragraph: *Paragraph number from the start of the referenced section of the Design Criteria Report.*

Drawing Reference: *References drawing number identifying the source Rouse drawing which generated the need for criteria change, clarification or reiteration.*

Resolution/Response Reference: *Reference number of source document(s) on which the change/comment is based.*

Change: *Proposed revision or addition to the Westlake Station Design Criteria.*

Remark: *Clarification or reiteration of original criteria or explanation of proposed criteria change.*

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individual addendum items. Those comments not concerned with a specific section of the Report have been incorporated as addendum items for inclusion in the Design Criteria Report at the locations deemed most appropriate. Some, which address new criteria not in the Report or subsequent addenda, are indicated in the Section reference as "NEW CRITERIA".

Three categories of resolution have been established. Category one, the comment/issue raised has been resolved since the design development phase and the solution is agreed to by all (IE, SED, DCD, and TRC). Category two, the comment/issue cannot be resolved at this time with the presently available information or has not yet been addressed in the design development. These are open items to be decided on later. Many of these items require action on the part of some party and this action is documented as a "Remark" in the Addendum rather than a "Change" to the Design Criteria. The third category of comment/issue is an unresolved issue requiring negotiation or agreement between the parties involved. For the most part, changes to the Design Criteria are the result of Category One comments, the resolutions to which have been fully discussed and agreed to by all. Item numbers which are followed by two asterisks (**) are thus flagged to identify a change to the Criteria which is recommended by IE and is not considered to be controversial, but has not been formally agreed to by all parties.

The addendum is divided into three groups corresponding to their category. Items within each group are organized in a consecutive manner as they apply to the original Design Criteria Report. Each Item has a unique addendum item number. The units digit of the number reflects the category in which the Item belongs (1.n = resolved, 2.n = open and 3.n = unresolved). The decimal portion is a sequential identifier which numbers the addendum items consecutively within each category. Sources of comments are usually referenced to the Rouse drawing number from which the comment arises. Resolutions and/or responses are referenced, by numbers to the references listed in the table of references in Appendix A.

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WESTLAKE STATION DESIGN CRITERIA
ADDENDUM NO. 3

Background

The City of Seattle entered into an agreement (No. TB4-B) with Kaiser Engineers on November 2, 1984 to identify Rehabilitation and Upgrading needs of the existing Seattle Monorail system. Amendment No. 1 called for an Alternatives Analysis to generate and evaluate possible arrangements for the relocated southern terminus (Westlake Station) which is to be integrated into the new Westlake Mall Development. As a result of these analyses, Alternative VII (The George Benson Alternative) was selected.

It was considered practical to have the Mall Developer design the Westlake Station as it is to be an integral part of the Mall. To aid in this design, as part of Supplemental Agreement No. 1, the Westlake Station Design Criteria Report (Task 9.2) was prepared. An errata to the Design Criteria Report was issued and circulated on October 18, 1985. The report provided transit-related station design criteria for use by the Westlake Mall Developer.

The City has decided that the Design Criteria Report is to be a working paper which is to be updated and revised by Kaiser Engineers at significant stages of the Westlake Center project. The updating process is to be accomplished through addenda to the original Westlake Station Design Criteria Report. This Addendum No. 3 is the third update/revision to the original document. It is prepared as part of Task 15.7 of Supplemental Agreement No. 8 and addresses design questions and issues raised since Addendum No. 2 and through the Design Development Phase review ending 18 December 1986. A final addendum is expected to be prepared when Construction Documents are issued.

Addendum Procedure

This addendum is a compilation of Items, each of which is the result of specific or general comments raised by various reviewing parties in response to the Westlake Center Design Development submittal. These Items are used to document "changes" to the original Design Criteria Report and its subsequent Addenda, to make "remarks" supplying supplemental information to further explain or reiterate a particular part of the criteria or as a combination of the two. "Remarks" are also used to explain how a change is to be incorporated into the original Design Criteria.

Many of the comments pertain to elements in the Design Development which were previously addressed in the original Design Criteria Report and these comments have generated

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ADDENDUM NO. 3

to the

WESTLAKE STATION DESIGN CRITERIA REPORT

Prepared for: SEATTLE ENGINEERING DEPARTMENT

Submitted by: *KAISER ENGINEERS, INC.*

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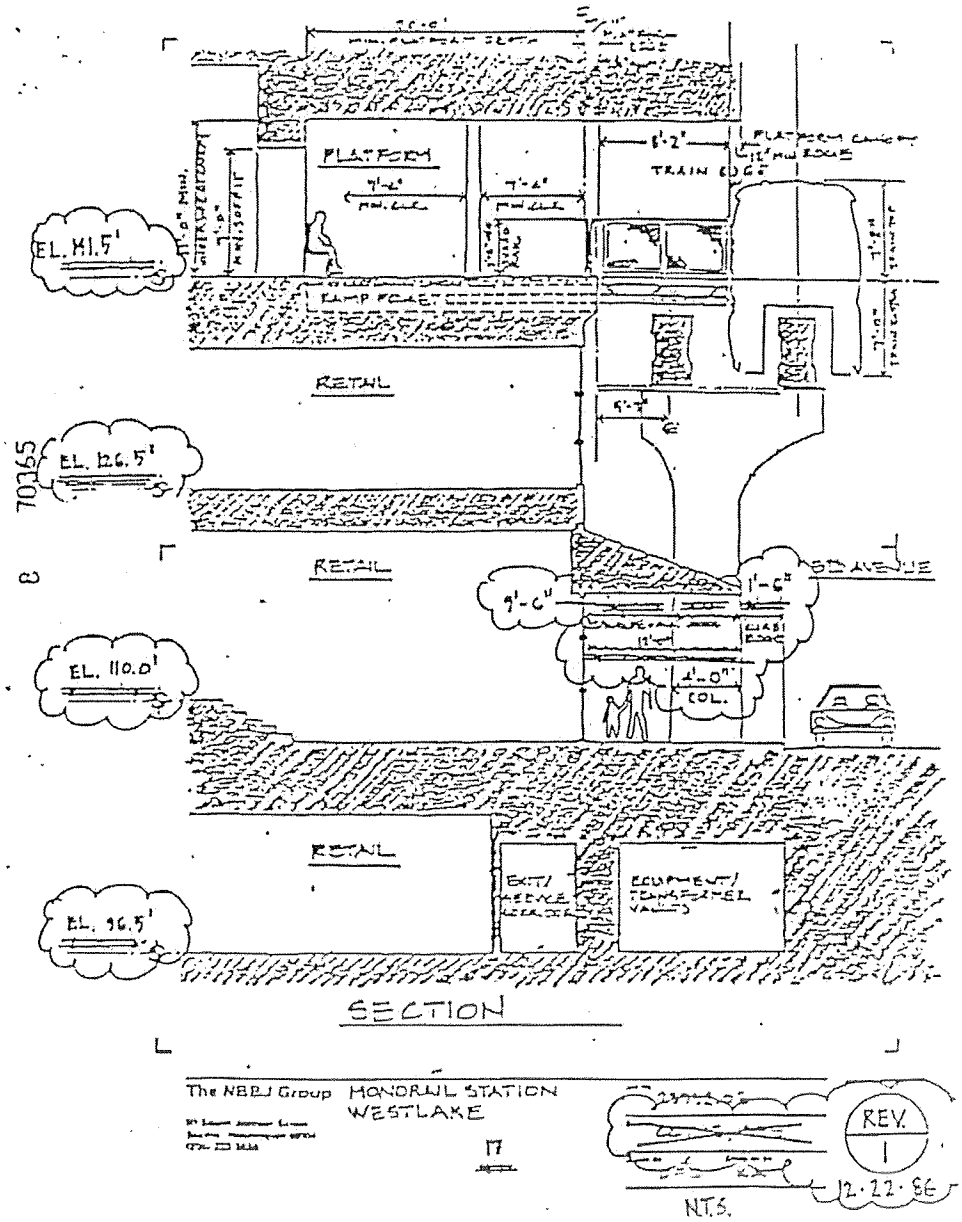

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APPENDIX B

SKETCH OF TYPICAL SECTION

REVISION NUMBER 1

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RESPONSE REFERENCES

R1. RTKL Meeting Notes from 3 April 1986 Meeting with KE, Tudor Eng. Co., DCD and EED, dated 4-10-86.

R2. DCD Memo from Rebecca Barnes to David Moseley (DCD), Review Comments from 19 May 1986 Meeting, dated 5-27-86.

R3. KE Drawing Review Comments, RKS-173, dated 6-2-86.

R4. DCD Letter from David Moseley to Perry Page (TRC), dated 5-30-86.

R5. Tudor Revised Sketch of Typical Cross-Section thru Station, revised 10-1-86.

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APPENDIX A

REFERENCES

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WESTLAKE DESIGN CRITERIA - Unresolved Issues

Remark: Current design shows 30 feet of doorway space (about 28 feet clear). Criteria calls for 32 feet of clear space. The clear travelway is needed for passenger flows.

Item Number: 3.7

Page: 22
Section: 2.2.7 Janitor's Closet
Paragraph: 1

Drawing Reference: Sheets 3 & 6
Resolution/Response Reference: R3 & R4

Change: Floor space for a janitor's closet shall not be included within the 2800 square feet of dedicated platform queing area.

Remark: Provision for a janitor's closet should be included at this point in the design and it shall be clearly shown that its floor area is additional to the 2800 square feet of station platform area.

8702170365

Item Number: 3.8

Page: 19 (Addendum No. 1)
Section: Item Number 3.2
Paragraph: N/A

Drawing Reference:
Resolution/Response Reference: R4

Change: Permanent specialty kiosks should not be located within the non-dedicated Mall atrium queing space. They will impede pedestrian traffic flows.

Remark: Peak crowds will require the entire queing area. Movement around these kiosks would be particularly difficult for wheelchairs and people on crutches.

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WESTLAKE DESIGN CRITERIA - Unresolved Issues

Change: The Fifth Avenue level elevator landing should be set back within the building property line to act as a transitional space for elevator passengers off the limited sidewalk area.

Remark: The proposed set-back would also alleviate the need for front and rear opening elevator doors.

Item Number: 3.4

Page: 18
Section: 2.2.2 Circulation (Vertical)
Paragraph: 4

Drawing Reference:
Resolution/Response Reference: R3

Change: None required.

Remark: Stair width of 5'-6" is minimum for Monorail direct entrances only. Use of stairwell for emergency exiting from second level retail should be considered as additional.

8702170365

Item Number: 3.5

Page: 18
Section: 2.2.2 Circulation (Vertical)
Paragraph: 4

Drawing Reference:
Resolution/Response Reference: R3

Change: None required.

Remark: Stair slope is 0.8 (rise/run). Kaiser recommends 0.5 slope. Maximum UBC/SBC is 0.75.

Item Number: 3.6

Page: 19
Section: 2.2.3 Entrances and Exits
Paragraph: 5

Drawing Reference: Sheets 3, 4, 5, 6 & 17
Resolution/Response Reference: R3 & R4

Change: None required.

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Addendum Items
3.0 Unresolved Issues Requiring Negotiation

Item Number: 3.1

Page: 1
Section: 1.1 Background (NEW CRITERIA)
Paragraph: 4

Drawing Reference: None.
Resolution/Response Reference: R1

Change: It has also been proposed that the Mall Developer Construction Contractor build the Monorail piers, footings (5 locations) and the underground electrical vault.

Remark: None.

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Item Number: 3.2

Page: 17
Section: 2.2.2 Circulation (Vertical)
Paragraph: 2

Drawing Reference: Sheet 17
Resolution/Response Reference: R4

Change: The Fifth Avenue entrance needs a more visible presence to constitute a public access and egress from the street. The Monorail is to be a public amenity and should be treated as one. The portal should be very visible, bright attractive and inviting.

Remark: The currently designed firestair and elevator door do not satisfy the above criteria.

Item Number: 3.3

Page: 17
Section: 2.2.2 Circulation (Vertical) (NEW CRITERIA)
Paragraph: 2

Drawing Reference: Sheets 2, 3, 4, 5, 6, 9, 10, 11, 15 & 17
Resolution/Response Reference: R3

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trains should be carried back to within the building property line.

Item Number: 7.4

Page: 23
Section: 2.2.8 Roof Covering
Paragraph: 4

Drawing Reference: Sheets 1, 7, 9, 10, 11, 16 & 17
Resolution/Response Reference: R3

Change: None required.

Remark: Prevention of pigeon habitation must be considered.

Item Number: 7.5

8702170365

Page: 23
Section: 2.2.8 Roof Covering
Paragraph: 4

Drawing Reference: Sheets 1, 7, 9, 10, 11, 16 & 17
Resolution/Response Reference: R3

Change: None required.

Remark: Design should address method of ventilation, mechanical or natural, at the top of the roof cavity to eliminate smoke accumulation.

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Addendum Items
2.0 Open Items Requiring Additional Information

Item Number: 2.1

Page: 20
Section: 2.2.4 Fare Collection
Paragraph: 1

Drawing Reference:
Resolution/Response Reference: R4

Change: Machines shall be located adjacent to platform entrance doors and out of anticipated pedestrian flow lanes. At least one will need to be available for use when the Hall is closed.

Remark: KE, Seattle Center and TRC need to coordinate efforts and needs in this area as criteria for these machines becomes available.

8702170365

Item Number: 2.2

Page: 21
Section: 2.2.5 Kiosk
Paragraph: 3

Drawing Reference:
Resolution/Response Reference: R3 & R4

Change: Floor space for the kiosk on the station platform shall be in addition to the 2800 square feet of dedicated platform queing area.

Remark: Provision for the station kiosk should be included at this point in the design and it shall be clearly shown that platform area does not include kiosk.

Item Number: 2.3

Page: 23
Section: 2.2.8 Roof Covering
Paragraph: 4

Drawing Reference: Sheets 1, 7, 9, 10, 11, 16 & 17
Resolution/Response Reference: R3

Change: None required.

Remark: Drainage for the cantilevered roofing out over the

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IT IS DUE TO THE QUALITY OF THE DOCUMENT.

WESTLAKE DESIGN CRITERIA - Resolved Changes Comments

Change: Column locations must be coordinated with the ramp mechanism envelops within the platform to avoid any conflict between the two.

Remark: 3rd & 4th columns from the south currently conflict with the Monorail ramps.

Item Number: 1.14

Page: 34
Section: 2.3.4 Guideway Support Structure - Support Bents (NEW CRITERIA)
Paragraph: 4

Drawing Reference: None.
Resolution/Response Reference: R1

Change: Column dimensions will be typically 4'-0" square for maximum bent spacing (87 feet) and maximum column height (30 feet). Any additional decorative cladding application to the piers should be considered a thickness increase to the nominal 4 foot column width.

Remark: Delete existing paragraph 4 and replace with above changes.

Item Number: 1.15

Page: 64
Section: 2.7.5 General Lighting Criteria
Paragraph: 3

Drawing Reference:
Resolution/Response Reference: R2

Change: Natural lighting shall be provided whenever possible.

Remark: None.

THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Drawing Reference: Sheets 1, 7, 9, 10, 11, 15 & 17
Resolution/Response Reference: R3

Change: None required.

Remark: Coverage for rain protection should be carried out at least to one (1) foot over the train door entrances for the East Train.

Item Number: 1.11 xx

Page: 25
Section: 2.2.11 Electrical and Automatic Train Protection Vaults
Paragraph: 1

Drawing Reference:
Resolution/Response Reference: R1

Change: Two (2) egress connections are required from the lower concourse level retail to the Monorail underground electrical vault.

Remark: None.

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Item Number: 1.12 xx

Page: 29
Section: 2.2.13.3 Entrance (and Exit) Doors from Mall
Paragraph: 2

Drawing Reference:
Resolution/Response Reference: R3

Change: Entrance and exit doors should swing 180 degrees so as not to obstruct the pedestrian flows, especially at the two (2) entries to the north.

Remark: The present 90 degree swing appears particularly impeding.

Item Number: 1.13

Page: 30
Section: 2.2.13.5 Roof Support Structure
Paragraph: 1

Drawing Reference: Sheets 3, 4, 5, 6, 10 & 17 (5th Ave. Elev.)
Resolution/Response Reference: R3

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WESTLAKE DESIGN CRITERIA - Resolve: Changes/Comments

Item Number: 1.7

Page: 17
Section: 2.2.2 Circulation (Vertical)
Paragraph: 1

Drawing Reference:
Resolution/Response Reference: R2

Change: Suggested high-quality materials are stone or terra cotta rather than ceramic tile, concrete or GFRC.

Remark: A sense of real quality for the project should be maintained through the public access between 5th Avenue and the Monorail.

Item Number: 1.8 **

Page: 18
Section: 2.2.2 Circulation (Vertical)
Paragraph: 4

Drawing Reference: Sheets 3, 4, 5, 6 & 17
Resolution/Response Reference: R3

Change: A security gate should be provided at the base of the stairs leading up to the Monorail platform to prevent unauthorized access after train operating hours.

Remark: None.

Item Number: 1.9 **

Page: 18
Section: 2.2.2 Circulation (Vertical)
Paragraph: 4

Drawing Reference: Sheets 2, 3, 4, 5, 6, 9, 10, 11, 15 & 17
Resolution/Response Reference: R3

Change: None required.

Remark: Intermediate stair landings are needed at 5 foot intervals to accommodate current 9 foot runs & floor to floor height of 15 feet.

Item Number: 1.10

Page: 23
Section: 2.2.5 Roof Covering
Paragraph: 4

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Change: None required.
Remark: Platform edge to west guidebeam centerline (horizontal) must be 5'-7". Sheet 16 scales 5'-0".

Item Number: 1.4

Page: 13
Section: 2.1.5 Clearance Requirements
Paragraph: 2

Drawing Reference: Sheet 16
Resolution/Response Reference: R3

Change: None required.

Remark: Top of platform (El. = 141.5) to top of guidebeam (vertically) must be 2'-3". Sheet 16 scales 2'-0".

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Item Number: 1.5

Pages: 14 (Criteria) / 8 (Addendum No. 1)
Section: Sketch of Typical Section / Item Number 1.11
Paragraph: N/A

Drawing Reference: Sheet 17
Resolution/Response Reference: R3

Change: None required.

Remark: Column set backs from the curb should be 18 inches rather than the approximate 9 inches shown.

Item Number: 1.6

Page: 14
Section: Sketch of Typical Section
Paragraph: N/A

Drawing Reference:
Resolution/Response Reference: R5

Change: See Appendix B for updated dimensions and clearances.

Remark: Appendix B contains a marked up copy of the original Design Criteria sketch.

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Addendum Items
1.0 Resolved Changes/Comments

Item Number: 1.1

Page: 7
Section: 2.1.3 Platform Location (Longitudinally)
Paragraph: 6

Drawing Reference: Sheets 4, 6 & 16
Resolution/Response Reference: R1 & R3

Change: None required.

Remark: The southernmost pier centerline, i.e. the end column, has been established as being 81'-0" north of the centerline intersection of Pine Street and 5th Avenue. (See Page 39 of Criteria, Preliminary Westlake Station Alignment.) South edge of the station platform is to be 113 feet north of the centerline intersection of Pine Street and 5th Avenue.

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Item Number: 1.2

Page: 8
Section: 2.1.3 Platform Location (Vertically)
Paragraph: 1

Drawing Reference: Sheets 4, 6 & 16
Resolution/Response Reference: R1 & R3

Change: The platform finished elevation is determined by the elevation of the third retail level of the Mall Building, i.e. 141.5'.

Remark: Monorail vertical alignment will be revised to accommodate this elevation change. Top of the rail will be 139.25'.

Item Number: 1.3

Page: 13
Section: 2.1.5 Clearance Requirements
Paragraph: 2

Drawing Reference: Sheet 16
Resolution/Response Reference: R3

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Dummy Layout

Below is a dummy layout for addendum items. Material in *italics* are explanations of the type of content found under each heading.

Item Number: *Sequential decimal number within each group of addendum items. Units digit indicates category, decimal portion is sequential identifier. (xx indicates XX suggested change)*

Page: *Page number reference to the Design Criteria Report.*

Section: *Section number and title from the Design Criteria Report.*

Paragraph: *Paragraph number from the start of the referenced section of the Design Criteria Report.*

Drawing Reference: *References drawing number identifying the source Rouse drawing which generated the need for criteria change, clarification or reiteration.*

Resolution/Response Reference: *Reference number of source document(s) on which the change/comment is based.*

Change: *Proposed revision or addition to the Westlake Station Design Criteria.*

Remark: *Clarification or reiteration of original criteria or explanation of proposed criteria change.*

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Design Criteria Report and these comments have generated individual addendum items. Those comments not concerned with a specific section of the Report have been incorporated as addendum items for inclusion in the Design Criteria Report at the locations deemed most appropriate. Some, which address new criteria not in the Report or subsequent addenda, are indicated in the Section reference as "NEW CRITERIA".

Three categories of resolution have been established. Category one, the comment/issue raised has been resolved since the schematic design phase and the solution is agreed to by all (KE, SED, DCD, and TRC). Category two, the comment/issue cannot be resolved at this time with the presently available information or has not yet been addressed in the schematic design. These are open items to be decided on later. Many of these items require action on the part of some party and this action is documented as a "Remark" in the Addendum rather than a "Change" to the Design Criteria. The third category of comment/issue is an unresolved issue requiring negotiation or agreement between the parties involved. For the most part, changes to the Design Criteria are the result of Category One comments, the resolutions to which have been fully discussed and agreed to by all. Item numbers which are followed by two asterisks (**) are thus flagged to identify a change to the Criteria which is recommended by KE and is not considered to be controversial, but has not been formally agreed to by all parties.

The addendum is divided into three groups corresponding to their category. Items within each group are organized in a consecutive manner as they apply to the original Design Criteria Report. Each Item has a unique addendum item number. The units digit of the number reflects the category in which the Item belongs (1.n = resolved, 2.n = open and 3.n = unresolved). The decimal portion is a sequential identifier which numbers the addendum items consecutively within each category. Sources of comments are usually referenced to the Rouse drawing number from which the comment arises. Resolutions and/or responses are referenced by numbers to the references listed in the table in Appendix A.

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WESTLAKE STATION DESIGN CRITERIA
ADDENDUM NO. 2

Background

The City of Seattle entered into an agreement (No. T84-8) with Kaiser Engineers on November 2, 1984 to identify Rehabilitation and Upgrading needs of the existing Seattle Monorail system. Amendment No. 1 called for an Alternatives Analysis to generate and evaluate possible arrangements for the relocated southern terminus (Westlake Station) which is to be integrated into the new Westlake Mall Development. As a result of these analyses, Alternative VII (The George Benson Alternative) was selected.

It was considered practical to have the Mall Developer design the Westlake Station as it is to be an integral part of the Mall. To aid in this design, as part of Supplemental Agreement No. 1, the Westlake Station Design Criteria Report (Task 9.2) was prepared. An errata to the Design Criteria Report was issued and circulated on October 18, 1985. The report provided transit-related station design criteria for use by the Westlake Mall Developer.

The City has decided that the Design Criteria Report is to be a working paper which is to be updated and revised by Kaiser Engineers at significant stages of the Westlake Center project. The updating process is to be accomplished through addenda to the original Westlake Station Design Criteria Report. This Addendum No. 2 is the second update/revision to the original document. It is prepared as part of Task 15.7 of Supplemental Agreement No. 8 and addresses design questions and issues raised since Addendum No. 1 and through the Schematic Design Phase, Revision No. 1 review. Subsequent addenda are expected to be prepared at the end of the Design Development Phase and when Construction Documents are issued.

Addendum Procedure

This addendum is a compilation of Items, each of which is the result of specific or general comments raised by various reviewing parties in response to the Westlake Center Schematic Design, Revision No. 1. These Items are used to document "changes" to the original Design Criteria Report and its subsequent Addenda, to make "remarks" supplying supplemental information to further explain or reiterate a particular part of the criteria or as a combination of the two. "Remarks" are also used to explain how a change is to be incorporated into the original Design Criteria.

Many of the comments pertain to elements in the Schematic Design which were previously addressed in the original

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ADDENDUM NO. 2

to the

WESTLAKE STATION DESIGN CRITERIA REPORT

Prepared for: SEATTLE ENGINEERING DEPARTMENT

Submitted by: *KAISER ENGINEERS, INC.*

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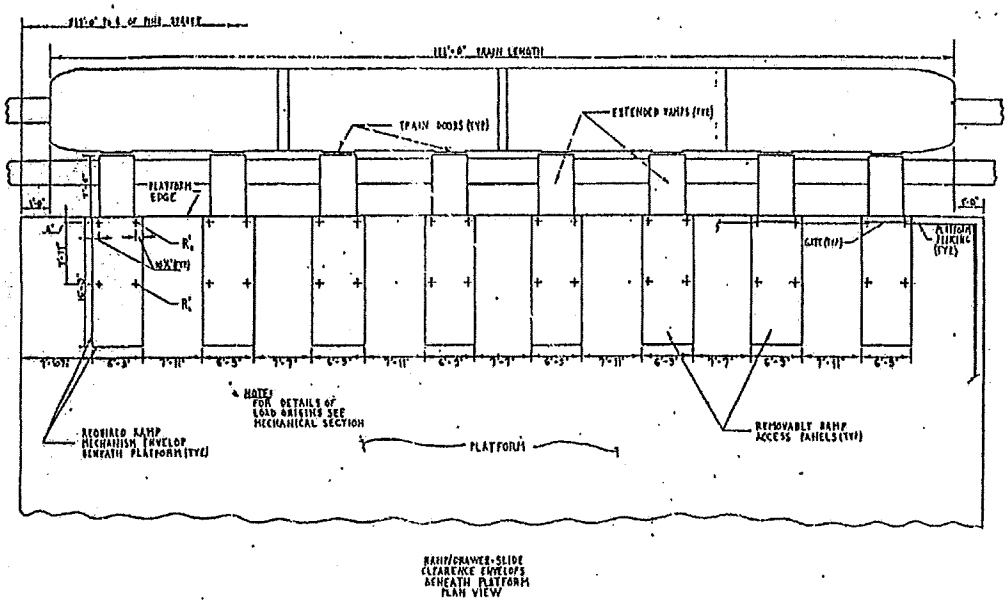

RAMP/DRAWER-SLIDE CLEARANCE ENVELOPS BENEATH PLATFORM PLAN VIEW

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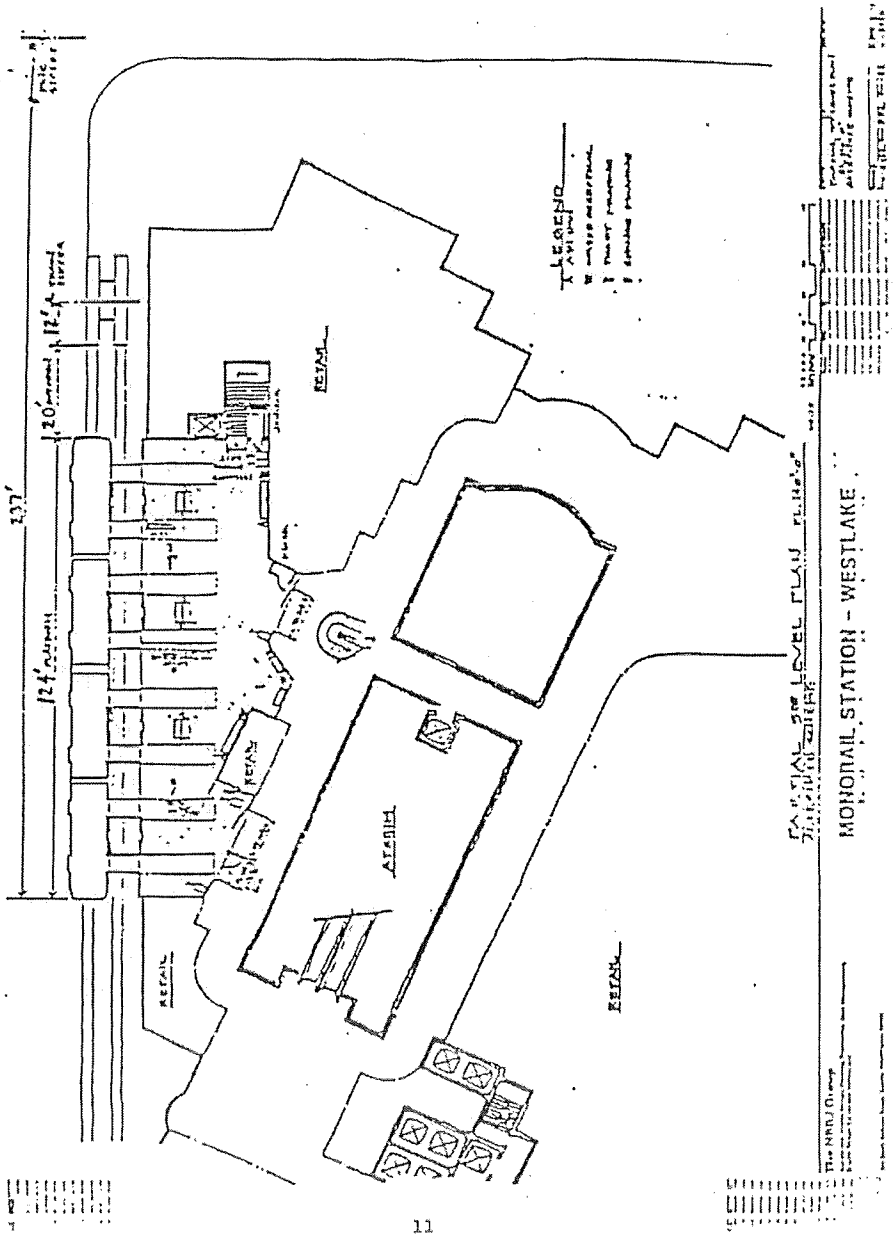

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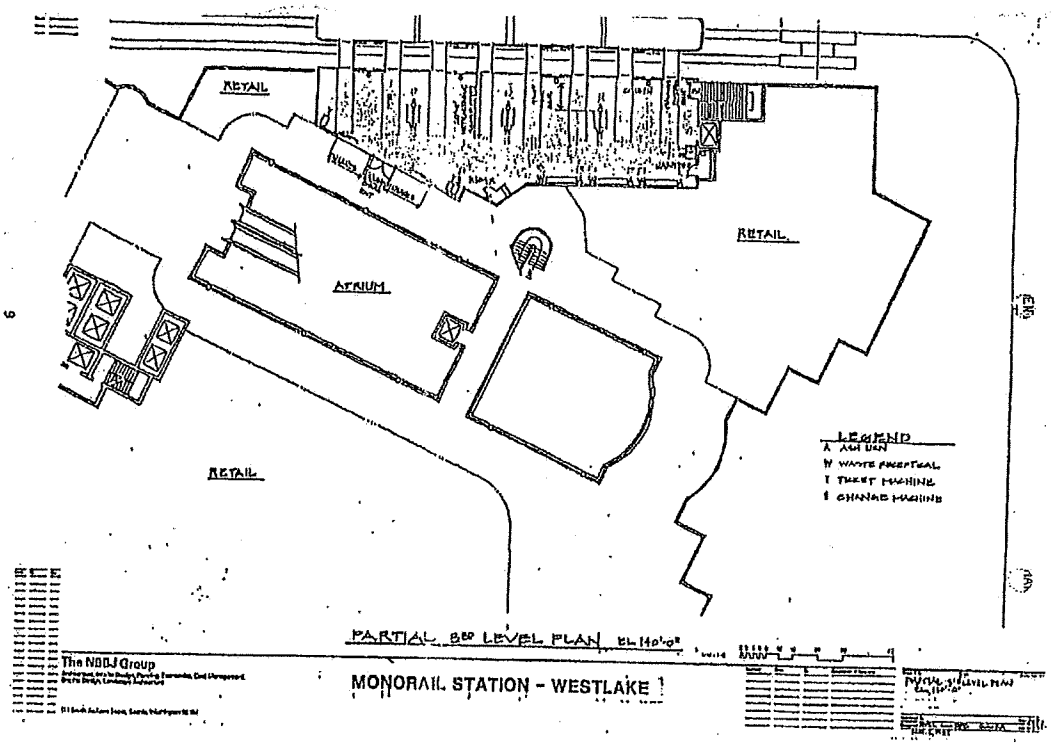

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Raymond Kaiser Engineers

Raymond Kaiser Engineers Inc
A Raymond International Company
710 Second Avenue
Seattle, Washington 98104
(206) 624-0004

RKS - 103

October 18, 1985

Mr. Ted Rees, P.E.
Project Manager
Seattle Engineering Department
Room 910, Seattle Municipal Building
600 Fourth Avenue
Seattle, WA 98104

Subject: Revised Sketches to The Westlake Station Design Criteria Report
Monorail Rehabilitation/Upgrading Project

Ref.: RKS-99, dated 10-14-85

Dear Mr. Rees:

Attached are revised copies of three of the sketches that are part of the Westlake Design Criteria Report. These sketches are pages 9, 11 and 42.

Pages 9 and 11 are revised to reflect an overrun allowance, between the train and the bumper, of 20 feet. The sketches had a distance of 24 feet. The 20 foot dimension is consistent with station and column locations used in the report and with the present overrun allowance being used.

Page 42 is revised to reflect the distance from the end of station platform to the train and first ramp and be consistent with the rest of the report.

We expect that the correction of pages 9 and 11 will be of minimum interest/effect to the Rouse Company. The ramp location from the platform's northern end will be important to the Rouse Company in the design of the platform support structure and slab.

We regret having to correct these sketches, however we believe that we are all best served by making these corrections as soon as possible.

Very truly yours,

R. H. Line, P.E.
Project Manager
Monorail Rehabilitation/Upgrading Project

Attachments

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APPENDIX B

ERRATA TO
DESIGN CRITERIA REPORT

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REFERENCES

Comments:

C1. TRC Intra-Office Memo from J. Diefenbach to C. Blackmer, dated 11-4-85.

C2. TRC Intra-Office Memo from C. Blackmer to P. Page, dated 11-5-85.

C3. Seattle Fire Department Memo from B. L. Hansen, Fire Marshal to Ted Rees, SED, dated 10-28-85.

C4. Seattle Center Memo from Anne Nelson to Ted Rees, SED, dated 11-12-85.

C5. Office of Planning memo from Don Carr to Ted Rees, SED, dated 11-15-85.

C6. Department of Construction and Land Use Memo from Tom Kinsman to Ted Rees, SED, dated 11-18-85.

C7. TRC Revised (Marked-Up) Copy of the Westlake Station Design Criteria Report, dated 12-4-85.

Responses:

R1. XE Meeting Notes from November 14, 1985 Meeting with SED, DCD and TRC, dated 11-20-85.

R2. DCD Meeting Notes from November 14, 1985 Meeting with XE, SED and TRC, dated 12-4-85.

R3. DCD Letter from David Moseley to Perry Page, TRC, dated 2-28-86.

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APPENDIX A

REFERENCES

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WESTLAKE DESIGN CRITERIA - Unresolved Issues

Item Number: 7.5

Page: 29
Section: 2.2.13.3 Entrance Doors From Mall
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: Panic bars openable from the station side will be discussed and resolved later in the design process. Emergency entrance into the Mall must be available at all times during Monorail operation. Rouse should address their security needs in light of this requirement. If exit into the Mall is not available, then a second exit to the street will be needed. Also refer to Item Number 1.22.

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WESTLAKE DESIGN CRITERIA - Unresolved Issues

Item Number: 3.3

Page: 18
Section: 2.2.2 Circulation (Vertical)
Paragraph: 4

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The shallower than maximum allowed slope of the stairs reflects the use of this stairway as the primary monorail entrance during times when the Mall is closed. The shallower stairs would be easier to climb. If the Mall is open at all times of Monorail operation then these stairs could be as steep as code permits.

Item Number: 3.4

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Page: 19
Section: 2.2.3 Entrances and Exits
Paragraph: 3

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The Rouse Company will investigate reconfiguring the platform to include an effective entrance/exit of 32 feet between the Monorail platform and the Mall. This reconfiguration must be approved by the City. The non-dedicated platform area will be activated in noonpeak times with kiosks and other festival retailing. The phrase "movable mall-front glazed panels furnished with doors" refers to the segmented, sliding glass doors/walls that are frequently used by retailers in shopping malls. A better name for these units may be "sliding mall front doors". The use of sliding mall front doors would enable the entrance to the Monorail to be opened to its full extent during periods of heavy usage or closed down partially or completely during periods of low usage.

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Addendum Items

3.0 Unresolved Issues Requiring Negotiation

Item Number: 3.1

Page: 5
Section: 2.1.2 Platform Area
Paragraph: 4

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The major limitation of a 2800 square foot platform is the lack of queueing space at peak times. The situation of dedicated versus non-dedicated platform area is to be considered by a House reconfiguration investigation for decision at a later date.

8702170365

Item Number: 3.2

Page: 6
Section: 2.1.2 Platform Area (NEW CRITERIA)
Paragraph: 3

Reference Comment: C2
Reference Resolution/Response: R1, R2 & R3

Change: A concept of "shared usage" has been proposed which will combine dedicated station platform area with non-dedicated Mall atrium queueing space to accommodate the peak capacity demands. Total available area for Monorail Station use will be 4500 square feet with a minimum of 2800 square feet dedicated to station platform. The remaining area (4500 - 2800 = 1700 square feet) will be provided by readily clearable space in the Mall atrium.

Remark: A Monorail usage "trigger-value" should be specified in the Monorail Easement Agreement between House and The City. If Monorail usage exceeds this value then a greater percentage of Mall area would be dedicated for Monorail station platform use. Likewise, if this "trigger-value" is consistantly not met over several years then, at House's discretion, some of the Mall space reserved for Monorail queueing could be converted to traditional retail space.

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WESTLAKE DESIGN CRITERIA - Open Items

Item Number: 7.7

Page: 21
Section: 2.2.6 Kiosk
Paragraph: Entire section

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The kiosk will be clarified later in the design process.

Item Number: 7.8

Pages: 37 & 38
Section: 2.4.2 Project-Specific Baselines
Paragraph: 1

Reference Comment: C1
Reference Resolution/Response: R1

Change: None required.

Remark: RTKL will need to decide whether proposed baselines are acceptable to the Mall project.

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THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Open Items

Item Number: 2.4

Page: 20
Section: 2.2.4 Fare Collection Equipment
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The 30 feet as used in the report is a worse case scenario. Locations of ticketing machines are not firm and will be established as the design progresses.

Item Number: 2.5 xx

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Page: 20
Section: 2.2.4 Fare Collection Equipment
Paragraph: 1

Reference Comment: C4
Reference Resolution/Response: N/A

Change: None required.

Remark: The required number and location of fare collection machines will depend on the chosen method of fare collection and the final platform configuration, both yet to be determined.

Item Number: 2.6

Page: 20
Section: 2.2.4 Fare Collection Equipment
Paragraph: 1

Reference Comment: C1
Reference Resolution/Response: R1

Change: None required.

Remark: C. Blackmer's proposal for fare collection only at the Seattle Center Station will be considered together with other fare collection methods later during the design of the fare collection system.

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THIS VERSION IS NOT ADOPTED

Addendum Items

2.0 Open Items Requiring Additional Information

Item Number: 2.1

Page: 1
Section: Contents
Paragraph: N/A

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: Pier design alternatives have been eliminated. The requested Urban Design Criteria are expected to be resolved later in sync with the design of both projects and will be addressed in other documents.

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Item Number: 2.2

Page: 7
Section: 2.1.3 Platform Location (Longitudinally)
Paragraph: 2

Reference Comment: C1
Reference Resolution/Response: R1

Change: None required.

Remark: The ramp envelop specified in the design criteria is considered to be adequate. RTKL should investigate the impact of these ramps on the mall building design.

Item Number: 2.3

Pages: 16 & 17
Section: 2.2.2 Circulation (Horizontal)
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: A separate write-up prepared by MBBJ has been provided to Rouse containing documentation and graphics on passenger exiting and entering flow scenarios at the station.

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THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Reference Comment: C1
Reference Resolution/Response: R1

Change: The ramps will not be extended or retracted while the train is waiting in the station.

Remark: Positioning the ramps when the train is out of the station provides more time for these operations. This allows them to take place at lower speeds with greater reliability. The potential for reliability problems has been considered, and, although risks do exist with this alternative, they have been weighed against the risks that would have resulted from a track switch. The ramp system was considered favorable. Failure management schemes are possible to mitigate the potential problems and failures.

Item Number: 1.32

Page: 47
Section: 2.6.2.3 Materials - Electrical Equipment (Uninterruptible Power Supply)
Paragraph: 1

Reference Comment: C1
Reference Resolution/Response: R1

Change: The uninterruptible power supply will include batteries. The space required to house them is less than 8 square feet.

Remark: None.

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THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Change: The passenger boarding ramp mechanisms will be accessed through removable panels in the station platform. It may be necessary to bring equipment through the project during working hours. Lifting of heavy ramp parts will be by small mobile crane.

Remark: None.

Item Number: 1.29 **

Page: 28
Section: 2.2.13.2 Stair Elevator Well
Paragraph: 1

Reference Comment: C6
Reference Resolution/Response: N/A

Change: Open staircases will not comply with the building codes. Doors which penetrate between the stairways and other building spaces require a one and one half hour fire resistance.

Remark: The staircases are essentially exits from a third floor which necessitates a minimum two-hour fire wall separation between the stairs and other building spaces.

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Item Number: 1.30 **

Page: 29
Section: 2.2.13.4 Partition Wall Separating Platform from Mall.
Paragraph: 1

Reference Comment: C3 & C6
Reference Resolution/Response: N/A

Change: None required.

Remark: The Seattle Fire Department had in their review recommended that the tenant wall between the station platform and the Mall be fire-rated for two hours and windowless. DCLU has since waived the requirement on the condition that the platform and mall building are sprinklered.

Item Number: 1.31

Page: 40
Section: 2.5.1 Passenger Boarding Ramp Operation/Mechanical
Paragraph: 1

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THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Reference Resolution/Response: N/A

Change: Translucent or transparent roof materials will require access or other provisions for cleaning and maintenance.

Remark: None.

Item Number: 1.26 **

Page: 23
Section: 2.2.9 Seating and Other Station Furniture
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R2

Change: Seating in the platform/station area (if any) will be movable, limited and will not compete with Hall seating. A minimum of 60 lineal feet of fixed seating shall.

Remark: Delete the underlined material from the Report.

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Item Number: 1.27

Page: 25
Section: 2.2.11 Electrical and Automatic Train Protection Vaults
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: Access to the vaults will be from the lower retail level as shown in the sketch on page 14. Access will be for personnel and equipment transportable by hand truck.

Remark: None.

Item Number: 1.28

Page: 28
Section: 2.2.13.1 Platform
Paragraph: 1

Reference Comment: C1
Reference Resolution/Response: R1

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THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Item Number: 1.22 **

Page: 19
Section: 2.2.3 Entrances and Exits
Paragraph: 4

Reference Comment: C7
Reference Resolution/Response: N/A

Change: Emergency exits must be accessible whenever the Monorail is operating whether the Mall is open or closed.

Remark: None.

Item Number: 1.23

Page: 22
Section: 2.2.8 Roof Covering
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: The Rouse Company will generate roof covering alternatives which are compatible with their retail mall project.

Remark: The Design Criteria Report was reflecting the then current Rouse roof design.

Item Number: 1.24 **

Page: 22
Section: 2.2.8 Roof Covering
Paragraph: 1 (4th sentence)

Reference Comment: C7
Reference Resolution/Response: N/A

Change: ... station will be temporarily changing ...

Remark: The word "temporarily" shall be added to the text as shown.

Item Number: 1.25 **

Page: 22
Section: 2.2.8 Roof Covering
Paragraph: 3

Reference Comment: C7

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THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Item Number: 1.19

Page: 17
Section: 2.2.2 Circulation (Vertical)
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R2

Change: The vertical circulation between the Monorail Station, Westlake Mall and METRO Tunnel Station will be multi-modal. Design of the vertical circulation must consider this aspect as being of prime importance.

Remark: None.

Item Number: 1.20

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Page: 18
Section: 2.2.2 Circulation (Vertical)
Paragraph: 4

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: Minimum stair width of 5 feet 6 inches results from application of NFPA 101 Code. RTKL will check this.

Item Number: 1.21

Page: 19
Section: 2.2.3 Entrances and Exits
Paragraph: 2

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The location of exit stairs must satisfy the requirements of all referenced codes. The most stringent of which shall be used as criteria for design. The Seattle Code is only one of several which may apply in this case. DCLD has expressed the opinion that the exit stairs can be no closer than one half the platform's diagonal dimension as stated in the original criteria.

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Item Number: 1.16

Page: 15
Section: 2.2.1 Pertinent Code Requirements and Analysis
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: Although the new edition of the Uniform Building Code (UBC) has been completed, it has not yet been accepted by the Seattle City Council. Therefore, the 1982 UBC will apply until Council approval of the new edition at which time The Rouse Company will be informed of the change.

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Item Number: 1.17 **

Page: 16
Section: 2.2.1 Pertinent Code Requirements and Analysis
Paragraph: 1, IV. Exit Requirements

Reference Comment: C5
Reference Resolution/Response: N/A

Change: None required.

Remark: There are no specific UMTA standard accessibility requirements for the elderly and the handicapped. The Seattle Building Code will be the governing Code on accessibility.

Item Number: 1.18

Page: 16
Section: 2.2.2 Circulation (Horizontal)
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1

Change: The design should also permit the emptying of the cars and clearing of the boarding areas as safely and attractively as possible.

Remark: None.

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THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Change: Monorail Station - Westlake, Typical Section

Remark: Reidentify the sketch as above.

Item Number: 1.13

Page: 14 & 34
Section: Typical Section Sketch & 2.3.4 Guideway Support Structure Concept Options (Support Rents)
Paragraph: 4

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: The latest pier/column sizing is approximately 4.5 feet by 4.5 feet.

Remark: These reduced dimensions for the columns eliminate the need to consider alternative pier designs or arrangements.

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Item Number: 1.14

Page: 15
Section: 2.2.0 General (NEW CRITERIA)
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: The architectural quality of the monorail station will be equal to the mall project. Rouse should take the lead in establishing the architectural character of the platform.

Remark: None.

Item Number: 1.15

Page: 15
Section: 2.2.0 General (NEW CRITERIA)
Paragraph: 2

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: The underside of the train will be as at present. There will be no safety ledge.

Remark: None.

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Remark: Minimum net platform area and minimum platform length and width are the required minimum clearances for each individual dimension established by their own specific constraints. They do not necessarily relate to each other. For instance the minimum platform length is controlled by the train length while the minimum platform area is constrained by capacity requirements.

Item Number: 1.10

Pages: 13 & 14
Section: 2.1.5 Clearance Requirements & Typical Section
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: The column near the platform edge in the sketch (page 14) may be integrated into the platform edge railings; however it (or anything else) must be arranged to provide at least 7 feet 4 inches of clear passageway along the platform edge to permit free movement of passengers.

Remark: None.

Item Number: 1.11

Page: 14
Section: Sketch of Typical Section
Paragraph: N/A

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: The pier setback from the curb edge will be 18 inches, not 3 feet as indicated in the sketch.

Remark: None.

Item Number: 1.12 xx

Page: 14
Section: Sketch of Typical Section
Paragraph: N/A

Reference Comment: C7
Reference Resolution/Response: N/A

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WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Remark: Requested documentation on the history of the monorail covering issues of patronage history, capacity requirements, original platform and revisions, etc., will not be provided as part of the Criteria. This information has been provided separately.

Item Number: 1.7

Page: 4
Section: 2.1.1 Passenger Demand
Paragraph: 2

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: "Incontrovertible" is defined as indisputable or unquestionable.

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Item Number: 1.8

Pages: 9 & 11
Section: 2.1.4 Platform Arrangement
Paragraph: Plan Sketches

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The 24-foot overrun was revised by an errata dated 10-18-85 (ref. Appendix B, this addendum). The correct overrun is 20 feet. The overrun is needed as a safe stopping buffer for the monorail trains between the planned train stopping point and the end of line train bumper assembly.

Item Number: 1.9 **

Page: 13
Section: 2.1.5 Clearance Requirements
Paragraph: 1

Reference Comment: C4
Reference Resolution/Response: N/A

Change: None required.

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THIS VERSION IS NOT ADOPTED

WESTLAKE DESIGN CRITERIA - Resolved Changes/Comments

Item Number: 1.4

Page: 2
Section: 1.2 Objective
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R2

Change: As part of the Contract of Sale with The Rouse Company, the City of Seattle is obligated to develop a mutually acceptable scope of work and performance standards (design criteria) for the relocated monorail station. This scope of work includes the design of new piers, columns, track, station platform, et al. This document, after acceptance by the City of Seattle and The Rouse Company, shall serve as the basis for development of an easement agreement pursuant to Section 7c of the Contract of Sale.

Remark: None.

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Item Number: 1.5

Page: 2
Section: 1.2 Objective
Paragraph: 2

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The very nature of a design criteria report inevitably results in some constraining of design. Most of the specific criteria are flexible and negotiable.

Item Number: 1.6 **

Page: 3
Section: 1.3.1 Existing System
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

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Addendum Items
1.0 Resolved Changes/Comments

Item Number: 1.1

Page: 1
Section: 1.1 Background
Paragraph: 1

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: SED is KE's "client" within the City of Seattle. SED has been attending all meetings between KE and The Rouse Company and will continue to do so.

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Item Number: 1.2

Page: 1
Section: 1.1 Background
Paragraph: 2

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: The Benson Alternative was chosen because of the relative risk between a monorail switch and the preferred option with the ramps. There are a greater variety of options for solution of ramp problems than for the switch problems.

Remark: None.

Item Number: 1.3

Page: 1
Section: 1.1 Background
Paragraph: 4

Reference Comment: C2
Reference Resolution/Response: R1 & R2

Change: None required.

Remark: The "works" are defined as the guideway relocation and new monorail station.

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Dummy Layout

Below is a dummy layout for addendum Items. Material in *italics* are explanations of the type of content found under each heading.

Item Number: *Sequential decimal number within each group of addendum items. Units digit indicates category, decimal portion is sequential identifier. (xx indicates XX suggested change)*

Page: *Page number reference to the Design Criteria Report.*

Section: *Section number and title from the Design Criteria Report.*

Paragraph: *Paragraph number from the start of the referenced section of the Design Criteria Report.*

Reference Comment: *Reference number identifying the source document(s) which generated the need for criteria change or clarification.*

Reference Resolution/Response: *Reference number of source document(s) on which the change/comment is based.*

Change: *Proposed revision or addition to the Westlake Station Design Criteria.*

Remark: *Clarification of original criteria or explanation of proposed criteria change.*

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"remarks" supplying supplemental information to further explain a particular part of the criteria or a combination of the two. "Remarks" are also used to explain how a change is to be incorporated into the original Design Criteria.

Most of the comments received pertain to specific sections or criteria from the original Design Criteria Report and have generated individual addendum items. Those comments not concerned with a specific section of the Report have been incorporated as addendum items for inclusion in the Design Criteria Report at the locations deemed most appropriate. Some, which address new criteria not in the Report, are indicated in the Section reference as "NEW CRITERIA".

Three categories of resolution have been established. One, the comment/issue is resolved and the solution is agreed to by all (KE, SED, DCD, and TRC). Two, the comment/issue cannot be resolved at this time with the presently available information, thus it is an open item to be decided on later. Many of these items require action on the part of some party and this action is documented as a "Remark" in the Addendum rather than a "Change" to the Design Criteria. The third category of comment/issue is an unresolved issue requiring negotiation or agreement between the parties involved. For the most part, changes to the Design Criteria are the result of category One comments, the resolutions to which have been fully discussed and agreed to by all. Item numbers which are followed by two asterisks (**) are thus flagged to identify a change to the Criteria which is recommended by KE and is not considered to be controversial, but has not been formally agreed to by all parties.

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The addendum is organized into three groups of Items corresponding to their category of status. Items within each group are organized in a consecutive manner as they apply to the original Design Criteria Report. Each Item has a unique addendum item number. The units digit of the number reflects the category in which the Item belongs (1.n = resolved, 2.n = open and 3.n = unresolved). The decimal portion is a sequential identifier which numbers the addendum items consecutively within each category. Sources of comments and resolutions/responses are referenced, by numbers, to the references listed in the table of references in Appendix A. Many of the changes suggested in the TRC Revised Copy of the Westlake Station Design Criteria Report (Ref. No. C7) are considered to be merely editorial in nature and do not alter the criteria. Comments such as those are not included in this addendum.

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WESTLAKE STATION DESIGN CRITERIA
ADDENDUM NO. 1

Background

The City of Seattle entered into an agreement (No. T84-8) with Raymond Kaiser Engineers on November 2, 1984 to identify Rehabilitation and Upgrading needs of the existing Seattle Monorail system. Amendment No. 1 called for an Alternatives Analysis to generate and evaluate possible arrangements for the relocated southern terminus (Westlake Station) which is to be integrated into the new Westlake Mall Development. As a result of these analyses, Alternative VII (The George Benson Alternative) was selected.

It was considered practical to have the Mall Developer design the Westlake Station as it is to be an integral part of the Mall. To aid in this design, as part of Supplemental Agreement No. 1, the Westlake Station Design Criteria Report (Task 9.2) was prepared. An errata to the Design Criteria Report was issued and circulated on October 18, 1985 (a copy of which is included in Appendix B). The report provided transit-related station design criteria for use by the Westlake Mall Developer.

The City has decided that the Design Criteria Report is to be a working paper which is to be updated and revised by Kaiser Engineers at significant stages of the project. The updating process is to be accomplished through addenda to the original Westlake Station Design Criteria Report. This Addendum No. 1 is the first such update/revision to the original document. It is prepared as part of Task 15.7 of Supplemental Agreement No. 7 and addresses comments and questions received as of December 4, 1985. Subsequent addenda are expected to be prepared at the end of the Schematic Design Phase, the Design Development Phase and when Construction Documents are issued.

Addendum Procedure

This addendum is a compilation of Items, each of which is the result of a specific comment or question received from the reviewing parties. These Items are used to document "changes" to the original Design Criteria Report, to make

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ADDENDUM NO. 1

to the

WESTLAKE STATION DESIGN CRITERIA REPORT

Exhibit C

Design Standards &
Scope of Work

Prepared for: SEATTLE ENGINEERING DEPARTMENT

Submitted by: *KAISER ENGINEERS, INC.*

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EXHIBIT I

ASSOCIATE SERVICES

The following services and access will be provided to the City by Associates on an on-going basis, for which payment is made pursuant to Section 13.

A. Platform Cleaning:

Associates will:
- mop and clean spills
- spot clean glass and surfaces.
- empty trash cans, replace trash bags and pick up floor trash.

Frequency:
- during mall operating hours or at least from 10:00 A.M. - 7:00 P.M., Monday-Saturday and 12:00 P.M. - 5:00 P.M. Sunday.
- as required over the course of the day.
- in response to specific calls from Monorail personnel.
- estimated to be for 15 minutes each 2 hours throughout the day.

Service Does Not Include:
- surface (floor, wall and glass) cleaning from routine daily traffic.
- replacement of light bulbs.
- cleaning of kiosk interior.
- extraordinary ticket stub pick up from Monorail patron abuse of ticket procedures.

B. Periodic painting of platform and exterior accessway wall surfaces, on a schedule equivalent to the repainting program for the public space within the mall, excluding repainting made necessary because of vandalism.

C. Routine repairs and maintenance by service contract of the passenger elevator in the exterior accessway, including a preventive maintenance program, at least equivalent to the elevator maintenance standards prevailing for the rest of the Westlake Center.

D. Comprehensive general liability insurance for the platform and exterior accessway, with the City as an additional insured.

E. Interior access through the public areas of Westlake Center during mall operating hours (or at least 10:00 A.M. - 7:00 P.M., Monday-Saturday and 12:00 P.M. - 5:00 P.M. Sunday) including access to the restrooms and retail passenger elevator. The interior accessway shall be clean and safe, lit and environmentally controlled, with operable escalators and elevators, subject to the provisions of Section 7 (Alterations) of this agreement.

F. Periodic cleaning of platform canopy and skylight.

13DKYT/07

THIS VERSION IS NOT ADOPTED

EXHIBIT B

The Seattle Center Schedule and Standards
for Routine Maintenance, Cleaning

Daily Cleaning

Sweep and mop floor on platform, stairs and elevator
~~Vacuum elevator if it is carpeted~~
Clean all glass surfaces
Dust surfaces and decorative materials
Pick up trash and replace trash liners
Remove gum and other material from surfaces
Remove debris from all areas
Remove graffiti

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Weekly or As-Needed Cleaning

Strip and wax floors
Thoroughly clean surfaces and decorative materials
~~Clean elevator floor carpet — if carpeted~~
Wash elevator walls
Clean furniture
Clean trash containers

Routine Maintenance — As Needed

Relamp fixtures
Remove graffiti
Replace/restore vandalized items
Replace anti-slick surfaces on stairway
Repair signage
Repair equipment

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THIS VERSION IS NOT ADOPTED

EXHIBIT G

INTERIOR ACCESSWAY MAINTENANCE STANDARDS

Daytime Maintenance

Trash pick-up and gum removal
Trash removal
Graffiti removal
Spill mop-up
Monitoring of escalators and elevators

Pre-opening Maintenance

Floor washed every day
Floors waxed when required
Cleaning of all glass surfaces
Cleaning of all other decorative materials
Replacement of lamps and ballasts
Cleaning of elevators and escalators
High dusting as required

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THIS VERSION IS NOT ADOPTED

EXHIBIT F

CONSUMER PRICE INDEX ADJUSTMENT
AND
PAYMENT TERMS

(a) As of each January 1st following the date that the payment first becomes due and payable, the payment shall be increased or decreased in proportion to the percentage change in the CPI that has occurred since January 1st of the year in which any payment first became due and payable. For the purposes of this Agreement, all references to the "CPI" as the basis for adjustments to be made to various amounts to be paid or credited by one party to the other shall mean the Consumer Price Index for All Urban Consumers for the Seattle-Everett Metropolitan Area as published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor; provided, that the CPI published for the calendar year shall be deemed to be the CPI as of January 1st of that year; provided further, that in the event the aforementioned index is discontinued, the parties shall select another, similar index that reflects consumer price changes; and provided, further, that in the event of a change in the index base (1967 - 100), the parties hereto shall utilize such index base during the period it is used by the federal government and shall apply whatever conversion factor is necessary to establish the percentage change in the CPI in or between any year(s) during which the index base is changed.

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(b) After publication of the CPI for the immediately preceding calendar year, the Associates shall notify the City of the amount(s) of any increase(s) or decrease(s) in the City's payment. Any amounts due to the Associates as a result of such notification, should such notification occur after January 1st, shall be paid or credited, as appropriate, within ten (10) days after the date of said notification. Until the date of such notice, the City shall pay the same payment as was due and payable for the immediately preceding December.

(c) Payment shall be due and payable on the tenth (10th) day of each month.

(d) A payment shall be delinquent if not paid within ten (10) days after the date due; delinquent sums shall bear interest at a rate of twelve percent (12%) per annum from the date of delinquency to the date paid.

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THIS VERSION IS NOT AUDITED

EXHIBIT E

Seattle Center Monorail
Regular Operating Hours

Summer -- Memorail Day through Labor Day

10:00 A.M. - 12:30 A.M. All Week

Winter -- Day after Labor Day to day before Memorail Day

10:00 A.M. - 9:00 P.M. Sunday-Thursday
10:00 A.M. - 12:00 A.M. Friday and Saturday

Special Events, School Breaks and Festivals

10:00 A.M. - 12:30 A.M.

New Years Eve

10:00 A.M. - 2:30 A.M.

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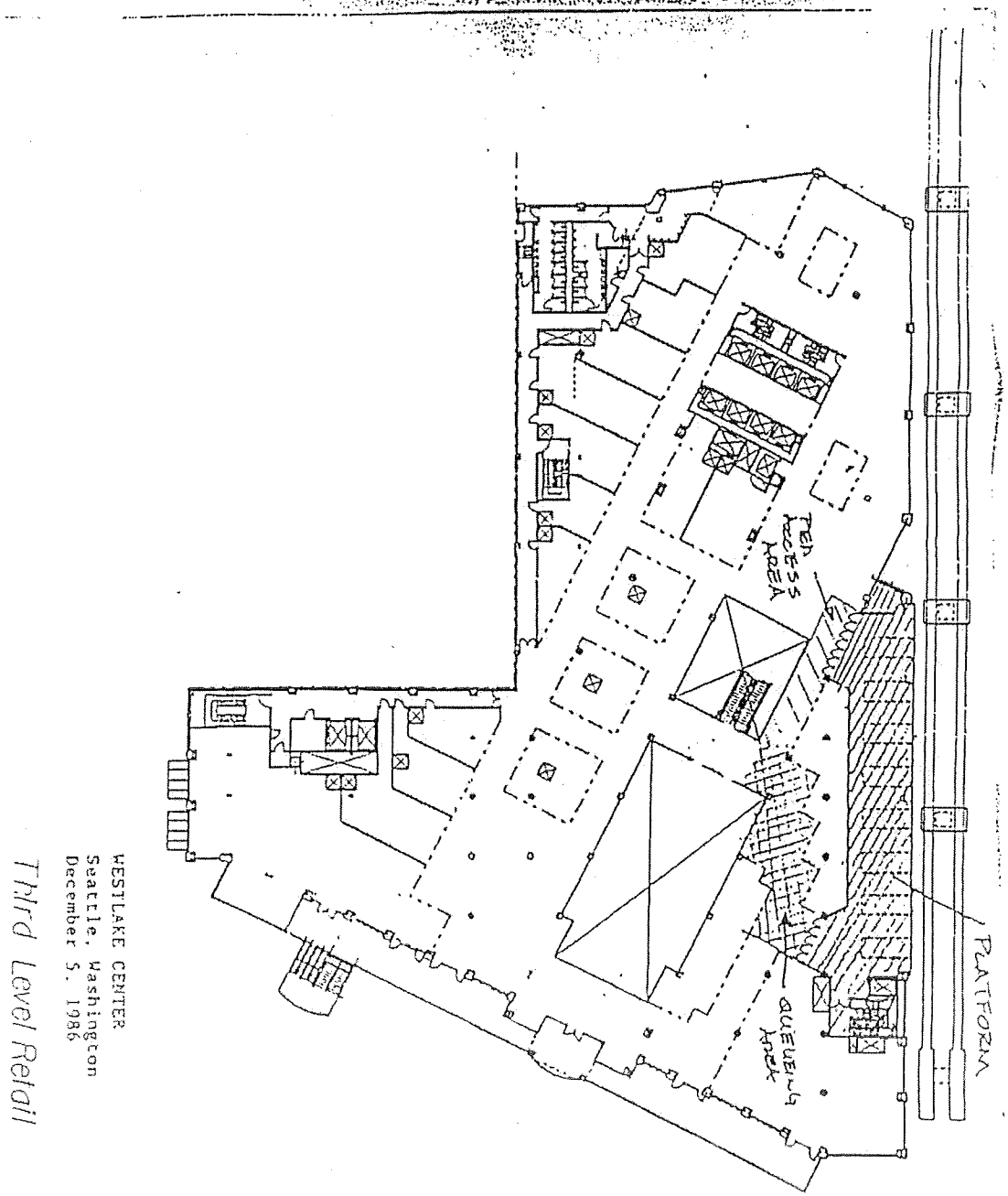
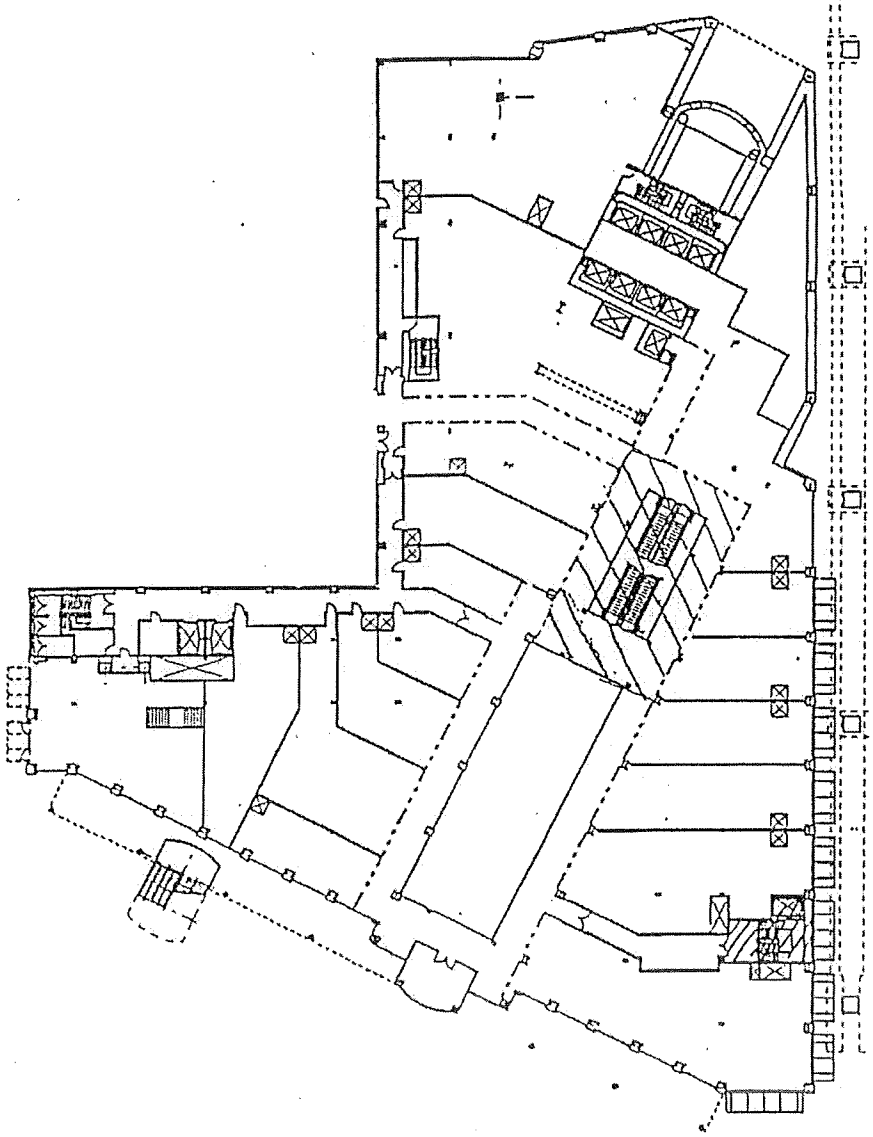


WESTLAKE CENTER
Seattle, Washington
December 5, 1986

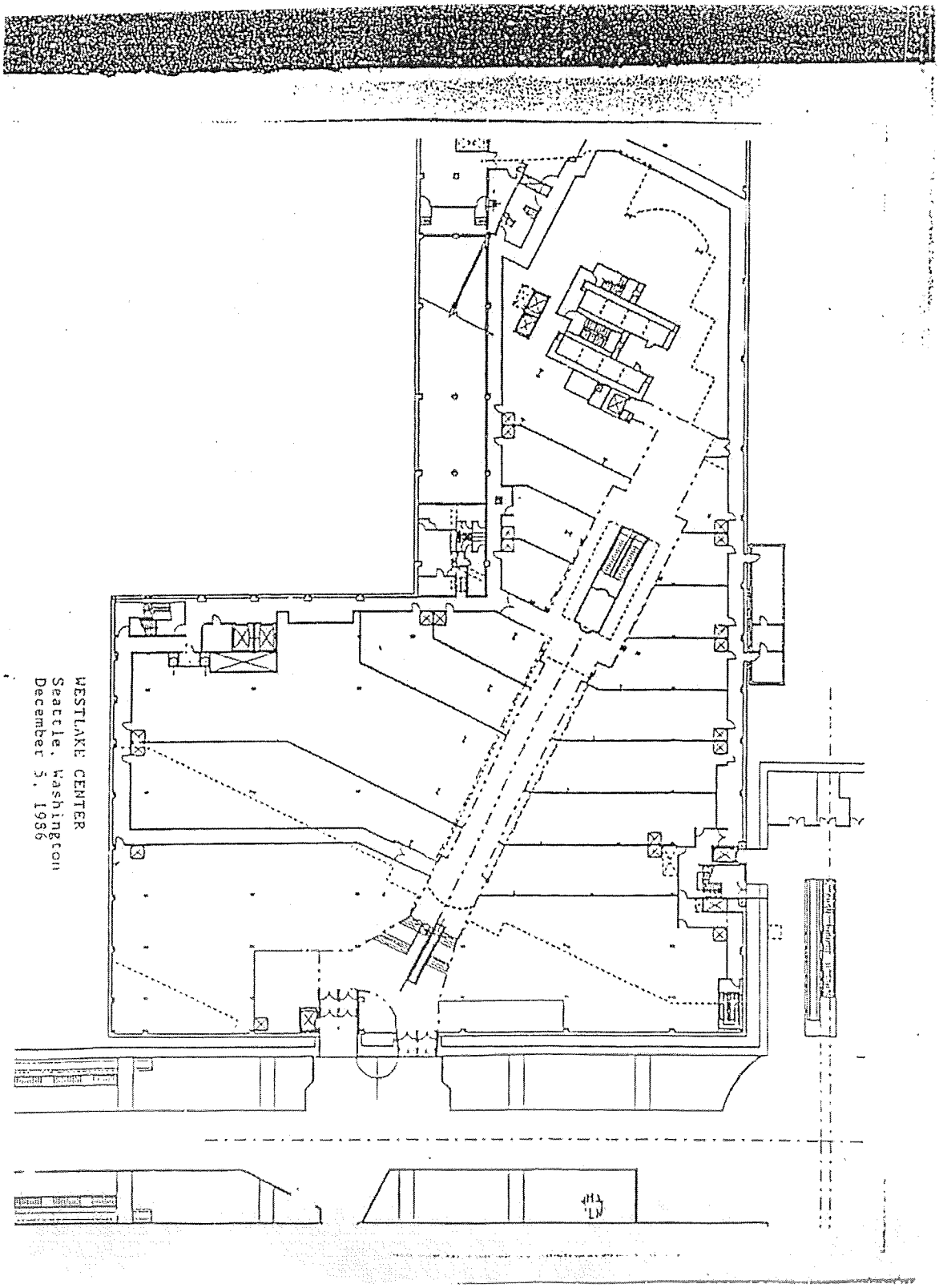
Third Level Retail

THIS VERSION IS NOT ADOPTED

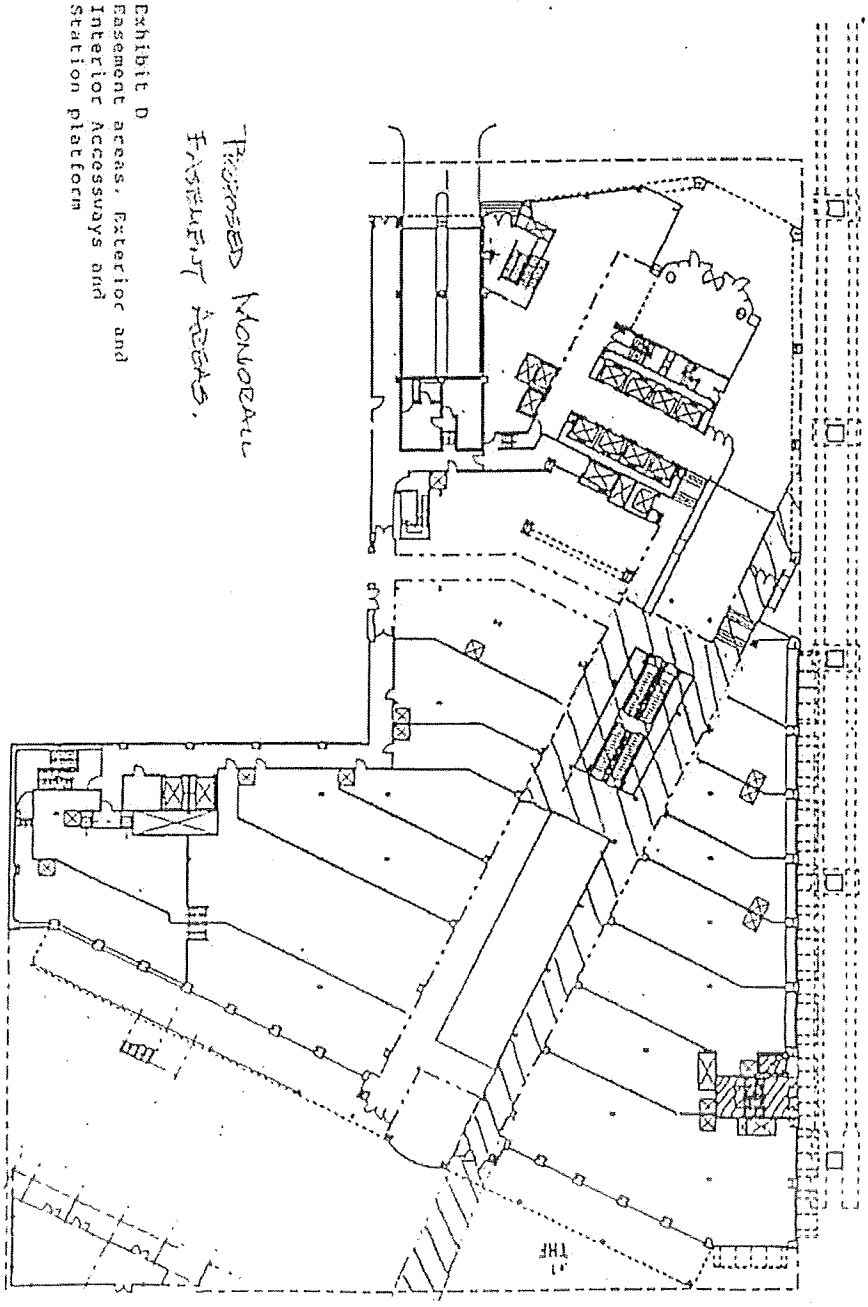


WESTLAKE CENTER
Seattle, Washington
December 5, 1986
SECOND LEVEL RETAIL

THIS VERSION IS NOT ADOPTED



THIS VERSION IS NOT ADOPTED



THIS VERSION IS NOT ADOPTED

Group 3: designed and constructed by the City of Seattle. Costs associated with these items will be assigned to Rouse's monorail obligation only to the extent that the City specifically requests, and Rouse agrees, that Rouse should perform the work.

a. hydraulic or electric moving platforms

b. ticket kiosk

c. platform, cab or guideway electrical service

d. guideway system

e. vault equipment

f. ticket dispensing equipment (location and placement is subject to approval by Rouse).

g. handrails/gates along platform edge

h. PA system

Group 4: designed by the City of Seattle and constructed by Rouse. Design costs will be paid by the City. Construction costs will be fully allocated to the Rouse Monorail committment.

a. Power supply vault, equipment vault and all ducts and related appurtenances

b. Monorail foundations and columns (Piers 60-63).

THIS VERSION IS NOT ADOPTED

Exhibit C
Monorail Reimbursement Scope

The following list sets out the rules for allocation of monorail construction costs between Rouse and the City of Seattle, s well as establishing methods for allocating broader project costs to the station construction:

Group 1: designed and constructed by Rouse within the monorail easement area; fully allocable as specified in Section 7.A.

a. station platform
b. canopy
c. 50% of common walls and 100% of station and exterior access walls.
d. all platform doors and sliders
e. 5th Avenue elevator
f. 5th Avenue stairwell
g. platform, elevator and stairwell finishes
h. platform, elevator and stairwell lighting
i. station graphic design and production and installation
j. removal of existing monorail footings and piers
k. monorail columns and vaults if built by Rouse
l. platform furniture, if provided by Rouse
m. any other work requested in writing by City and accepted by Rouse.
n. sprinkler system
o. emergency lighting
p. ticket kiosk enclosure

Group 2: designed and constructed by Rouse, not within the monorail easement area; partially allocable to the Rouse monorail commitment as specified Section 7.A.

a. steel structural framing; amount allocated to monorail represented by fraction of total structural cost where the numerator is the gross building area of the monorail platform including elevator and stairwell, and the denominator is the gross building area of the entire Westlake Center project.

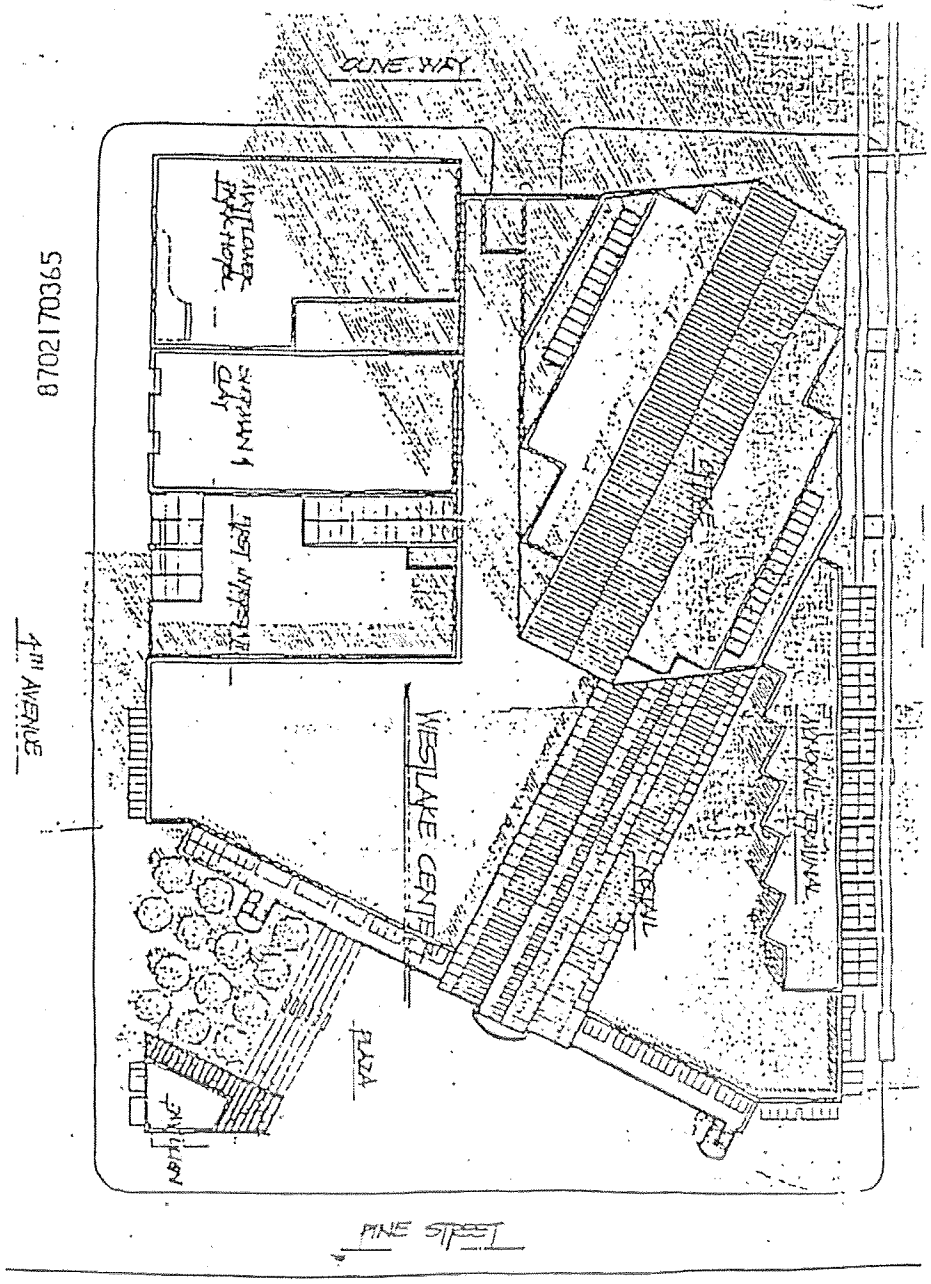
b. foundations; allocated in the same fashion as (a) above.

c. central electrical service; amount allocated to monorail will be based on the estimated percentage of total project capacity required by monorail as determined by Rouse's engineers, reviewed and approved by monorail.

d. mall escalators; amount allocated to monorail will be the incremental cost, if any, of escalators sized to handle the monorail exiting capacity over the cost of escalators that would otherwise be provided to serve mall customers, to be reviewed and approved by monorail.

THIS VERSION IS NOT ADOPTED

Exhibit B
Site Plan



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the City a leasehold interest in and to that certain real property located in the City of Seattle and more particularly described as follows:

Lot 2, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington;
EXCEPT the Westerly 12 feet of said lot condemned by the City of Seattle in King County Superior Court Cause No. 52380 for the widening of Fourth Avenue, as provided by Ordinance 13776 of said City; and EXCEPT the portion of said lot condemned by the City of Seattle in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance No. 7733 of said City.

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Those portions of Lots 10, 11 and 12, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 1203, in King County, Washington, lying easterly of the east line of Westlake Avenue as condemned by the City of Seattle in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance 7733 of said City;
EXCEPT the southeasterly 7 feet of said Lot 12 condemned by the City of Seattle in King County Superior Court Cause No. 57057 for the widening of Pine Street as provided by Ordinance 14500 of said City.

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Also subject to all of the terms and conditions of this Agreement, the City agrees to sell and assign to Purchaser and Purchaser agrees to purchase and take from the City all of the City's right, title and interest in and to the hereinafter described Lot 2, Block 1, including but not limited to, the City's right, title and interest in and to that certain Statement of Lease Agreement dated November 15, 1945 by and between F. S. Stimson Corporation, as lessor, and Edison Washington Stores, Inc., as lessee, as assigned to the City by Assignment of Ground Lease dated August 27, 1980 by and between Joseph W. Lund, Ross J. Beatty, John T. Fallon, Alfred C. Linklatter and William G. Myers as Trustees of Bradley Real Estate Trust and the City and that certain Assignment of Leases, Subleases and Tenancies and Assumption Agreement dated August 27, 1980 between the aforesaid Trustees and the City (herein collectively called "Ground Lease"), a copy of which is attached hereto as Exhibit C, which Ground Lease has a term expiring on July 31, 1998 (subject to extension by the lessee thereunder to a term expiring on July 31, 2028) and which conveys to

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Exhibit A

Property Interest

Fee Simple Estates in:

Lot 1, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington;
EXCEPT the Westerly 12 feet of said lot condemned by the City of Seattle in King County Superior Court Cause No. 52280, for the widening of Fourth Avenue, as provided by Ordinance 13778 of said City; and
EXCEPT the Southeasterly 7 feet of said lot condemned by the City of Seattle, in King County Superior Court Cause No. 57057 for the widening of Pine Street as provided by Ordinance 14500 of said City; and
EXCEPT the portion of said lot condemned by the City of Seattle, in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance No. 7733 of said City.

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Lot 3, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to the plat recorded in Volume 1 of Plats, page 103, in King County, Washington;
EXCEPT the Westerly 12 feet of said Lot condemned by the City of Seattle in King County Superior Court Cause No. 52280 for the widening of Fourth Avenue, as provided by Ordinance 137376 of said City;

All those portions of Lots 8, 9, 10 and 11, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, Page 103, in King County, Washington; lying Westerly of the West line of Westlake Avenue, as condemned by the City of Seattle in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance 7733 of said City.

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LOTS 10, 11 and 12

Those portions of Lots 10, 11 and 12, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased, (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington, lying Easterly of the East line of Westlake Avenue as condemned by the City of Seattle in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance 7733 of said City;

EXCEPT the southeasterly 7 feet of said Lot 12 condemned by the City of Seattle in King County Superior Court Cause No. 57057 for the widening of Pine Street as provided by Ordinance 14500 of said City.

TOGETHER WITH those portions of Westlake Avenue and the alley lying within said Block 1 which attached to the above-described Lots 1, 3, 8, 9, 10, 11 and 12 by operation of law upon the vacation thereof.

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LOT 3: Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to the plat recorded in Volume 1 of Plats, page 103, in King County, Washington;

EXCEPT the Westerly 12 feet of said Lot condemned by the City of Seattle in King County Superior Court Cause No. 52280 for the widening of Fourth Avenue, as provided by Ordinance 13776 of said City.

LOT 7: Block 1, ADDITION TO THE TOWN OF SEATTLE, as laid off by the heirs of Sarah A. Bell, deceased (commonly known as Heirs of SARAH A. BELL'S ADDITION TO THE CITY OF SEATTLE), according to the plat recorded in Volume 1 of Plats, page 103, in King County, Washington;

EXCEPT the portion of said Lots condemned by the City of Seattle in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance No. 7733 of said City.

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LOTS 8, 9, 10 and 11: All those portions of Lots 8, 9 10 and 11, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington; lying Westerly of the West line of Westlake Avenue, as condemned by the City of Seattle in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance 7733 of said City.

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EXHIBIT A

LOT 1: Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington:

EXCEPT the Westerly 12 feet of said lot condemned by the City of Seattle in King County Superior Court cause No. 52280, for the widening of Fourth Avenue, as provided by Ordinance 13778 of said City; and

EXCEPT the Southeasterly 7 feet of said lot condemned by the City of Seattle, in King County Superior Court Cause No. 57057 for the widening of Pine Street as provided by Ordinance 14500 of said City; and

EXCEPT the portion of said lot condemned by the City of Seattle, in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance No. 7733 of said City.

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LOT 2: Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington:

EXCEPT the Westerly 12 feet of said Lot 2 condemned by the City of Seattle in King County Superior Court Cause No. 52280 for the widening of Fourth Avenue, as provided by Ordinance 13778 of said City:

AND EXCEPT that portion of said Lot 2 condemned by the City of Seattle in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance No. 7733 of said City.

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TMP52

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I hereby certify that on this 12th day of February 1987, personally appeared before me Stephen L. Koehler and _____, to me known to be the President and _____ respectively of Koehler, McFadyen & Company, a corporation executing the within and foregoing instrument as general partner of Westlake 7 Building Partners Limited Partnership and acknowledged said instrument to be the free and voluntary act and deed of said corporacion for the uses and purposes therein mentioned and on oath stated that they are authorized to execute said instrument.

WITNESS my hand and official seal this 12th day of Feb, 1987.

Robin Bushnell
NOTARY PUBLIC in and for the State of Washington, residing at Seattle
Commission expires 1/1/90

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TMP52

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this day personally appeared before me Ewen C. Dingwall David Moseley and — Commissioner, to me known to be the Secretary Director and Secretary Director respectively of the municipal corporation that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath stated that they are authorized to execute said instrument and that the seal affixed is the corporate seal of said municipal corporation.

WITNESS my hand and seal this 10th day of February, 1987.

Claire M. Sobkowski
NOTARY PUBLIC in and for the State of Washington, residing at Seattle - King County
Commission expires 11-27-89

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STATE OF Washington
) ss
COUNTY OF King)

I hereby certify that on this 12th day of February 1987 personally appeared before me Darrell M. Vange and _____, to me known to be the Vice President and _____ respectively of Rouse-Seattle, Inc., a corporation executing the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said corporation as general partner of Westlake Center Associates Limited Partnership for the uses and purposes therein mentioned and on oath stated that they are authorized to execute said instrument.

WITNESS my hand and official seal this 12th day of February, 1987

Robbin Bushnell
NOTARY PUBLIC in and for the State of Wash. residing at Seattle
Commission expires FEB 90

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IN WITNESS WHEREOF, the parties have caused these presents to be executed, acknowledged and delivered in form and manner proper and sufficient in law, all as of the day and year first above written.

ATTEST:

THE CITY OF SEATTLE

By: _____
Director, Seattle Center

By: _____
Director, Department of Community Development

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WESTLAKE CENTER ASSOCIATES
LIMITED PARTNERSHIP

ATTEST:

By: Rouse-Seattle, Inc.,
General Partner

By: _____
Its VICE PRESIDENT

By: WESTLAKE 7 BUILDING PARTNERS
LIMITED PARTNERSHIP,
General Partner

ATTEST:

By: Koehler, McFadyen & Company,
General Partner

By: _____
Its PRESIDENT

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hereto and Associates' Mortgagees, and their successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third-party beneficiary or otherwise) on account of any nonperformance hereunder.

Section 46. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Washington and venue shall lie with the appropriate court in King County.

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(including, without limitation, electricity, gas, gasoline or steam), materials or supplies in the open market; failure of transportation; strikes; lockouts; action of labor unions; condemnation; requisition; order of government or civil or military or naval authorities; litigation involving a party or others relating to zoning, subdivision, or other governmental action or inaction; or any other cause, whether similar or dissimilar to the foregoing, not reasonably within the control of such party; provided, however, that neither party shall be entitled to relief under this Section by reason of any event unless such party shall have given the other party notice of such event and the nature of such event within a reasonable time after the occurrence of such event, and unless such party uses reasonable prudence and diligence (without unreasonable expense) to avoid or mitigate the delay caused by such event.

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Section 43. Recordation. This Agreement or a memorandum hereof shall be recorded among the land records of the City of Seattle. All costs and expenses of such recording shall be shared equally by the parties.

Section 44. Number and Gender. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and vice versa, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include corporation, firm or association.

Section 45. No Third Party Rights. Nothing in this Agreement shall be construed to permit anyone other than the parties

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interest therein, or any part thereof, to any party which is not a governmental entity or agency.

Section 40. No Partnership. Nothing herein and no subsequent acts of any of the parties shall be deemed or construed by the parties hereto, nor by any third party, as creating or authorizing the creation of the relationship of principal and agent or of partnership or joint venture between the parties, or any of them.

Section 41. Expense of Obligations. Where this Agreement imposes obligations or responsibilities upon either party hereto, such obligations and responsibilities shall be performed at the expense of such party responsible therefore except where otherwise specifically provided.

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Section 42. Unavoidable Delay. Except as otherwise expressly provided, each party hereto shall be excused from performing any of its obligations or undertakings provided in this Agreement (except any of its obligations to pay any sums of money under the applicable provisions hereof) for so long as the performance of such obligation is prevented or delayed by any cause which is beyond the reasonable control of such party, including but not limited to such of the following as may be beyond the reasonable control of such party: Act of God; fire; earthquake; flood; explosion; action of the elements; war; invasion; insurrection; riot; mob violence; sabotage; malicious mischief; inability to procure or general shortage or rationing or regulation of labor, equipment, facilities, sources of energy

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Section 38. Entire Agreement. This Agreement and all the Exhibits attached hereto contains the entire agreement of the parties with respect to the subject matter hereof, and no representations or agreements, oral or otherwise, between the Parties not embodied herein, attached hereto or hereinabove referenced shall be of any force and effect. Any additions or amendments to this Agreement subsequent hereto shall be of no force and effect unless in writing and signed by the parties hereto.

Section 39. Transfer: Binding Nature. Except as provided in Section 19 (Mortgages), any sale, transfer or conveyance of any property subject to this Agreement or any part thereof or interest therein shall be subject to this Agreement, and it shall be deemed construed without further agreement that the purchaser or grantee at any such sale, transfer or conveyance has assumed and agreed to carry out any and all obligations of the transferor in this Agreement so long as such purchaser or grantee shall be the owner of the interest so transferred. As a condition of any such sale, transfer or conveyance, the transferee thereunder shall execute such instruments as the other party may reasonably require confirming the foregoing, and each party represents and covenants that it will not make any such sale, transfer or conveyance except in accordance with the provisions of this Section. In addition to and without limiting the generality of the foregoing, the City shall not, without the prior written consent by Associates, sell, transfer or convey the Monorail System or Monorail Station or its

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unenforceable because of judicial construction, the remaining terms, covenants and conditions of this Agreement, or the application of such term, covenant or condition to persons, parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 36. Rights Cumulative. All rights, powers and privileges conferred herein upon the parties shall be cumulative but not restrictive to those given by law.

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Section 37. Waivers and Consents. One or more waivers of any covenant, term or condition of this Agreement by either party shall not be construed as a waiver of subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waiver or render unnecessary consent to or approval of any subsequent similar act. The Director of the Seattle Department of Community Development is authorized to act for and on behalf of the City in connection with this Agreement and in determining Associates' compliance with its obligations hereunder, and to extend the time for the performance of any of Associates' obligations under this Agreement, and to grant any consents, waivers or approvals on behalf of the City hereunder, except where action by another party is required by law or this Agreement.

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thirty (30) days after written request by the other party, such party will execute, acknowledge and deliver to the requesting party or to any prospective Mortgagee of Associates, assignee or tenant or subtenant, a certificate stating (i) that the Agreement is unmodified and in force and effect (or if there have been modifications, that this Agreement is in force and effect as modified, and identifying the modification agreements, or if the Agreement is not in force and effect the certificate shall so state; (ii) whether or not there is any existing default by either party under the Agreement with respect to which a notice of default has been served, and if there is any such default, specifying the nature and extent thereof; and (iii) whether or not, to the best knowledge of the certifying party, there are any setoffs, defenses or counterclaims against enforcement of the obligations of the certifying party hereunder.

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Section 34. No Waiver. No failure of either party hereto to exercise any power given it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

Section 35. Partial Invalidity. In any term, covenant, or condition of this Agreement or the application thereof to any person, party or circumstances shall, to any extent, be illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity or becomes

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Section 30. Section Headings. The section headings in this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

Section 31. Successors. Subject to the other provisions of this Agreement, all of the terms, covenants, obligations and conditions of this Agreement shall inure to the benefit of and shall bind as the case may be, the parties hereto, and their respective heirs, executors, administrators, legal representatives, successors and assigns.

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Section 32. Real Estate Commissions. Each of the parties represents and warrants unto the other that there are no commissions, charges or other compensation due any broker, agent or finder with respect to this Agreement or the negotiations thereof, and each of the parties covenants and agrees with the other that if either party hereto utilizes an agent, broker, or finder, the party so using an agent, broker or finder or incurring such commissions, charges, fees or similar expenses will pay, hold harmless and indemnify the other party from and against all claims, costs, expenses or liability (including, without limitation, the cost of counsel fees in connection therewith) for any such compensation, commissions, charges or other compensation claimed by any such broker, agent or finder.

Section 33. Estoppel Certificates. Each party agrees that at any time and from time to time at reasonable intervals, within

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IF TO ASSOCIATES: Westlake Center Associates
Limited Partnership
Associates-Seattle, Inc.,
General Partner
c/o The Rouse Company
10275 Little Patuxent Parkway
Columbia, Maryland 21044
Attention: General Counsel

or to such other address or addresses as Associates shall from time to time and at any time designate by notice to the City.

Every notice, demand, request, or other communication sent in the manner aforesaid shall be deemed to have been given, made or communicated, as the case may be, and shall be effective on the second business day after the same has been deposited, registered or certified, properly addressed as aforesaid, postage prepaid, in the United States mail, except that any notice, demand, request, or other communication to a party (but not to any Mortgagee) may be personally delivered, and in such event shall be deemed to have been given on the date the same shall have been personally delivered to the officer or representative of the Party (as identified above) to whom such notice, demand, request or other communication is addressed. Each party shall designate an officer or representative to receive such personal notice.

Either party may require, at any time, that additional copies of any notice, be sent to such person(s), not, as to each notice, in excess of three (3) copies at any one time, as shall from time to time be designated in any notice from such party as to such requirement.

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American Arbitration Association or as determined by the arbitrators. Each arbitrator shall be independent of any affiliation or interest with either of the parties and shall be experienced in the development and operation of high quality, mixed-use real estate projects and public transportation systems. In any proceeding conducted pursuant to this Section, the award of the arbitrators shall be final and binding and enforceable in any court of competent jurisdiction.

(c) Except the arbitration described in Section 26(c), if either party reasonably and in good faith believes that an arbitral award or decision of a dispute would involve damages in excess of $25,000, then such dispute shall not be subject to arbitration. Once the parties submit a dispute to arbitration, the arbitral award or decision shall be final, binding and enforceable, regardless of the amount of any damages.

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Section 29. Notices. Every notice, demand, consent, approval or other communication which either party is required or desires to give or make or communicate upon or to the other party shall be in writing and shall be sent by mailing the same by registered mail or certified mail, postage prepaid, return receipt requested, as follows:

IF TO THE CITY: Director of Seattle Center
Seattle Center
305 Harrison Street
Seattle, Washington 98109

or to such other address or addresses as the City shall from time to time and at any time designate by notice to Association.

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time the parties continue to negotiate in good faith or the arbitration process is in operation, the terms of this Agreement as of the fiftieth (50th) anniversary date shall continue with full force and effect.

Section 27. Compliance with Laws. At all times during the Term, the parties shall comply with all laws then in effect respecting the performance of their respective obligations and the exercise of the respective rights hereunder.

Section 28. Arbitration.

(a) If a dispute shall arise between the parties, and if, pursuant to any express provision of this Agreement, such dispute is to be resolved by arbitration, then any such dispute shall be resolved by arbitration. Except to the extent expressly provided otherwise herein, any such arbitration shall be in accordance with the commercial arbitration rules of the American Arbitration Association then obtaining and shall commence within thirty days of the date arbitration was invoked.

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(b) The arbitrators shall be sworn faithfully and fairly to determine the question(s) at issue, and shall afford each party a hearing and the right to submit evidence, with the privilege of cross-examination on the question(s) at issue, and shall, with all possible speed, make their determination in writing, and shall give the parties notice of such determination. Any Mortgagee of Associates shall be entitled to participate fully in such hearing. All fees and costs of any such arbitration shall be paid as provided in the commercial arbitration rules of the

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discontinued, for reasons other than those necessary for the repair, maintenance or renovation of the Improvements, for a continuous period in excess of twenty-four (24) months.

(b) On the Termination Date each party shall be released from each covenant, provision and condition to be performed by it under this Agreement (including, without limitation, those respecting easements), which is not by its terms, to extend beyond or survive the Termination Date (except that the parties shall not be released from any liability incurred prior to the Termination Date). Upon the request of a party, both parties shall sign and exchange an instrument in recordable form evidencing the termination of this Agreement.

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(c) Provided the Monorail System and Monorail Station are in operation in accordance with this Agreement and the City is otherwise in compliance with its obligations hereunder, on the fiftieth (50th) anniversary of the date of this Agreement, either party may request the other party to re-negotiate the terms of this Agreement. Each party shall negotiate in good faith. If the parties are unable to reach agreement on the new terms of the Agreement within two (2) years of the fiftieth (50th) anniversary date, such disputed terms shall be submitted to arbitration as provided in Section 28. In any event, the City shall retain, at its sole and absolute discretion, the right to an access easement on the Property to operate the Monorail Station; provided that, any calculation of any arbitral award or decision shall disregard the City's right to retain such an access easement. During the

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Date. On the date of the first to occur of the following events (the "Termination Date"), this Agreement shall terminate in its entirety:

(i) The fiftieth (50th) anniversary of the date of this Agreement, except as provided in Section 26(c);

(ii) Upon the condemnation of all or substantially all of the Improvements (provided that such termination shall not be effective until such time as title to the condemned property vests in the condemning authority and the City (if not the condemning authority) shall be entitled to claim compensation from the condemning authority on account of its lost easements or easement rights hereunder) or the destruction of all or substantially all of the Improvements not followed by commencement of restoration within one (1) year;

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(iii) Upon the unanimous consent of the City, Associates and Associates' Mortgagees;

(iv) At the option of Associates and following sixty (60) days written notice to the City, at such time as operation of the Monorail System shall be discontinued for reasons other than those necessary for the repair and maintenance of the Monorail System for a continuous period in excess of sixty (60) days or for any non-consecutive sixty (60) days total in any calendar year; or

(v) At the option of the City and following sixty (60) days written notice to the Associates, at such time as operation of the retail portions of the Westlake Project shall be

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the event or events giving rise to Associates' default hereunder and stating the City's intention to exercise its remedies hereunder on a date specified in such notice. Notwithstanding such notice, the City shall not exercise its remedies hereunder if (i) such default by the Associates can be cured by the payment of a fixed monetary amount and within thirty (30) days after the date on which such notice is given, such Mortgagee shall make such payment or (ii) such default can be cured with the exercise of reasonable diligence by such Mortgagee, and such Mortgagee, within sixty (60) days after the date such notice is given, commences such proceedings (including, without limitation, the filing of a petition for the appointment of a receiver) as it may deem necessary to succeed to Associates interest under this Agreement and thereafter diligently pursues the curing of such default. Upon request, the City will enter into an agreement with any Mortgagee of Associates granting to the Mortgagee the rights set forth in this Section 25. This Agreement shall not be modified, amended, surrendered, cancelled or wholly terminated by Associates, nor shall any waiver of Associates' rights hereunder be effective, without the written consent of such Associates' Mortgagees whose name and address shall have been furnished to the City pursuant to Section 29.

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Section 26. Termination Date.

(a) This Agreement shall remain in full force and effect and binding upon each party hereto and its property to the extent herein provided until the occurrence of the Termination

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default hereunder, such default shall not give rise to a right to terminate this Agreement, and the parties expressly understand and agree that this Agreement shall continue in effect through its Term, notwithstanding any default by any party.

(b) On the twentieth (20th) and fortieth (40th) anniversary of the date of this Agreement, either party may request the other party to re-negotiate the financial terms of this Agreement in order to reflect any changed circumstances. Each party shall negotiate in good faith and shall reasonably take into account any changed circumstances.

Section 24. Remedies Not Exclusive. The remedies provided for in this Agreement are not the sole remedies of a party and shall not be construed to be, by way of limitation, the only remedies available to the parties, but in addition either party shall be entitled to all remedies available in law or equity for breach by the other party.

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Section 25. Rights of Mortgagees. The City agrees to accept performance and compliance by any Associates' Mortgagee of and with any term, covenant, agreement, provision or limitation on the part of Associates to be kept, observed or performed by the Associates under this Agreement. Without limiting the generality of the foregoing, in the event Associates shall be a Defaulting Party under this Agreement, the City shall not exercise its rights or remedies provided in Section 21 unless it shall first give to each of the Associates' Mortgagees whose name and address shall have been provided to the City pursuant to Section 29 notice of

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(i) Failure by the City to satisfy promptly any judgment rendered against the City or against Associates, if Associates is protected by the City's indemnity in Section 16;

(ii) Failure by the City to comply promptly with any arbitral award or decision rendered pursuant to Section 28; or

(iii) Failure by the City to pay promptly the obligations described in Section 13 and 9(b)(iii), in which event, the denial of access is limited to the Interior Accessway.

(c) The term "Default Rate" means the annual rate of interest equal to the lesser of (i) the rate of interest announced from time to time by The Chase Manhattan Bank (National Association) (or some other bank agreed upon by the Parties) for short term loans to large businesses having the highest credit standing or (ii) the highest rate of interest allowed by law.

Section 22. Duration of Rights. The rights given by either party to the other to act as a Non-Defaulting Party under Section 21 shall endure until the Termination Date, provided that if and to the extent that any right or obligation of any party under this Agreement endures beyond such Termination Date, the rights provided in this Agreement shall likewise endure. Nothing in this Agreement shall act to terminate or limit any right of any Party to receive payment of any amount accrued at or before the Termination Date until it has been paid in full.

Section 23. No Termination and Re-negotiation Rights.

(a) The parties expressly agree that any provision of law or equity to the contrary notwithstanding, in the event of any

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Section 12, or upon reasonable notice not to exceed sixty (60) days with respect to matters involving a material visual impact on equipment, fixtures or other improvements installed by Associates on the Monorail Station Platform or Exterior Accessway, or involving public safety or unsafe conditions, or upon such other notice as may be specifically provided herein, cure or prosecute the curing of such default and all reasonable expense incurred in connection therewith, including legal fees, together with interest thereon at the Default Rate shall promptly be paid by the Defaulting Party to the Non-Defaulting Party effecting such cure. Neither party shall have the right to enter upon the property of the other party, except the Easement Areas, or to operate or cause the operation of the property of such other party in order to undertake any such cure.

(b) In addition, with respect to the events described herein, Associates may deny access to the property of Associates, including the Easement Areas, after Associates have notified the City in writing not less than thirty (30) days in advance. Such denial of access shall continue during the period of any default by the City in its obligations hereunder until such time as the default is cured (including such time as any amounts owed to Associates by the City shall have been paid in full, with interest thereon at the Default Rate from the time the amounts became due) and shall only occur upon the happening of the following events:

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Section 20. Release Upon Transfer. If at any time, either party shall sell, assign, transfer or convey the entirety of its interest in the property which is the subject of this Agreement, other than by the execution of a Mortgage, such party shall be relieved of all further liability hereunder accruing from and after the date of transfer. Such party shall, however, as a condition of such transfer, cause the transferee expressly to assume and be bound by all the terms, covenants and conditions in this Agreement contained and to be performed on the part of the transferring party.

Section 21. Rights of Self-Help.

(a) If any party (the "Defaulting Party") fails to perform any of the provisions, covenants or conditions of this Agreement on its part to be performed (including, without limitation, the making of any payment which the Defaulting Party has agreed herein to make) at the time and in the manner herein provided for the performance thereof, or if any provision, covenant or condition in this Agreement requires the diligent pursuit of a conduct or a course of work and if the Defaulting Party shall fail to pursue it diligently, then, in addition to any other remedies at law or in equity or as otherwise provided in this Agreement, the other Party (the "Non-Defaulting Party") may, upon 24 hour notice with respect to physical security devices on the Monorail Station Platform or Exterior Accessway or securing the access between the Monorail Station Platform and the Interior Accessway, or to cleaning and maintenance services described in

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of Associates in this Agreement pursuant to foreclosure, assignment or deed in lieu of foreclosure, such Mortgagee, and any party who acquires Associates' interest in this Agreement through such Mortgagee shall be bound by the provisions of this Agreement; provided, however, that a Mortgagee of Associates which succeeds to the interest of Associates in this Agreement and the Improvements pursuant to foreclosure, assignment or deed in lieu of foreclosure prior to completion of the Improvements shall only be required to complete construction of the Improvements (including, without limitation, the Monorail Station Platform and Easement Areas located on the Westlake Property) to the extent required under the Contract.

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As used herein the term "Mortgage" means any one or more mortgages, deeds of trust, deeds to secure debt, loan deeds, trust indentures, owner's interest in a sale-leaseback, lessor's interest in a lease-sublease back, security agreements or any similar security or title retention device, including without limitation any leasehold mortgage, which shall, from time to time, create a lien upon the estate of any Associates in property and which shall be security for one or more notes, bonds or other evidences of indebtedness issued by Associates. The term "Mortgagee" means the holder of a Mortgage or the lender in whose favor the Mortgage was created, together with its successor, assignee or designee selected by the Mortgagee to take title to the property encumbered by the Mortgage upon foreclosure or assignment or deed in lieu of foreclosure.

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Monorail Station Platform, Exterior Accessway and Interior Accessway.

(c) If any portion of the Improvements, including the Easement Areas, and the Monorail System or Station are damaged or destroyed at the same time, either party may elect not to rebuild or restore, respectively, the Improvements or the Monorail System or Station. Each party shall waive any damages or claims against the other party in connection with the damage or destruction, at the same time, of the Improvements and Monorail System or Station. If the City elects to rebuild or restore the Monorail Station and Associates does not elect to rebuild or restore the Improvements, then Associates shall perform the undertakings described in Section 18(a). If the Associates elect to rebuild or restore the Improvements and the City does not elect to rebuild or restore the Monorail Station, then the City shall perform the undertakings described in Section 18(b).

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Section 19. Mortgages. At any time and from time to time during the Term of this Agreement, Associates may assign or encumber its interest in this Agreement by way of a Mortgage or Mortgages containing such terms and provisions as Associates shall, in its sole discretion, deem fit and proper (but subject to the provisions, as applicable, of the Contract), and no Mortgagee of Associates shall be bound by the provisions of this Agreement as a result of any such Mortgage. Notwithstanding the foregoing, following completion of construction of the Improvements should any such Mortgagee of Associates otherwise succeed to the interest

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(ii) The access easement granted to the City in Section 8 shall continue in accordance with this Agreement.

(iii) Associates and the City shall negotiate in good faith the terms of a new operating agreement for the Monorail System, if Associates elect to re-develop the Property.

(iv) The City shall waive all damages and claims against Associates in connection with any interruption of Monorail System service.

(v) Associates shall clear away any ruins resulting from damage or destruction.

(b) Following completion of construction of the Westlake Project and continuing until the termination date, provided the Westlake Project is in operation in accordance with this Agreement and Associates are otherwise in compliance with its obligations hereunder, the City may, at its sole discretion, within a reasonable period of time, elect not to rebuild or restore the Monorail Station or System, in which event the City shall undertake the following:

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(i) During the initial twenty (20) years of this Agreement, the City shall pay Associates an amount equal to $2,051,000 less $102,550 for every year after the first year of this Agreement until the year the Monorail System suffers such damage or destruction.

(ii) The City shall remove all fixtures, systems and equipment relating to the operation of the Monorail System, Monorail Station, Ramps, and Monorail Station Platform from the

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(b) In the case of damage to or destruction of the Monorail System, and at the option of Associates, the rebuilding, restoration and repair (as necessary) of the Monorail System and Monorail Station to the same general quality, performance and operation standards, and appearance and in the same level or levels as existed prior to such damage or destruction.

Section 18. Election Not to Rebuild.

(a) Following completion of construction of the Westlake Project and continuing until the Termination Date, provided the Monorail System and Monorail Station are in operation in accordance with this Agreement and the City is otherwise in compliance with its obligations hereunder, and subject to the rights, if any, of the City under the Contract, any Mortgagees or other third parties, Associates may, at its sole option, within a reasonable period of time, elect not to rebuild or restore the Improvements (including, but not limited to the Monorail Station Platform), in which event the following shall occur:

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(i) Associates shall grant the City the right to build, at the City's sole expense, a temporary monorail station platform with an accessway to the sidewalk on Associates' property in substantially the same space occupied by the Monorail Station Platform and Exterior Accessway. The City shall promptly remove, at the City's sole expense, such temporary platform and accessway upon the request of Associates when Associates commence construction on the Property.

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its tenants, subtenants, agents and employees, or from anyone arising on or within the Interior Accessway. Each party shall be responsible proportionately for their own negligent acts, errors or omissions and claims and liability arising therefrom as governed by the laws of the State of Washington. Each party shall bear its own defense costs, including attorneys' fees, statutory and other costs for defending a claim.

Section 17. Damage and Destruction. In the event of the destruction of or damage to any portion of the property of either party hereto located upon or adjacent to Block 1 (the Improvements in the case of Associates and the Monorail Station in the case of the City), and if such party elects to rebuild, restore or repair the same (it being understood that, pursuant to the Contract Associates may be obligated to rebuild the Improvements or portions thereof), such party shall promptly rebuild, restore and repair the same, or cause such rebuilding, restoration and repair, in a good and workmanlike manner. Any such rebuilding, restoration and repair shall include:

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(a) In the case of damage to or destruction of any portion of the property of Associates, and at the option of the City, the rebuilding, restoration and repair (as necessary) of the Monorail Station Platform and such portions of the Easement Areas as are located upon or above the Westlake Property to as good a condition, to the same general appearance, and on the same level or levels as existed prior to such damage or destruction; and

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performing any of the construction work contemplated under this Agreement, name Associates and the City as additional insureds on the general contractors' policies of comprehensive general liability insurance. Each general contractor shall, at its own expense, obtain and shall file with Associates and the City appropriate evidence in the form of a Certificate of Insurance of a policy of comprehensive general liability insurance (including contractual and automobile coverages). Such Certificates are subject to approval by Associates and the City as to insurer, form and coverage. Such policies shall provide minimum limits of $1,000,000 combined single limit per occurrence and annual aggregate with no deductible amounts. Associates and the City shall be given thirty (30) days prior written notice of any material change, cancellation, expiration or non-renewal of each such policy.

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Section 16. Indemnity. To the extent permitted by law, the City shall indemnify, save harmless, and defend Associates from all claims and liability due either to the negligent acts, errors or omissions of the City, its agents and employees, or from anyone arising on or within the area of the Monorail System, Monorail Station Platform, Ramps or Exterior Accessway, except to the extent such claims and liability relate to cleaning and maintenance services provided by Associates pursuant to Section 12 in such areas. In the same manner, Associates shall indemnify, save harmless and defend the City from all claims and liability due either to the negligent acts, errors or omissions of Associates,

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Section 14. Liability Insurance.

(a) Upon the execution of this Agreement, Associates shall obtain and file with the City evidence of its policy of comprehensive general liability insurance. Such policy shall specifically name the City as an additional insured thereunder. This insurance shall be maintained by Associates during the term of this Agreement.

(b) The City is not insured by any independent insurance carrier and is self-insured at this time. Should the City, at its sole discretion, obtain any applicable independent insurance coverage on the Monorail Station and Platform, then the City agrees that it shall notify Associates immediately in writing and shall specifically name Associates as an additional insured thereunder. The parties recognize that under current law, including Article VIII, Section 6 of the Constitution of the State of Washington and RCW 39.36.020, 6.04.140 and 6.04.150, there is a limit upon the amount of public indebtedness which may be incurred by the City, upon which Associates have relied, as a material part of this Agreement, and agreed to the City's self-insurance as it impacts the Monorail Station and Platform. Should there be a material change to the current law in this respect during the period of time in which the City remains self-insured, then upon reasonable notice from either party, the parties shall endeavor in good faith to renegotiate this section of the Agreement.

Section 15. General Contractor's Insurance. Each party shall require that their respective general contractors,

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shall be, at least, of equivalent quality as the original. The City shall maintain the Monorail Station Platform and Exterior Accessway, including without limitation, any mechanical systems thereon, in a first-class and sound operating condition, except the routine repair and maintenance of the elevator in the Exterior Accessway. The City shall provide Associates in advance with a copy of the annual capital budget which covers the Monorail System and Monorail Station. Any dispute under this Section shall be resolved by arbitration as provided in Section 28.

(d) The City shall pay all utility charges in connection with the Monorail Station Platform, Ramps and Exterior Accessway. Associates shall pay all utility charges in connection with the Interior Accessway.

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Section 13. Payment. In order to reimburse in part Associates' costs in providing cleaning and maintenance services, in keeping open the Interior Accessway and in providing other non-routine services more fully described in Exhibit I, for the Monorail Station Platform and Exterior Accessway, the City shall pay Associates $2,583.33 per month. Such amount shall be increased annually pursuant to an adjustment based on the Consumer Price Index, which adjustment is more fully described in Exhibit F. Such amount may, also, be increased, with the approval of the City, in accordance with insurance premium increases directly related to claims experience on the Monorail Station Platform, Ramps and Exterior Accessway.

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operating hours of the retail portion of the Westlake Project for the purposes of this Section shall be at a minimum 10:00 a.m. to 7:00 p.m. Monday through Saturday, and 12:00 noon to 5:00 p.m. on Sunday. During the regular operating hours of the retail portions of the Westlake Project, Associates shall be responsible for providing routine spot cleaning and maintenance services for the Monorail Station Platform and Exterior Accessway in accordance with the schedule and standards for such services described in Exhibit I. If either party fails to provide their respective required cleaning and maintenance services described in this Section for the Monorail Station Platform and Exterior Accessway, the other party shall so notify the responsible party for such failure. If after 24 hours, the responsible party has not corrected the default, the other party may provide such required maintenance services at the expense of the defaulting responsible party until such time as the responsible party provides the required level of service. Any dispute arising in connection with this Section 12 shall be resolved by arbitration in accordance with the provisions of Section 28.

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(c) The City shall be responsible for all capital improvements, replacements and major maintenance on the Monorail Station Platform, Ramps and Exterior Accessway. Prior to the commencement of any such capital improvement, replacement or maintenance, the City shall first obtain the written approval of Associates, which shall not be unreasonably withheld. All replacements of such capital improvements, equipment or fixtures

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written consent of Associates. For purposes of this provision, the peak base ridership volume is 6,000 passengers per hour. Any dispute as to compliance with the provisions of this Section 11 shall be resolved by arbitration in accordance with the provisions of Section 28.

Section 12. Maintenance, Security and Utilities.

(a) The City shall be responsible at all times for providing security services to and securing the Monorail Station Platform, Ramps and Exterior Accessway. Associates shall be responsible at all times for providing security services to and securing the Interior Accessway. Associates shall have the right to protest the insufficiency of security for the Platform and Exterior Accessways and the City shall have the same right with respect to the Interior Accessway. Upon the occurrence of such protest, the City or Associates, in cooperation with the other party, shall promptly and reasonably endeavor to develop and implement a revised schedule and standard of security services as may be reasonably necessary under the circumstances.

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(b) The City shall be responsible before and after the regular operating hours of the retail portions of the Westlake Project for providing overnight and routine cleaning and maintenance services and all other maintenance services not otherwise the responsibility of Associates for the Monorail Station Platform, Ramps and Exterior Accessway. Such routine cleaning and maintenance services shall be in accordance with the schedule and standards for such services described in Exhibit H. The regular

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clean operating condition and repair, and shall at its cost and expense make all needed repairs thereto and shall restore the same and all systems, facilities or equipment therein as often as the same shall be worn out, damaged or obsolete.

(b) The City shall, at its sole cost, be responsible for all operation, cleaning, repair and maintenance of equipment and/or systems installed by the City, within or upon the Monorail Station Platform, Accessways, Ramps or Improvements.

(c) The City covenants and agrees to manage and operate the Monorail System with the Monorail Station in accordance with this Section 11 hereof for not less than twenty (20) years after the Opening Date. Notwithstanding any other provision herein to the contrary, if the City defaults under this covenant, the damages to be paid to Associates shall be determined in accordance with Section 18(b). The City may sell, transfer, or convey any of its rights, title or interests in and to the Monorail System (including its current management rights) to any governmental entity without the Associates' consent, but shall not sell, transfer or convey any of its rights, title or interests in and to the Monorail System (including its current management rights) to any non-governmental entity without the written consent of Associates, which shall not be unreasonably withheld.

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(d) The City shall not extend, expand or substantially alter the Monorail System in any manner which would increase on a consistent basis above the peak base ridership volume passenger use of the Monorail Platform and/or Accessways without the prior

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shall be resolved by arbitration in accordance with the provisions of Section 28.

Section 11. Use and Operating Covenant of the City.

(a) Commencing on the date on which the retail portions of the Westlake Project are first open for business and continuing for so much of the Term of this Agreement as Associates shall be complying with its obligations hereunder, and subject to discontinuances of use due to damage or destruction of all or portions of the improvements of the City respecting the Monorail System (including, without limitation, the Monorail Station) or condemnation, and provided compliance is not rendered impossible by unavoidable delay by action or inaction of Associates or by persons or events over which it has no control, the City shall continuously manage and operate the Monorail System (including, without limitation, the Monorail Station and all fixtures, equipment and/or systems installed by the City upon or within the Monorail Station Platform, Accessways and/or Improvements) as a first-class, clean, safe and efficient public transportation system with appurtenant systems and facilities. Without limiting the generality of the foregoing, commencing on the date on which the retail portions of the Westlake Project are first open for business, and continuing during the Term of this Agreement, subject to the provisions set forth above, the City shall keep the Monorail System, the Monorail Station, and all such fixtures, equipment and/or systems installed by the City upon or within the Monorail Station Platform, Accessways and/or Improvements in good,

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(xi) Associates reserve the right to close off those portions of the Easement Areas for the installation of utilities or improvements or for the repair or restoration of its property; provided, however, that before closing off any part of the Easement Areas as provided above, Associates shall give written notice to the City, pursuant to Section 7, of its intention to do so and shall coordinate its closing with the activities of the City so as to minimize interference with the operation of the Monorail System.

Section 10. Associates' Use and Operating Covenant. Commencing on the date on which the retail portions of the Westlake Project are first open for business and continuing for so much of the Term of this Agreement as the City shall be complying with its obligations hereunder, and subject to discontinuances of use due to damage or destruction of all or portions of the Westlake Project or condemnation, and provided compliance is not rendered impossible by unavoidable delay, by action or inaction of the City or by persons or events over which Associates has no control, Associates shall keep the Interior Accessway in good, clean operating condition and repair, generally in accordance with the maintenance standards attached hereto as Exhibit G, and shall at its cost and expense make all needed repairs thereto and shall restore the same and all systems, facilities or equipment therein as often as the same shall be worn out, damaged or obsolete. Any dispute as to compliance with the provisions of this Section 10

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Station (but the Queueing Area shall in no event be relocated or expanded without the consent of Associates, in its sole and absolute discretion), and the parties shall execute such release of easement or other document or instrument reasonably requested by either party to effectuate the same. Any bona fide dispute respecting whether the Queueing Area is reasonably necessary, on a consistent basis, for the efficient and orderly use of the Monorail Station shall be determined at the sole and absolute discretion of the City; provided that the City shall reasonably demonstrate to Associates the reasonable necessity of the Queueing Area.

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(x) Provided that the Interior Accessway to the Monorail Station Platform shall include the main vertical accessway through the retail portions of the Westlake Project, Associates may, from time to time, reconfigure and/or relocate those portions of the Accessways (but not the Monorail Station Platform), in which event the easements created under this Agreement in and over the Accessways shall apply to and encumber the same, as reconfigured and/or relocated, but shall not apply to any portion of the Improvements no longer used as Accessways, and provided that Associates shall not reconfigure or relocate the Exterior Accessway or Queueing Area without the prior written consent of the City (which consent shall not be unreasonably withheld).

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consisting of approximately 1,700 square feet, except to the extent shown on such plans and specifications or as otherwise agreed by the City. Associates may merchandise the Queueing Area pursuant to movable kiosks, pushcarts, displays and other movable merchandising fixtures and means, which shall not take more than 500 square feet of space in the Queueing Area, and Associates may install movable furniture, seating, fixtures and equipment within the Queueing Area, all without the consent of the City; provided, however, that upon not less than twenty-four (24) hours written notice from the City (which notice shall state that the City reasonably expects that the Queueing Area must be cleared in order to accommodate an anticipated high ridership volume and state the duration of time during which the City requires that the Queueing Area be cleared), Associates shall remove such movable furniture, equipment and the like from the Queueing Area for so long as the same shall be necessary to accommodate the City's request. At the end of the fifth (5th) year following the Opening Date, the City and Associates shall endeavor in good faith to agree as to whether the Queueing Area has been reasonably necessary for the efficient and orderly use of the Monorail Station. If the Queueing Area has not been so necessary on a consistent basis, the parties shall either remove the Queueing Area from the Easement Area or modify and/or reduce the size of the Queueing Area to accommodate the reasonably necessary needs of the Monorail

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work requiring such access from the scope of Associates' Work. Otherwise, neither party shall be entitled to access over those portions of the Easement Areas located on or above the property of the other until such time as work respecting the Easement Areas (including, in any event, the Monorail Station and Monorail Station Platform) shall have been completed pursuant to this Agreement and the retail portions of the Westlake Project are first open for business.

(viii) Associates shall not place any furniture, equipment or fixtures within or upon the Monorail Station Platform except as shown on the plans and specifications approved hereunder, or as provided under the Contract, or otherwise without the consent of the City. Associates shall have the right to merchandise the Monorail Station Platform and to grant concessions thereon; provided, however, that Associates shall remove such concessions upon the City's request pursuant to the same conditions described in Section 9(b)(ix). The City shall have the right to approve the location of any concessions by Associates on the Monorail Station Platform to the extent that the location of such concessions may adversely affect the use of the Platform as a public transportation terminal. The City shall have no right to grant any concessions on the Monorail Station Platform.

(ix) Associates will not place any permanent furniture, fixtures or equipment within that portion of the Accessways designated on Exhibit D as "Queueing Area"

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purposes at least five (5) months prior to the Scheduled Opening Date, provided Associates shall have completed its work respecting the Monorail Station Platform sufficient to allow such access safely and conveniently (and Associates shall use its reasonable efforts so to complete its work at least five (5) months prior to the Scheduled Opening Date). Associates shall give the City written notice at least sixty (60) days in advance of the commencement date of such five-month period. In the event Associates are unable to provide access on the designated commencement date, the time during such five-month period in which the City is to complete its obligations shall be extended for the same time period as the delay in providing access. During the construction of the Monorail Station and Monorail Station Platform, Associates shall, with assistance from the City, apply in a timely fashion for street use or other applicable permits in order to obtain temporary access to the sidewalk and street below the Monorail Station for the purpose of constructing piers, columns, vaults and other improvements in connection with the completion of the Monorail Station or Monorail Station Platform. Associates' application for such permits shall be considered and decided upon expeditiously by the City's Board of Public Works ("Board"), although nothing provided herein shall be construed to obligate the Board to issue such permits. If the Board does not issue such permits in a timely manner, Associates shall have the right to remove the

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operation by the City. Such fee shall be increased annually pursuant to an adjustment based on the Consumer Price Index, which adjustment is more fully described in Exhibit F. In addition, such fee may be increased by Associates, with the approval of the City, which approval shall not be unreasonably withheld, due to extra security costs as may be required by experience and over time. If the Interior Accessway and Queueing Area is open for such special events or circumstances, Associates may restrict access over any other portions of the Westlake Project.

(iv) In addition to and notwithstanding the foregoing, emergency access through the Easement Area shall be available on a 24-hour basis.

(v) Associates shall be entitled to install doors, security grilles and fire doors and/or fire protection devices on the Easement Areas in order to secure its property at times during which the Easement Areas are not open for pedestrian access and to protect its property against damage by fire.

(vi) In addition and notwithstanding anything contained in this Agreement to the contrary, Associates may temporarily deny access to and upon the Easement Area to the extent reasonably necessary for security purposes, fire or other emergencies.

(vii) The City shall be entitled to access to the Monorail Station Platform for construction and testing

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operating hours whereby the Monorail System would commence operations earlier than 6:00 a.m. or terminate operations later than 1:00 a.m. shall be subject to approval by Associates which shall not be unreasonably withheld. If the Monorail System is operating beyond its regular operating hours as a result of special events or circumstances, the Exterior Accessway shall be open one-half hour before and one-half hour after such extended hours, provided that the City shall give Associates 24-hour advance written notice of such extended hours. Any day in which the Monorail System is not in operation, Associates may close the Monorail Station Platform and Exterior Accessway to pedestrian access, but not for access by the City or its agents at any time.

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(iii) Associates shall keep open the Interior Accessway and Queueing Area whenever the retail portions of the Westlake Project are open for business or at least from 10:00 a.m. to 7:00 p.m. Monday through Saturday and from 12:00 noon to 5:00 p.m. on Sunday. At all other times, Associates shall have the right to close access to the Interior Accessway and Queueing Area. If the Monorail System is in operation as a result of special events or circumstances beyond the regular operating hours, Associates shall keep open the Interior Accessway and Queueing Area upon written notice from the City not less than 24 hours in advance. In such event, the City shall pay Associates an hourly fee of $50.00 per hour for each hour of extended

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acts or to restrain any such person from coming upon the Easement Areas. In so acting, such party shall not be deemed to be the agent of any other party, unless expressly authorized or directed in writing to do so by such other party.

(b) In addition to the foregoing restrictions, the parties' use of the Easement Areas shall be subject to and in accordance with the following:

(i) The City covenants and agrees that the Monorail System shall be in operation and open to public ridership and shall keep the Monorail Station open for pedestrian access between the Westlake Project and the Monorail Station during the hours that the retail portions of the Westlake Project are open or from 10:00 a.m. to 9:00 p.m. Monday through Saturday and 12:00 noon to 5:00 p.m. on Sunday, whichever is shorter.

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(ii) The Monorail Station Platform and Exterior Accessway shall be open for pedestrian access one-half hour before and one-half hour after the regular operating hours of the Monorail System. Regular operating hours shall be provided in writing to the manager designated by Associates, but shall not exceed the time period from 6:00 a.m. to 1:00 a.m. each day. The initial regular operating hours are described in Exhibit E. Written notice of any change to the regular operating hours shall be delivered to the Associates' manager not less than thirty (30) days in advance of the effective date of any such change. Any change in the regular

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(i) (A) With respect to the Accessways, parade, rally, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of the Accessways or Monorail Station Platform by persons entitled to use the same, create a disturbance, attract attention or harass, disparage or be detrimental to the interests of any of the retail or business establishments within the Improvements; and (B) with respect to the Monorail Station Platform, parade, rally, patrol, picket, demonstrate or engage in any conduct that would tend to obstruct, hinder or impede the egress or ingress to the Monorail System or Accessway; or

(ii) Deface, damage or demolish any sign, light standard or fixtures, or other improvement on or within the Improvements or Monorail Station; or

(iii) Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind; or

(iv) Use any sound making device of any kind;

provided, that with respect to paragraphs (i) through (iv) above, neither of the parties hereto shall be deemed to be in default hereunder so long as such party uses reasonable effort to halt or prevent any such act or acts from taking place on property under its control. To the extent permitted by law, each of the parties shall have the right to deny access to or exclude from the Easement Areas any person engaged in the commission of any such act or

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Improvements and Monorail Station, in accordance with the purpose for which such Accessways are designed and subject to the provisions of Section 9 below. In addition, the City shall have the right of access to the vault and electrical switches through the Improvements relating to the operation of the Monorail System, Monorail Station Platform and Exterior Accessway.

(c) The City shall not modify, redesign or replace the Monorail Station Platform ramps or install any other system of pedestrian access between the Improvements and the Monorail Station without the written consent of Associates.

Section 9. Restrictions Respecting Easement Areas. The areas burdened by the easements granted pursuant to Section 8 above are hereinafter referred to as the "Easement Areas". Each of the parties hereto will take such action as may be reasonable under the circumstances to regulate the Easement Areas in accordance with those uses and purposes for which the Easement Areas are intended, and neither of the parties shall authorize the use of the same by anyone other than those persons to whom the easements are granted under Section 8. Notwithstanding the foregoing, nothing herein shall be construed to provide less rights of use than those which now or in the future shall be required under local, state and federal law.

(a) Unless required by law, no person shall be permitted to do any of the following in or about any part of the Easement Areas without the consent of both of the parties:

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the City's invitees, employees, and contractors retained to repair the Monorail System, Monorail Station Platform and Exterior Accessway, and passengers utilizing the Monorail System.

(vii) All easements granted hereunder shall exist by virtue of this Agreement and the Exhibits hereto, without the necessity of confirmation by any other document and shall be binding upon each Grantor, its successors and assigns, for the benefit of each Grantee, its successors and assigns. Upon the termination or release of any easement (in whole or in part) in respect of all or any part of the property burdened thereby, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the request of any Grantor or Grantee, each other Grantor and Grantee will execute and acknowledge an appropriate document memorializing the existence (including the location and any conditions) or the termination or release (in whole or in part), as the case may be, of any easement.

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(b) Associates, as Grantor, hereby grants to the City, as Grantee, for the benefit of the Monorail Station, an easement in the Monorail Station Platform and those portions of the Improvements shown on Exhibit D as the Interior Accessway and Exterior Accessway (as the same may be actually constructed pursuant to this Agreement and the Contract) (collectively "Accessways") for the purpose of pedestrian access between the

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(ii) A party to whom an easement is granted is called a "Grantee".

(iii) The word "in" with respect to an easement granted "in" a particular parcel or property means, as the context may require, "in", "to", "on", "over", "through", "upon", "across" and "under", or any one or more of the foregoing.

(iv) The grant of an easement by a Grantor shall bind and burden its property to the extent of its interest therein, which for purposes of the granting of any easement under this Agreement shall be deemed to be the servient estate, and any such grant shall survive the total or partial destruction of the subject matter of the easement and extend for such period as is hereinafter provided and shall run with the land.

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(v) The grant of an easement to a Grantee shall benefit the Grantee and its property (including, but not limited to, any leasehold, fee or real property interest of a Grantee), which property shall, for the purpose of this Agreement, be deemed to be a dominant estate without payment of any fee or other charge therefor.

(vi) Unless provided otherwise, all easements granted hereunder are irrevocable and non-exclusive and may be used in common by the Associates and the City and their successors and assigns, and by the tenants, subtenants, concessionaires, invitees and licensees of Associates, and by

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shall pay for and place signage at both terminals of the Monorail System notifying the ridership about the Accessway closure.

(c) If either Accessway is to be closed for more than seven (7) days, (i) Associates shall notify the City in writing at least ninety (90) days in advance; (ii) the City shall have the right to reasonably disapprove the scheduled closure dates by a demonstration of a significant scheduling conflict and written notice of such disapproval shall be delivered to Associates within five (5) days of the receipt of the Associates' notice; (iii) Associates shall pay for and place signage at both terminals of the Monorail System notifying the ridership about the Accessway closure; and (iv) Associates shall compensate the City for any loss of income due to any ridership loss as a result of such Accessway closure, unless such closure is due to damage or destruction to the Accessway. Loss of income for this purpose shall be determined by multiplying the average number of riders from the prior three years during the same period of time as the closure by the current average ticket rate. The City shall send Associates an invoice for the loss of income so calculated within thirty (30) days of re-opening the Accessway and Associates shall tender payment within thirty (30) days of receiving the invoice.

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Section 8. Easements and Ramp Modifications.

(a) For the purpose of this Section the following will apply:

(i) A party granting an easement is called a "Grantor".

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rights or ability to alter, modify, demolish, rebuild or reconstruct all or portions of the Improvements; provided and for so long as the same shall be consistent with the applicable provisions of this Agreement with respect to the Monorail Station Platform, access to the Monorail Station (following completion of such alteration, modification, demolition, rebuilding or reconstruction) pursuant to the easements hereinafter granted, and otherwise be in accordance with any applicable provisions of the Contract. In the event Associates undertake to alter, modify, demolish, rebuild or reconstruct all or portions of the Improvements, the following conditions shall apply:

(a) Associates shall not close at the same time both the Interior Accessway and Exterior Accessway, except as described in Section 9 hereof or unless both Accessways are damaged or destroyed.

(b) If either Accessway is to be closed for seven (7) days or less, (i) Associates shall notify the City in writing at least thirty (30) days in advance; (ii) the City shall have the right to reasonably disapprove the scheduled closure dates by a demonstration of a significant scheduling conflict and written notice of such disapproval shall be delivered to Associates within five (5) days of the receipt of the Associates' notice; (iii) in the event of such disapproval, the City shall provide Associates with alternate closure dates, which dates shall be within thirty (30) days of the scheduled closure dates; and (iv) Associates

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its cost and expense, within thirty (30) days after notice of the filing of such lien, shall, upon the demand of the party against whose property the lien was filed, either (a) cause the same to be discharged of record, or (b) cause the same to be insured over to the satisfaction of the party demanding such discharge; provided that, in the event of a bona fide dispute as to the propriety of the lien and if the property of the liened party is not threatened with foreclosure to satisfy the lien or otherwise jeopardized by the lien, the responsible party shall not be required to discharge or insure over the lien so long as it provides the liened party with a bond (naming the liened party as an obligee) in form and amount reasonably satisfactory to the liened party (provided that the amount of such bond shall be at least equal to 125% of the amount claimed under the lien) and issued by a surety licensed to do business in the State of Washington and reasonably satisfactory to the liened party and sufficient in all respects to protect the liened party's interest in its property affected by the lien, and shall also defend, at its sole cost and expense, any action, suit or proceeding which may be brought for the enforcement of such lien, and shall pay any damages suffered or incurred therein by the liened party, and shall satisfy and discharge any judgments entered therein, and shall save the liened party harmless from any claims or damage therefrom.

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Section 7. Alterations. Nothing contained in this Agreement, including, without limitation, the easements hereinafter granted, shall be construed to limit or restrict Associates'

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station to serve the Monorail System during construction of the Monorail Station and Monorail Station Platform.

Section 6. Quality of Construction: Mechanic's Liens. All construction respecting the Monorail System, Monorail Station and Monorail Station Platform shall be performed in a good and workmanlike manner, and Associates and the City will coordinate their construction respecting the Monorail Station and Monorail Station Platform so as to facilitate their respective construction activities. The City recognizes and agrees that Section 20.46 of the Seattle Municipal Code does not apply to construction of the Monorail Station Platform. However, Associates agrees to seek to involve minorities and women in its construction of the Monorail Station Platform, as part of the Improvements (but not as a separate construction item) in the manner set forth in Section 42B of the Contract. The City and Associates hereby give notice that neither party hereto shall be responsible or liable for the work performed pursuant to this Agreement by or for the other party or for any materials furnished to or for the other party, nor shall either party hereto be subject to a lien upon its property for the cost of any labor, services or materials provided to the other party in the performance of the other party's obligations, or the exercise of its rights, under this Agreement. If, in connection with any work done or claimed to have been done by or on behalf of a party hereto, or in connection with any material supplied to such party, any mechanic's, laborer's or materialman's lien shall be filed against the property of the other party, such party, at

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resolved by arbitration pursuant to Section 28 of this Agreement. Within 30 days following agreement as to such cost certification by Associates, (i) the City shall pay to Associates the entire amount by which such cost of Associates' Work, as certified and approved, exceeds $2,051,000 or (ii) if such Associates' Work costs, as certified and approved, is less than $2,051,000, Associates shall pay the City the entire difference between $2,051,000 and the cost of such Associates' Work as certified and approved. Associates shall keep adequate books and records with respect to the cost of construction of the Monorail Station Platform and the City shall have the right to inspect such books and records at Associates' regular place of business, during Associates' regular business hours and upon reasonable prior notice to Associates, and provided that Associates shall not be required to maintain separate books and records regarding such costs.

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Section 5. Temporary Monorail Station. The City shall be responsible, at its sole cost, for the demolition of any existing Monorail System tracks, equipment and improvements, including, without limitation, all piers, columns and supporting elements appurtenant to those portions of the existing Monorail System. The City may elect to leave the footings of the old monorail station in place, in which event Associates shall remove such footings and include the cost thereof in the scope of Associates' Work. The City shall further be responsible, at its sole cost, for the construction and demolition of a temporary monorail

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Associates shall advise the City in writing no later than April 1, 1987 as to the estimated cost for the Associates' Work, which estimate shall be based on an allocation of Associates' overall estimated construction costs or guaranteed maximum cost contract for the Improvements, allowances for additional work and contingencies. Associates shall provide the amount of the guaranteed maximum cost for the Associates' Work by June 1, 1987. Following execution of a contract covering Associates' Work (which may be included in Associates' contract for the Improvements), Associates shall not enter into change orders increasing either the estimated or guaranteed maximum cost of the Associates' Work by more than $5,000, based on estimates provided by contractors and other parties performing work, unless the City consents to the same. During construction of the Monorail Station Platform, Associates shall pay for the cost thereof as invoiced, and on the Opening Date Associates shall advise the City of the estimated cost of construction with respect thereto. Within sixty (60) days following the Opening Date and completion of the Monorail System, Monorail Station and Monorail Station Platform, Associates shall certify to the City the actual cost respecting the Associates' Work and, within 30 days following such certification, the City shall advise Associates in writing whether it agrees that such cost, as certified, has been incurred in accordance with the Contract and this Agreement. If the City shall fail so to advise Associates of such agreement within such 30 day period, it shall be deemed conclusively that the City has agreed to the certification. Any bona fide dispute as to such certification shall be

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the City under the Contract resulting from Associates' failure to comply with its obligations and undertakings set forth therein.

Under the Contract the City is obligated to incur overtime and premium costs, as necessary, in order to complete, among other things, the Monorail Station, on or prior to the Scheduled Opening Date. If the City incurs such overtime and premium costs and causes the Monorail Station and certain other obligations of the City to be complete and open for business or ready to open for business by the Scheduled Opening Date but the Monorail Station Platform and retail portions of the Improvements are not open for business by the Scheduled Opening Date, Associates shall under certain circumstances as set forth in and subject to the provisions of the Contract, reimburse the City for a portion of such overtime and premium costs.

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Section 4. Payment for Construction; Cost Savings. Associates shall bear the cost of the Associates' Work respecting the Monorail Station Platform (not including costs incurred by the City respecting the City Work), until such time as the total cost of such construction (excluding design and engineering cost) is equal to $2,051,000. The City shall bear the balance of all such construction cost, if any, respecting the Monorail Station Platform in excess of $2,051,000.

The City shall bear the entire cost of construction respecting the Monorail Station, all other aspects of the Monorail System and its improvements to the Monorail Station Platform.

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Date (as defined in the Contract). In addition, Associates shall use its reasonable efforts to complete its work respecting the Monorail Station Platform (excluding pedestrian access) sufficient to allow the City access to the Monorail Station Platform for construction and testing purposes pursuant to Section 9(b)(vii) hereof.

In the event the Monorail Station Platform and retail portions of the Improvements are open for business or ready to open for business (as defined in the Contract) on the Scheduled Opening Date but the Monorail Station is not open for business (as defined in the Contract), Associates shall have the rights set forth in the Contract, and exercise of such rights shall be without limitation of any other rights and remedies of Associates under the Contract resulting from the City's failure to comply with its obligations and undertakings set forth therein (including, without limitation, those respecting streetscaping and Westlake Park). In the event the Monorail Station is open for business or ready to open for business on the Scheduled Opening Date, and if the City shall have completed and fulfilled its other obligations and undertakings under the Contract to be completed and fulfilled by the Scheduled Opening Date, but the Monorail Station Platform and retail portions of the Improvements are not open or ready to open for business on the Scheduled Opening Date, the City shall have the rights set forth in the Contract, and exercise of such rights shall be without limitation of any other rights and remedies of

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The right of Associates and the City to disapprove plans and specifications respecting the Monorail Station and Monorail Station Platform shall be exercised in a reasonable fashion and limited to matters (1) which are not consistent developments of the design standards and scope of work set forth in Exhibit C or plans and specifications previously approved respecting the Monorail Station or Monorail Station Platform, as the case may be or (2) which are new and material architectural or design elements not depicted or described in Exhibit C or in previously approved plans and specifications. Any bona fide dispute as to whether disapproval of plans and specifications or any amendment or modification thereof is allowed hereunder shall be resolved by arbitration in the manner set forth in Section 10(D) of the Contract.

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Section 3. Completion of Construction; Construction Schedule. Associates shall use its reasonable efforts to complete base building construction of the Monorail Station Platform, as part of the Improvements, in accordance with the schedule for completion of the Improvements as set forth in the Contract. The City shall likewise use its reasonable efforts to complete construction of the Monorail System and Monorail Station in accordance with the Schedule set forth in the Contract. The parties intend that the Monorail System, Monorail Station and Monorail Station Platform shall be complete and operational so that the Monorail System will be open and available for passenger service to and from the Monorail Station Platform on the Scheduled Opening

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All such improvements of the City as are located within the Improvements shall be located upon the Monorail Station Platform except that the City may install ticket issuing machines, as approved by Associates, at the other locations. Associates shall submit its plans and specifications for the Monorail Station Platform to the City as part of its plans and specifications for the Improvements to be submitted pursuant to the Contract and within the time frames set forth in the Contract. The City shall use its reasonable efforts to submit its design development plans and specifications for its improvements to the Monorail Station Platform and for the Monorail Station to Associates on or prior to January 1, 1987, and to submit to Associates its construction plans and specifications for its improvements to the Monorail Station Platform and for the Monorail Station on or prior to March 1, 1987. Associates shall approve or disapprove the plans and specifications of the City within the time frames (i.e., 15 working days) applicable to the City's approval of Associates plans and specifications under the Contract, and such plans and specifications shall be deemed approved by Associates unless the City is notified to the contrary within 15 working days following submission. If Associates disapproves the plans and specifications of the City, Associates shall so notify the City in writing and state the specific reasons therefor. Following such notification, the City shall either resubmit corrected plans and specifications to Associates for approval or incorporate such corrections as are requested by Associates in the City's subsequent plans.

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part of the Monorail Station), which will serve as an area through which passengers may enter upon or exit from the Monorail Station.

Section 2. Construction; Design Standards and Scope of Work. Attached hereto as Exhibit C are design standards and a scope of work applicable to the construction of the Monorail Station by the City and Monorail Station Platform by Associates. Associates shall complete base building construction, finish work, lighting, signage and other improvements described in Exhibit C hereof respecting the Monorail Station Platform ("Associates' Work") in accordance with plans and specifications consistent with such design standards and scope of work (to the extent applicable to the Monorail Station Platform) and approved by the City, as part of the plans and specifications for construction of the Improvements, in the manner set forth in the Contract. The City shall construct the sliding ramps ("Ramps") which connect to and extend from the Monorail Station Platform and shall complete other improvements (including, without limitation, platform handrails, ticket issuing machines and kiosk interior) respecting the Monorail Station Platform ("City Work") and shall construct all portions of the Monorail System (including, without limitation, the Monorail Station) other than the Monorail Station Platform, and it shall construct its improvements respecting the Monorail Station Platform and the Monorail Station in accordance with plans and specifications consistent with such design standards and scope of work (to the extent applicable to the Monorail Station Platform and Monorail Station) and approved as to appearance by Associates.

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adjacent property in accordance with the Contract and which will upon completion constitute the Westlake Project.

"Monorail System" means the elevated monorail public transit system owned and operated by the City and extending from Seattle Center to the Westlake Project and all equipment appurtenant thereto and necessary or appropriate for the operation of such public transit system, including but not limited to stations, terminals, trackage, trains and rolling stock and switching equipment.

"Monorail Station" means that portion of the Monorail System consisting of elevated monorail tracks constructed or to be constructed by the City pursuant to the Contract and this Agreement and located adjacent to Block 1 on the easterly side of the Westlake Project and generally in the location shown on the Site Plan attached hereto as Exhibit B and made a part hereof, together with all improvements and equipment necessary for the safe and proper use and operation of the Monorail Station, including without limitation pilings, supports, tracks and switching equipment, but not including the hereinafter defined Monorail Station Platform.

"Monorail Station Platform" means that portion of the Improvements constructed by Associates pursuant to the Contract and this Agreement consisting of a passenger terminal, including but not limited to a concrete platform, walls, ceilings, glass canopy, stairs, and an elevator located adjacent to the Monorail Station generally as shown on Exhibit B (but not constituting a

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WHEREAS, pursuant to the Contract, Associates is to construct the Westlake Project so as to provide access through the Westlake Project and over and upon a platform located within the Westlake Project, constructed by Associates and designed to allow pedestrians to enter monorail trains operating on elevated tracks to be constructed by the City adjacent to Block 1 on the easterly side of the Westlake Project; and

WHEREAS, pursuant to the Contract, the City has agreed to construct and operate such elevated monorail tracks as part of the monorail system serving the City of Seattle and extending from Seattle Center to the Westlake Project; and

WHEREAS, the Contract provides for the City and Associates to enter into an agreement respecting construction, maintenance, use and operation of such elevated monorail tracks, monorail platform and associated pedestrian access, and respecting easements to be granted in order to preserve such pedestrian access; and

WHEREAS, the City and Associates have agreed as to such matters.

NOW, THEREFORE, in consideration of the promises and the mutual obligations herein undertaken and other good and valuable consideration, the City and Associates agree as follows:

Section 1. Definitions. In addition to the terms defined in the recitals of this Agreement, as used herein, the following terms have the following definition:

"Improvements" means the buildings and permanent improvements to be constructed by Associates on the property and certain

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MONORAIL OPERATING AND EASEMENT AGREEMENT

THIS AGREEMENT made as of the 13th day of February, 1987, by and between the City of Seattle, a municipal corporation of the State of Washington, having its office at the Seattle Municipal Building, 600 Fourth Avenue, in The City of Seattle, Washington (hereinafter called "City") and Westlake Center Associates Limited Partnership (hereinafter "Associates"), a Washington limited partnership whose general partners are Rouse-Seattle, Inc., a Maryland corporation and Westlake 7 Building Partners Limited Partnership, a Washington limited partnership.

W I T N E S S E T H:

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WHEREAS, pursuant to a Contract for Sale of Property dated August 17, 1984, as amended (the "Contract") between the City and Rouse-Seattle, Inc., predecessor in interest to Associates, the City has conveyed to Associates Lots 1, 3, 8, 9, 10, 11 and 12 located on Block 1 in the City of Seattle and Associates has acquired separately Lots 2 and 7 of Block 1 (the "Property" as more particularly described in Exhibit A attached hereto and made a part hereof); and

WHEREAS, pursuant to the Contract (the interest of Rouse-Seattle, Inc. therein having been assigned to Associates), Associates is to develop on the Property and certain adjacent property a mixed use office, retail and garage complex (the "Westlake Project"); and

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EXHIBIT B

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SAFECO TITLE INSURANCE COMPANY
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SAFECO DL-453263
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MONORAIL OPERATING AND EASEMENT AGREEMENT

by and between

WESTLAKE CENTER ASSOCIATES
LIMITED PARTNERSHIP

and

THE CITY OF SEATTLE

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DISTRIBUTION
ORIGINAL— Director of Engineering
WHITE— Permittee
YELLOW— Inspector
PINK— Inspector
PINK— Const. Crew

THE CITY OF SEATTLE

DEPARTMENT OF ENGINEERING

DIRECTOR OF ENGINEERING

APPLICATION FOR UTILITIES PERMIT
TO THE BOARD OF PUBLIC WORKS

The undersigned (pursuant to Ordinance No. 90047) hereby applies for permission to

Construct monorail piers, vaults and ducts in 5th Avenue adjacent to Westlake Center in accordance with the Monorail Agreement; Letter dated 10/26/87, Frederick to Vange; and contract documents associated with Seattle Engineering Department Plan No. 782-163.

☐ Permittee to do restoration between curb and property line.
☒ Permittee to do full restoration of street right-of-way with full time inspection by Director of Engineering.
☐ Seattle Engineering Department to do restoration between curb and property line.

Permittee/Contractor ~~Rouse-Seattle Inc./~~ H. S. Wright, Inc. By [signature] Sr. project mgr. Date 11-25-87.

I recommend that this permit be granted, subject to the conditions set forth therein.

DIRECTOR OF ENGINEERING

Date December 7, 1987 By [signature]

WORK UNDER THIS PERMIT SHALL BEGIN WITHIN SIX MONTHS OF THE DATE OF THE PERMIT UNLESS OTHER ARRANGEMENTS ARE MADE, OTHERWISE PERMIT SHALL BE REVOKED.

PERMIT

THE ABOVE APPLICATION IS HEREBY GRANTED SUBJECT TO GRANTEE:

Complying with all City Ordinances and Board of Public Works regulations;
Notifying the Director of Engineering of the time the work will start, and when it will finish;—XXXXXXXX
Notifying any utility or property owner subject to damage or inconvenience during performance of the work, and, grantee shall make all arrangements necessary for the protection of any such utility or owner interest;
Prosecuting the work with diligence and with due respect to all property, contracts, persons, rights and the interests and convenience of the public;
Saving the City harmless from any and all damages which may accrue to any person or property because of this installation or maintenance;
NOTIFYING THE UTILITIES OF THE WORK BY CALLING 1-800-424-5555 48 HOURS BEFORE DIGGING.
Complying with special conditions below and on back as noted:

☒ UNDERGROUND CONSTRUCTION ☐ CUSTOMER SERVICE ☐ AERIAL CONSTRUCTION

☒ CONDITION NO'S 1, 2, 4, 7, 8, 9

FAILURE TO GIVE NOTICE TO DIRECTOR OF ENGINEERING WILL RESULT IN THE ASSESSMENT OF A MINIMUM OF ONE HOUR INSPECTION TIME CHARGED AGAINST THE PERMITTEE.

Maintain a minimum of subject to specifications lane(s) of vehicular traffic in each direction at all times.

Hours of Work: 6:00 a.m. to 7:00 p.m. subject to Section 1-08.11(1) in City Supplement

Board of Public Works [signature] Chairman
[signature] Exec. Secretary

Date _____
_____ Director of Engineering
By _____

The undersigned accepts this permit and agrees to abide by the conditions thereof.

Permittee/Contractor _____ By _____ Date _____

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STATE OF WASHINGTON)
) ss.
COUNTY OF K I N G)

I hereby certify that on this 24 day of February 198 8, personally appeared before me Stephen K. Koehler ~~and~~ ~~, to~~ me known to be the President ~~and~~ respectively of Koehler, McFadyen & Company, a corporation executing the within and foregoing instrument as general partner of Westlake 7 Building Partners Limited Partnership and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath stated that they are authorized to execute said instrument.

WITNESS my hand and official seal this 24 day of February, 198 8.

NOTARY PUBLIC in and for the State of Washington, residing at Seattle
My Commission expires 1-17-90

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

7:AGR3.

THIS VERSION NOT ADOPTED

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

STATE OF WASHINGTON)
) ss.
COUNTY OF K I N G)

On this day personally appeared before me David Moseley to me known to be the Director, Dept. of Community Development of the municipal corporation that executed the within and the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath stated that they are authorized to execute said instrument and that the seal affixed is the corporate seal of said municipal corporation.

WITNESS my hand and seal this 1st day of February, 1988.

Juanita E. Serrato
NOTARY PUBLIC in and for the State of Washington, residing at Seattle.
My Commission expires 1-29-88

STATE OF WASHINGTON)
) ss.
COUNTY OF K I N G)

I hereby certify that on this 2nd day of February 1988, personally appeared before me Darrell M. Walker and _____, to me known to be the Vice President and _____ respectively of Rouse-Seattle, Inc., a corporation executing the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said corporation as general partner of Westlake Center Associates Limited Partnership for the uses and purposes therein mentioned and on oath stated that they are authorized to execute said instrument.

WITNESS my hand and official seal this 2nd day of February, 1988.

Connie Bushell
NOTARY PUBLIC in and for the State of Washington, residing at Seattle
My Commission expires 4-17-90

THIS VERSION IS NOT ADOPTED

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

IN WITNESS WHEREOF, the City and Associates have executed this Agreement as of the day and year first hereinabove written.

ATTEST:

THE CITY OF SEATTLE

By: _____
Director, Department
of Community Development

WESTLAKE CENTER ASSOCIATES
LIMITED PARTNERSHIP

ATTEST:

By: Rouse-Seattle, Inc.
General Partner

_____

By: _____
Its VICE PRESIDENT

By: WESTLAKE 7 BUILDING PARTNERS
LIMITED PARTNERSHIP,
General Partner

ATTEST:

By: Koehler, McFadyen & Company,
General Partner

_____

By: _____
Its PRESIDENT

THIS VERSION IS NOT ADOPTED

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Associates, after following the notification and approval procedure as previously stated, shall thereupon provide payment for the additional costs or cost overruns and shall be reimbursed for the City's share of the costs in the manner provided for in Section 4 of the Agreement.

5. In the event that Associates are unable to complete construction of the work provided for in the Monorail Contract 4 within the time frame provided for, then, except to the extent provided for in paragraph 3 of this Amendment, the City shall not otherwise be relieved of its obligations to have the Monorail Station ready and open for business as provided for in Section 3 of the Agreement, nor shall it give rise to an extension of time for the City to meet its obligations as provided in Section 9(a)(vii) of the Agreement.

6. This Amendment to the Agreement is being executed by and on behalf of the City of Seattle by its Director of Community Development pursuant to Section 46 of that certain Contract for Sale of Property and Redevelopment executed August 17, 1984, as amended, and Section 38 of the Agreement.

THIS VERSION IS NOT ADOPTED

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

For any change orders or any cost overruns involving less than Five Thousand Dollars ($5,000), the City shall have three (3) working days from the date of the Associates' written request to notify Associates of its acceptance or rejection or shall be deemed to have given its acceptance to the work. For change orders or cost overruns in excess of Five Thousand Dollars ($5,000.00), the City shall have ten (10) calendar days from the date of the Associates' written request to notify Associates of its acceptance or rejection; failure to so notify Associates shall make the City solely responsible for the additional costs attributable to the delay, but in no event shall silence or inaction on the part of the City be considered "deemed acceptance" so as to authorize the work.

The City shall be responsible for cost overruns (whether due to change orders or otherwise) except to the extent such cost overruns are due to the ~~fault or~~ negligence of Associates, their contractors, subcontractors or agents, in which event Associates shall be proportionally responsible for such additional costs and cost overruns. In any event

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4. Cost overruns and cost savings shall be treated as provided in that certain Contract for Sale ~~and Redevelopment~~ executed August 17, 1984, amended October 5, 1984 and further amended February 5, 1987 by and between the City and Associates (hereinafter the "Contract") and Section 4 of the Agreement. The work undertaken pursuant to this Agreement shall be for a price of Five Hundred Twenty Five Thousand Nine Hundred and Thirty Dollars ($525,930.00) including general conditions, fees, state sales tax, B&O and Contingency but excluding bid item 32, Limestone Veneer identified in Exhibit 1, Bid Item List by the City of Seattle dated June 25, 1987, which work is eliminated as part of the work under this Agreement. For any change orders or for any work in excess of the price, (hereinafter referred to as cost overruns), Associates shall prior to authorizing or undertaking such work first seek approval from the City in writing by submitting its request which shall include a detailed written proposal, to:

Seattle Engineering Department
Monorail Project Manager
Attention: Phil Frederick
Room 600 - Municipal Building
Seattle, WA 98104

THIS VERSION IS NOT ADOPTED

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

damages to the City or its agents for failing to complete their work on time, whether the delay to complete such work is due to the City's own negligence, the fault of third parties or otherwise. If there is a failure to complete work on time which is due to the negligence of Associates, their contractor, subcontractor or agents, and if as a direct result of said negligence there are delays to other contractors and/or subcontractors for the work and contract milestones of related projects (as identified in said Item No. 1-b of Addendum No. (1)), then Associates shall be responsible for the reasonable construction cost increases which may become necessary in order to reasonably achieve the contract milestones of said related projects and shall further, to the extent permitted by law, indemnify, save harmless and defend the City from any claims and liability from said other contractors and/or subcontractors resulting from such delay. Each party shall be responsible proportionately for their own negligent acts, errors and omissions resulting in such delays and claims and liability arising therefrom as governed by the laws of the State of Washington.

THIS VERSION IS NOT ADOPTED
NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

(1) WASH DOT/APWA 1984 Standard Specifications, 1986 City of Seattle Supplement, as modified and amended by the 1986 City of Seattle Standard Plans, Special Provisions which is itself modified and amended by Special Provisions, Guideway Pier and Vaults Contract 4, as amended by Addendum No. 1;

(2) Bid Document Drawings;

(3) Bid Item List Contract 4 (City of Seattle);

(4) Bid Item response list from Howard S. Wright Company;

(5) Letter from Philip M. Frederick to Darrell Vange, dated October 27, 1987; and

(6) City of Seattle Utilities Permit No. 48148.

(7) Exhibits A & B1 and B2

3. Special Provisions, Section 2-08.9, LIQUIDATED DAMAGES (FAILURE TO COMPLETE WORK ON TIME) as stated Exhibit 1 shall not apply, but rather the following shall apply when there is a failure to complete work on time.

Time is of the essence in this Amendment, and Associates shall use all reasonable efforts to meet their contract milestones (as provided in Exhibit 1, item No. 1-a in the attached Addendum No. 1 to Special Provisions, Piers and Vaults, Contract No. (4)) in a timely fashion. Except as provided herein, Associates shall not be responsible to pay

NOW, THEREFORE, in consideration of the promises and mutual obligations herein undertaken and other good and valuable consideration, the City and Associates agree as follows:

1. Exhibit "C" of the Agreement, providing for the design standards and scope of work applicable to the construction of the Monorail station and Monorail Platform is amended to include the following work to be performed by the Associates ("Associate Work") pursuant to the following conditions. To the extent there is a conflict between other provisions in the Agreement and the conditions pertaining to the additional scope of work contained in this amendment, the conditions in this amendment shall apply to the additional scope of work.
2. Associates Work shall include construction of the Guideway Piers and Vaults in that certain Contract known as the Monorail Contract 4. The description, conditions and requirements of said construction work are contained in Exhibit "1" to this Agreement, attached and incorporated by reference herein, which includes the following:

THIS VERSION IS NOT AUDITED
NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

THIS VERSION IS NOT ADOPTED

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

AMENDMENT TO THE MONORAIL OPERATING
AND EASEMENT AGREEMENT SCOPE OF WORK

THIS AGREEMENT made as of the 28th day of January, 1988, by and between the City of Seattle, a municipal corporation of the State of Washington, having its office at the Seattle Municipal Building, 600 Fourth Avenue, in The City of Seattle, Washington (hereinafter called "City") and Westlake Center Associates Limited Partnership (hereinafter "Associates"), a Washington limited partnership whose general partners are Rouse-Seattle, Inc., a Maryland corporation and Westlake 7 Building Partners Limited Partnership, a Washington limited partnership.

WHEREAS, the City and Associates have entered into that certain Monorail Operating and Easement Agreement dated February 13, 1987 (herein "Agreement") wherein, among other things, the parties have entered into an agreement respecting construction, maintenance, use and operation of certain elevated monorail tracks and monorail platform; and

WHEREAS, it is in the mutual benefit of the City and Associates to amend the Agreement to modify the scope of work provided for in Exhibit "C" of the Agreement, respecting the construction of a portion of the elevated monorail tracks.

THIS VERSION IS UNOFFICIAL

EXCEPT THE FOLLOWING;

COMMENCING AT THE HEREINBEFORE MENTIONED **POINT 'B'**;
THENCE NORTH 85°52'53" EAST 15.24 FEET TO **POINT OF BEGINNING 'FOUR'**;
THENCE CONTINUING NORTH 85°52'53" EAST 11.33 FEET;
THENCE SOUTH 04°07'07" EAST 31.94 FEET;
THENCE SOUTH 85°52'53" WEST 11.33 FEET;
THENCE NORTH 04°07'07" WEST 31.94 TO **POINT OF BEGINNING 'FOUR'**.

TOGETHER WITH THE FOLLOWING:

COMMENCING AT THE INTERSECTION OF THE SOUTHWESTERLY MARGIN OF 5TH AVENUE AND THE NORTHWESTERLY MARGIN OF PINE STREET AS ESTABLISHED UNDER ORDINANCE NUMBER 14500 OF THE CITY OF SEATTLE;
THENCE NORTH 30°36'52" WEST 53.98 FEET TO **POINT OF BEGINNING 'FIVE'**;
THENCE SOUTH 59°18'59" EAST 26.23 FEET;
THENCE NORTH 30°41'01" WEST 13.00 FEET;
THENCE NORTH 59°18'59" EAST 14.08 FEET;
THENCE NORTH 30°41'01" WEST 6.67 FEET;
THENCE NORTH 59°18'59" EAST 7.50 FEET;
THENCE SOUTH 30°41'01" EAST 1.33 FEET;
THENCE NORTH 59°18'59" EAST 1.58 FEET;
THENCE NORTH 30°41'01" WEST 1.00 FEET;
THENCE NORTH 59°18'59" EAST 3.09 FEET;
THENCE SOUTH 30°36'52" EAST 19.33 FEET TO **POINT OF BEGINNING 'FIVE'**.

LYING AT ELEVATION 111.5 FEET, CITY OF SEATTLE VERTICAL DATUM.

CONTAINING 8,717 SQUARE FEET MORE OR LESS.

Signature
Surveying & Mapping, PLLC
SSM
"Professional & Accessible"

P.O. Box 55487 · Shoreline, WA 98155
206-947-4975 phone · 206-364-3032 fax
info@signaturepllc.com

THIS VERSION IS NOT ADOPTED

LYING BETWEEN ELEVATION 96.5 AND 111.5 FEET, CITY OF SEATTLE VERTICAL DATUM.

CONTAINING 1,448 SQUARE FEET MORE OR LESS.

TOGETHER WITH THE FOLLOWING:

COMMENCING AT THE INTERSECTION OF THE SOUTHWESTERLY MARGIN OF 5TH AVENUE AND THE NORTHWESTERLY MARGIN OF PINE STREET AS ESTABLISHED UNDER ORDINANCE NUMBER 14500 OF THE CITY OF SEATTLE;
THENCE SOUTH 59°18'59" WEST 132.76 FEET TO POINT OF BEGINNING 'THREE';
THENCE NORTH 04°07'07" WEST 46.51 FEET;
THENCE NORTH 85°52'53" EAST 1.71 FEET;
THENCE NORTH 04°07'07" WEST 12.61 FEET;
THENCE NORTH 85°52'53" EAST 0.69 FEET;
THENCE NORTH 04°07'07" WEST 19.37 FEET;
THENCE SOUTH 85°52'53" WEST 20.65 FEET;
THENCE NORTH 04°07'07" WEST 9.12 FEET;
THENCE NORTH 86°13'44" EAST 9.85 FEET;
THENCE NORTH 04°07'07" WEST 21.52 FEET;
THENCE NORTH 86°13'44" EAST 10.79 FEET;
THENCE NORTH 04°07'07" WEST 50.41 FEET;
THENCE NORTH 35°28'10" EAST 16.70 FEET;
THENCE NORTH 04°07'07" WEST 68.25 FEET;
THENCE NORTH 85°52'53" EAST 3.42 FEET;
THENCE NORTH 04°07'07" WEST 24.01 FEET;
THENCE NORTH 30°36'52" WEST 30.63 FEET;
THENCE SOUTH 04°07'07" EAST 65.93 FEET;
THENCE NORTH 85°52'53" EAST 17.50 FEET;
THENCE NORTH 04°07'07" WEST 101.04 FEET;
THENCE NORTH 30°36'52" WEST 30.00 FEET;
THENCE SOUTH 03°53'08" EAST 69.88 FEET;
THENCE SOUTH 85°52'53" WEST 1.33 FEET;
THENCE SOUTH 04°07'07" EAST 11.00 FEET;
THENCE NORTH 85°52'53" EAST 1.09 FEET;
THENCE SOUTH 04°07'07" EAST 56.50 FEET TO A POINT HEREINAFTER REFERED TO AS POINT 'B';
THENCE CONTINUING SOUTH 04°07'07" EAST 157.42 FEET;
THENCE NORTH 85°52'53" EAST 11.60 FEET;
THENCE SOUTH 04°07'07" EAST 12.61 FEET;
THENCE NORTH 85°52'53" EAST 1.60 FEET;
THENCE SOUTH 04°07'07" EAST 54.22 FEET;
THENCE NORTH 59°18'59" EAST 17.24 FEET TO POINT OF BEGINNING 'THREE';

THIS VERSION IS NOT ADOPTED

THENCE NORTH 59°18'59" EAST 13.70 FEET;
THENCE NORTH 30°32'51" WEST 4.41 FEET;
THENCE NORTH 59°27'09" EAST 6.36 FEET TO **POINT OF BEGINNING 'ONE'**.

TOGETHER WITH THE FOLLOWING:

COMMENCING AT THE INTERSECTION OF THE SOUTHWESTERLY MARGIN OF 5TH AVENUE AND THE NORTHWESTERLY MARGIN OF PINE STREET AS ESTABLISHED UNDER ORDINANCE NUMBER 14500 OF THE CITY OF SEATTLE;
THENCE NORTH 30°36'52" WEST 53.98 FEET TO **POINT OF BEGINNING 'TWO'**;
THENCE SOUTH 59°18'59" WEST 19.23 FEET;
THENCE NORTH 30°41'01" WEST 13.00 FEET;
THENCE NORTH 59°18'59" EAST 7.08 FEET;
THENCE NORTH 30°41'01" WEST 6.67 FEET;
THENCE NORTH 59°18'59" EAST 7.50 FEET;
THENCE SOUTH 30°41'01" EAST 1.33 FEET;
THENCE NORTH 59°18'59" EAST 1.58 FEET;
THENCE NORTH 30°41'01" WEST 1.00 FEET;
THENCE NORTH 59°18'59" EAST 3.09 FEET;
THENCE SOUTH 30°36'52" EAST 19.33 FEET TO **POINT OF BEGINNING 'TWO'**.

LYING BETWEEN ELEVATION 91.5 AND 111.5 FEET, CITY OF SEATTLE VERTICAL DATUM.

CONTAINING 1,846 SQUARE FEET MORE OR LESS.

TOGETHER WITH THE FOLLOWING:

BEGINNING AT THE HEREINBEFORE MENTIONED **POINT 'A'**;
THENCE NORTH 3°46'16" WEST 35.14 FEET;
THENCE SOUTH 86°13'44" WEST 5.29 FEET;
THENCE NORTH 3°46'16" WEST 38.62 FEET;
THENCE SOUTH 86°13'44" WEST 0.38 FEET;
THENCE NORTH 3°46'16" WEST 6.50 FEET;
THENCE SOUTH 86°13'44" WEST 10.09 FEET;
THENCE SOUTH 3°46'16" EAST 6.50 FEET;
THENCE SOUTH 86°13'44" WEST 0.38 FEET;
THENCE SOUTH 3°46'16" EAST 15.02 FEET;
THENCE SOUTH 86°13'44" WEST 9.44 FEET;
THENCE SOUTH 3°46'16" EAST 48.23 FEET;
THENCE NORTH 86°13'44" EAST 13.35 FEET;
THENCE SOUTH 30°32'51" EAST 14.89 FEET;
THENCE NORTH 59°27'09" EAST 6.19 FEET TO POINT 'A' AND THE TERMINUS OF THIS DESCRIPTION.

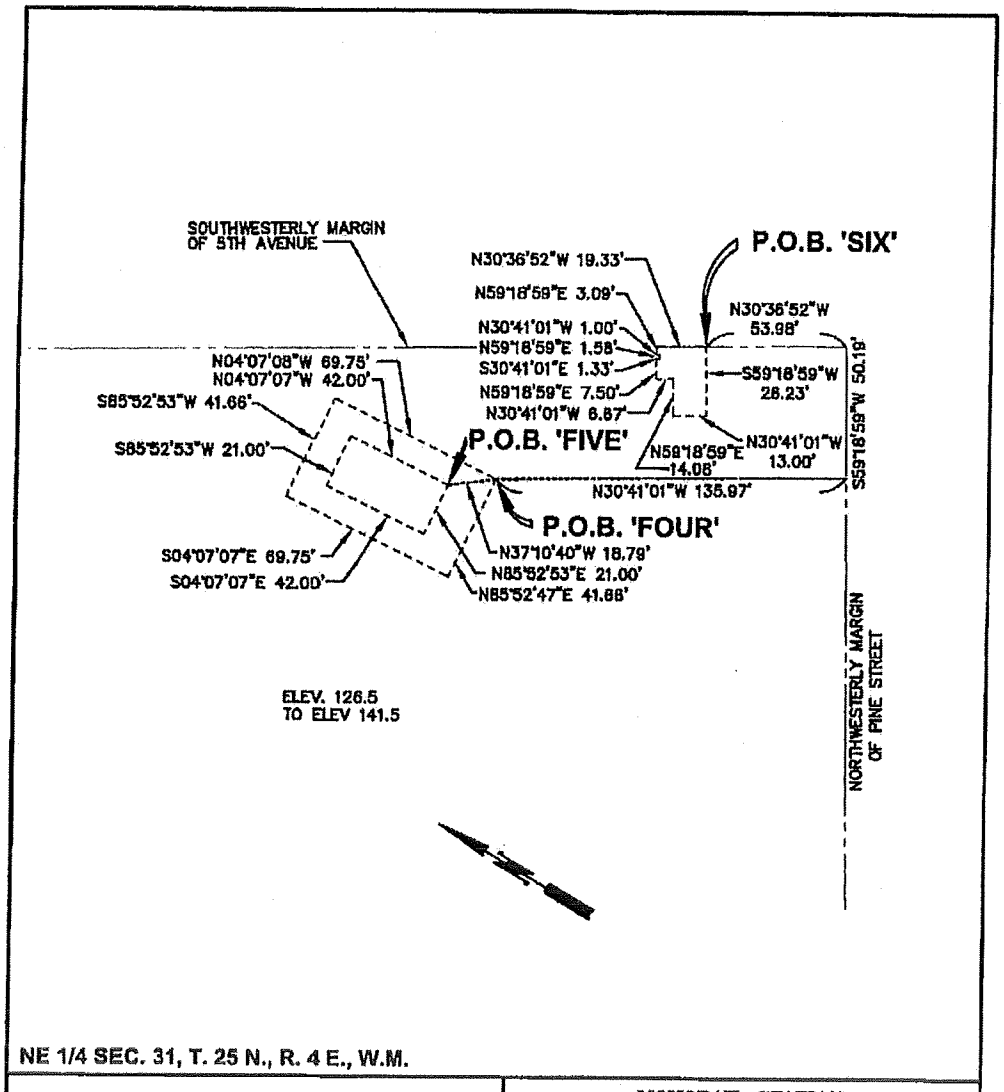
THIS VERSION IS NOT ADOPTED

WESTLAKE CENTER TRANSIT STATION ACCESS EASEMENT
LEGAL DESCRIPTION

THAT PORTION OF LOTS 1, 11, AND 12 (INCLUDING THE PORTIONS THEREOF LYING WITHIN VACATED WESTLAKE AVENUE AS VACATED BY CITY OF SEATTLE ORDINANCE NUMBER 113078, AND VACATED ALLEY AS VACATED BY CITY OF SEATTLE ORDINANCE NUMBER 113078), BLOCK 1, ADDITION TO THE TOWN OF SEATTLE AS LAID OFF BY THE HEIRS OF SARAH A. BELL, DECEASED (COMMONLY KNOWN AS HEIRS OF SARAH A. BELL'S ADDITION TO THE TOWN OF SEATTLE), ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 103, IN KING COUNTY, WASHINGTON, SITUATE IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHWESTERLY MARGIN OF 5TH AVENUE AND THE NORTHWESTERLY MARGIN OF PINE STREET AS ESTABLISHED UNDER ORDINANCE NUMBER 14500 OF THE CITY OF SEATTLE;
THENCE SOUTH 59°18'59" WEST 113.18 FEET;
THENCE NORTH 30°32'51" WEST 4.39 FEET TO **POINT OF BEGINNING 'ONE'**;
THENCE NORTH 30°32'51" WEST 17.91 FEET TO A POINT HEREINAFTER REFERED TO AS **POINT 'A'**;
THENCE SOUTH 59°27'09" WEST 6.19 FEET;
THENCE NORTH 30°32'51" WEST 14.89 FEET;
THENCE SOUTH 86°13'44" WEST 13.35 FEET;
THENCE SOUTH 23°45'54" WEST 20.55 FEET;
THENCE SOUTH 59°32'18" WEST 22.94 FEET;
THENCE SOUTH 30°27'42" EAST 9.79 FEET;
THENCE NORTH 59°32'18" EAST 7.72 FEET;
THENCE SOUTH 30°27'42" EAST 14.68 FEET;
THENCE SOUTH 58°30'18" WEST 1.46 FEET;
THENCE NORTH 30°27'42" WEST 3.29 FEET;
THENCE SOUTH 58°30'18" WEST 5.50 FEET;
THENCE SOUTH 30°27'42" EAST 7.00 FEET;
THENCE NORTH58°30'18" EAST 6.96 FEET;
THENCE SOUTH 30°27'42" EAST 3.18 FEET;
THENCE NORTH 59°18'59" EAST 13.70 FEET;
THENCE NORTH 30°27'42" WEST 21.52 FEET;
THENCE NORTH 59°32'18" EAST 1.40 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 13.80 FEET;
THENCE WESTERLY ALONG THE ARC OF SAID CURVE PASSING THROUGH A CENTRAL ANGLE OF 89°54'51" A DISTANCE OF 21.66 FEET;
THENCE SOUTH 30°32'51" EAST 3.24 FEET;
THENCE NORTH 59°27'09" EAST 1.10 FEET;
THENCE SOUTH 30°32'51" EAST 4.44 FEET;

THIS VERSION IS NOT ADOPTED



NE 1/4 SEC. 31, T. 25 N., R. 4 E., W.M.

Signature
Surveying & Mapping, PLLC
15541 26th Avenue NE
Shoreline, Wa. 98155

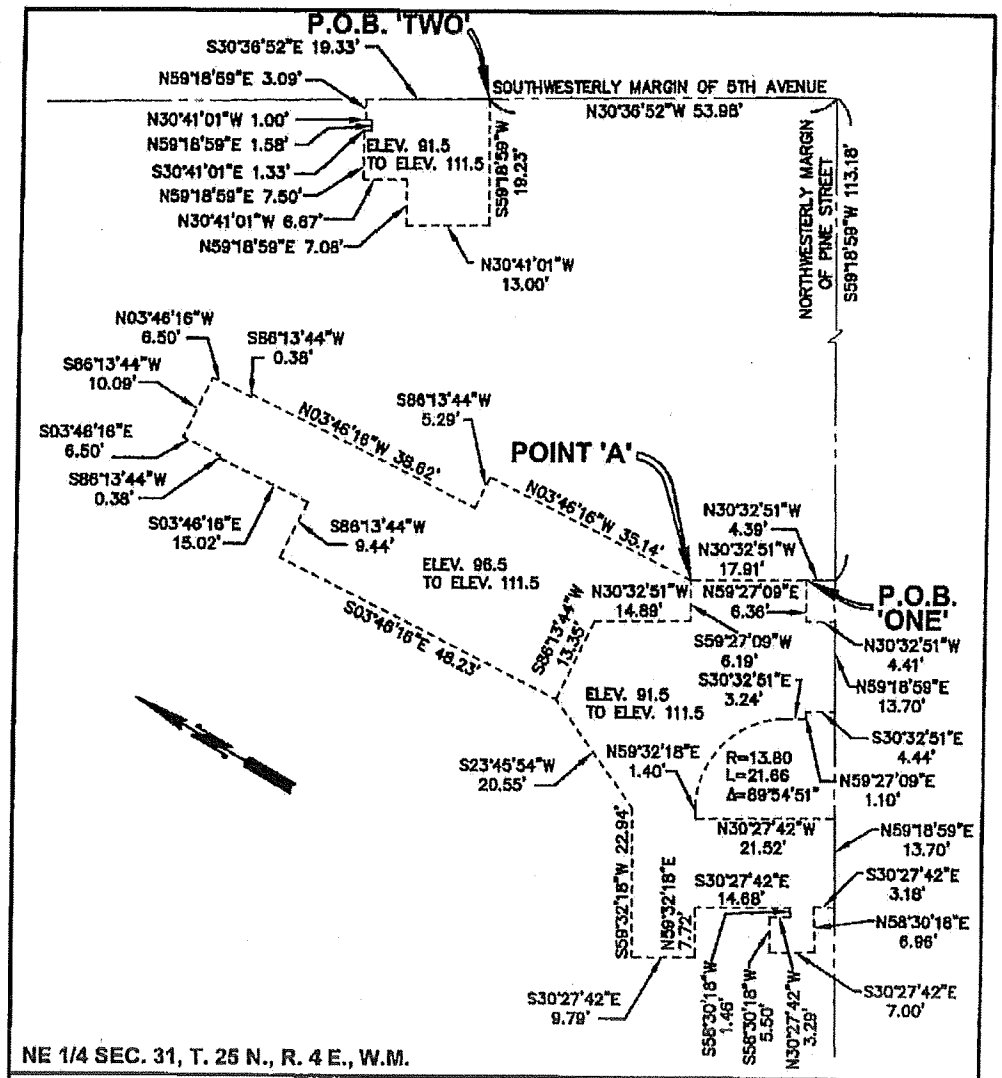
SSM

MONORAIL STATION ACCESS EASEMENT EXHIBIT LEVEL 2

WESTLAKE CENTER
SEATTLE, WA.

DWN. BY DPH	DATE 8/29/2013	JOB NO. 13028
CHKD. BY PLS	SCALE 1" = 50'	SHEET 2 OF 3

THIS VERSION IS NOT ADOPTED



Signature
Surveying & Mapping, PLLC
15541 26th Avenue NE
Shoreline, Wa. 98155

SSM

TRANSIT STATION
ACCESS EASEMENT EXHIBIT
METRO LEVEL

WESTLAKE CENTER
SEATTLE, WA.

DWN. BY	DATE	JOB NO.
DPH	8/15/2013	13028
CHKD. BY	SCALE	SHEET
PLS	1" = 20'	1 OF 2

Exhibit A

THIS VERSION IS NOT ADOPTED

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I certify that I know or have satisfactory evidence that Andrew P. Massmann appeared before me and signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Authorized Signatory of WESTLAKE CENTER, LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 2nd day of September, 2014

"OFFICIAL SEAL"
JENNIFER R. ANFINSON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 2/25/2017

Jennifer R. Anfinson
Notary Public in and for the State of ~~Washington~~ Illinois
Residing at Chicago, IL
My appointment expires: 2/25/17

STATE OF WASHINGSTON)
) SS.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Robert Nellams appeared before me and signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Director of the Seattle Center Department of THE CITY OF SEATTLE, a municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 18th day of Sept, 2014

Diane D. Woods
Notary Public in and for the State of Washington
Residing at Snohomish
My appointment expires: 7-25-15

DIANE D. WOODS
NOTARY PUBLIC
COMMISSION EXPIRES
07-25-15
STATE OF WASHINGTON

THIS VERSION NOT ADOPTED

IN WITNESS WHEREOF, Associates and City have caused this First Addendum to be executed as of the date and year first written above.

ASSOCIATES:

Westlake Center, LLC,
a Delaware limited liability company

By:
Name: Andrew P. Massmann
Title: Authorized Signatory

CITY:

The City of Seattle

By: _____
(signature)

Name: Robert Nellams
Title: Director of the Seattle Center

THIS VERSION IS NOT ADOPTED

NOW, THEREFORE, the parties agree as follows:

1. Amendment to Exhibit D. The first page of Exhibit D to the Monorail Agreement is hereby deleted and fully replaced with Exhibit A attached hereto and collectively designated as Page 1 of Exhibit D.

2. Ratification. Except as provided herein, all of the terms, covenants and conditions of the Monorail Agreement are hereby continued, approved and ratified, and, as hereby amended, shall continue in full force and effect and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

3. Counterparts. This First Addendum may be executed and delivered in any number of counterparts, each of which shall constitute an original.

[*Remainder of page intentionally left blank; signature page to follow*]

THIS VERSION IS NOT ADOPTED

AFTER RECORDING MAIL TO:

_____

_____

_____

FIRST ADDENDUM TO MONORAIL
OPERATING AND EASEMENT AGREEMENT

This First Addendum to Monorail Operating and Easement Agreement ("First Addendum") is made as of the 18 day of September, 2014 to that certain Monorail Operating and Easement Agreement ("Monorail Agreement") by and among Westlake Center, LLC, a Delaware limited liability company ("Westlake Center") (successor-by-conversion to Westlake Center Associates Limited Partnership ("Associates")) and the City of Seattle ("City") entered into on February 12, 1987 and recorded on February 17, 1987 as Document No. 8702170365 in the King County Recorder's Office. All capitalized terms not defined herein shall have the meanings ascribed to them in the Monorail Agreement.

RECITALS

A. By virtue of a corporate entity restructuring, Associates converted itself from a limited partnership to a limited liability company (i.e., Westlake Center), with no change in beneficial ownership.

B. Westlake Center has requested, and City has agreed to, a relocation of certain easements granted by Westlake Center to the City under Section 8 of the Monorail Agreement in locations depicted on the first and second pages of Exhibit D of the Monorail Agreement to provide more direct commuter access to the Property and to accommodate renovation of Westlake Center's retail space.

C. Westlake Center and City now desire to amend Exhibit D to the Monorail Agreement to reflect the relocation of said easements.

THIS VERSION IS NOT ADOPTED

EXHIBIT B. 1987 MONORAIL SYSTEM OPERATING AND EASEMENT AGREEMENT

Exhibit B includes:

1. September 18, 2014 First Addendum to Monorail Operating and Easement Agreement
2. January 28, 1988 Amendment to the Monorail Operating and Easement Agreement Scope of Work, exhibits to the Amendment are not included. They are available from the Seattle City Clerk's Office as part of Comptroller File 296229 (p. 68-315)
3. February 13, 1987 Monorail System Operating and Easement Agreement

THIS VERSION IS NOT ADOPTED

EXHIBIT A. SEATTLE CENTER DESCRIPTION

Seattle Center consists principally of the real property within the boundary formed by the following streets:

First Avenue North, Republican Street, Warren Avenue North, Mercer Street, Fifth Avenue North, Broad Street, Second Avenue North, and Thomas Street

with the exception of properties occupied by the Space Needle and the Pacific Science Center. The Seattle Center also includes three parking garages adjacent to the above described boundaries. They are on the full blocks bounded by:

a) Fifth Avenue North, Republican Street, Broad Street and the vacated Sixth Avenue North, b) Mercer Street, Fourth Avenue North, Roy Street and Third Avenue North, and c) Thomas Street, First Avenue North, Warren Street and John Street.

It also includes the Seattle Monorail System including but not limited to the elevated guideway therefor, which extends from a passenger station within the Seattle Center adjacent to the intersection of vacated Thomas Street and vacated Nob Hill Avenue North, along Fifth Avenue North to the passenger station at Westlake Center adjacent to the intersection of Fifth Avenue North and Pine Street.

THIS VERSION IS NOT ADOPTED

LIST OF EXHIBITS

Exhibit A	Seattle Center Description
Exhibit B	1987 Monorail System Operating and Easement Agreement
Exhibit C	Inventory of Spare Parts

XXXIX. ENTIRE AGREEMENT

This Agreement, including the Exhibits and agreements referenced herein, which by this reference form a part hereof, constitute the entire agreement between the parties concerning the subject matter herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by having their respective authorized representative sign his/her name in the appropriate space below:

CONCESSIONAIRE: **SEATTLE MONORAIL SERVICES LLC**, a Washington limited liability company

By _____
Its _____

Date_____

CITY: **THE CITY OF SEATTLE**

By _____
Its _____

Date_____

THIS VERSION NOT ADOPTED

mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs and that such costs shall not be considered an Operating Expense of the Monorail System. Except for equitable relief to preserve the status quo pending the completion of the mediation, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

XXXVI. ATTORNEYS FEES

If either party retains the services of an attorney in connection with enforcing the terms of this Agreement, each party agrees to bear its own attorneys' fees and costs.

XXXVII. APPLICABLE LAW; VENUE

This Agreement shall be construed under the Laws of the State of Washington. Venue for any action brought hereunder shall be in King County, Washington.

A. **Previous Agreements Superseded.** The terms and conditions of this Agreement supersede the terms, obligations and conditions of any existing or prior agreement between the parties regarding the subject matter hereof.

B. **Redevelopment Modifications.** Notwithstanding any other provisions hereof, in the event the Director determines that in order to facilitate the redevelopment of the Seattle Center in a manner consistent with the "Seattle Center Century 21 Master Plan" approved through Seattle City Council Resolution 31071, or subsequent Seattle Center Master Plans, any portion of the Monorail System is required for some use or purpose other than that contemplated by the parties under this Agreement, the Director shall have the right to materially change the Monorail System without recourse by the Concessionaire, by providing written notice of such change to the Concessionaire and specifying the effective date of such material change which, in no event, shall be less than two (2) years prior to the Seattle Center's use or purpose for said System.

XXXVIII. ACKNOWLEDGEMENT OF NEGOTIATED AGREEMENT

The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

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G. **Limited Effect of Approval by Director.** Action of the Director pursuant to or in implementation of this Agreement does not constitute any official action that may be required by law, City Charter, ordinance, rule or regulation before the Concessionaire may rightfully commence, suspend, enlarge, or terminate any particular undertaking.

H. **No Relationship Established.** The Concessionaire is an independent contractor. Neither the City nor the Concessionaire shall be construed to be a partner, associate, or joint venturer of the other party or any of its affiliates by virtue of this Agreement. The Concessionaire is not an agent of the City for any purpose whatsoever and shall not create any obligation or responsibility on behalf of the City or bind the City in any manner. This Agreement was negotiated by each party as an arms-length transaction and neither party is a fiduciary or trustee of the other.

I. **Powers of the City.** Nothing contained in this Agreement shall be considered to diminish the governmental or police powers of the City.

J. **Binding Effect.** The provisions, covenants, and conditions contained in this Agreement apply to bind the parties, their legal heirs, representatives, successors, and assigns.

K. **Enforcement of this Agreement.** The obligations of the parties to this Agreement are unique in nature; this Agreement may be specifically enforced by either party.

L. **Invalidity of Particular Provisions.** Should any term, provision, condition, or other portion of this Agreement or the application thereof be held to be inoperative, invalid, or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected hereby and shall continue in full force and effect.

M. **Joint and Several Liability.** In the event the Concessionaire is composed of more than one corporation or entity, each corporation or entity composing the Concessionaire shall be jointly and severally liable under this Agreement.

N. **Governing Law; Venue.** This Agreement shall be governed by and construed under the laws of the State of Washington. Venue for any action arising under this Agreement shall be in King County Superior Court.

O. **No Third Party Beneficiaries.** Except as expressly set forth in this Agreement, no party is a third-party beneficiary under this Agreement.

XXXV. DISPUTE RESOLUTION

The parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in order to ensure that Monorail services are not adversely impacted or interrupted. If a dispute cannot be resolved by negotiations between subordinate staff of the Concessionaire and Seattle Center, the matter shall be referred to the Seattle Center Director and Tom Albro (Managing Director of Seattle Monorail Services, LLC). If those officials are unable to resolve the dispute between them, then either party may commence mediation by providing to the other party a written request for

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D. **No Claims for Removal.** In no event shall the Concessionaire or any of its subcontractors make any claim or demand upon the City, nor shall the City be liable for any inconvenience, annoyance, disturbance, or loss of business or any other damage arising out of City's removal of materials and property under Subsection XXXII.C.

XXXIII. BONDING REQUIREMENT

A. **Bond.** The Concessionaire shall deliver to the address specified in Section XXIX hereof within five (5) days after the execution of this Agreement, and shall thereafter maintain in full force and effect throughout the Term of this Agreement, a good and sufficient bond in the amount of Two Hundred Thousand Dollars ($200,000). Said bond shall be executed by the Concessionaire, as principal, and by a surety company authorized to do such business in the State of Washington, and conditioned upon full performance by the Concessionaire of all of the terms and conditions of this Agreement including but not limited to the timely payment by the Concessionaire of all fees, charges, and portions of Net Operating Income due to the City. The Concessionaire must secure the City Attorney's approval of the surety and form of the bond prior to submitting the bond to the Director.

XXXIV. MISCELLANEOUS PROVISIONS

A. **Use of Language.** Terms used in the neuter gender include the masculine and feminine, and terms used in the singular or plural include the other, as the context may require.

B. **Captions.** The titles of sections are for convenience only and do not define or limit the contents.

C. **Amendments.** No modifications or amendment of the terms hereof shall be effective unless in writing and signed by authorized representatives of the parties hereto. The parties hereto expressly reserve the right to modify this Agreement from time to time, by mutual agreement.

D. **Time of Essence.** Time is of the essence in this Agreement.

E. **Remedies Cumulative.** Rights under this Agreement are cumulative; failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. Each party shall also have any other remedy given by the law. The use of one remedy shall not be taken to exclude or waive the right to use another.

F. **No Waiver.** No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default of any of the terms, covenants and conditions of this Agreement. The waiver of any right under this Agreement must be in writing and signed by the party making the waiver. The payment or acceptance of any compensation or fee for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

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training and support of daily operations including but not limited to scheduling and cash collection.

All post-termination or post-expiration transition services provided to the City or its designee shall be billed to the City at actual labor and material costs plus an overhead charge of no more than sixty percent (60%).

XXXII. SURRENDER OF MONORAIL SYSTEM; HOLDING OVER

A. **Surrender and Delivery.** Upon the expiration or termination of the Term, whichever is earlier, Concessionaire shall surrender the Monorail System and promptly deliver to the Director all keys the Concessionaire, its subcontractors, and any of their officers, agents, and employees may have to any areas of the Seattle Center, the Westlake Center, and the Monorail System. Upon expiration or termination, the Concessionaire shall: (i) assign to the City such leases and contracts for equipment used for or in connection with the Routine Maintenance or operation of the Monorail System that the Director elects to assume; and (ii) terminate, without cost or liability to the City, all other contracts for Monorail System-related equipment and services that were executed by the Concessionaire; (iii) convey to the City, free and clear of all liens and encumbrances, and without additional compensation, but subject to normal wear and tear, all equipment used for or in connection with the Routine Maintenance or direct operation of the Monorail System that the Concessionaire purchased during the Term and credited as an Operating Expense under this Agreement, and (iv) surrender and assign to the City all social networking site accounts relating to the Monorail System, including the passwords, account name, and contacts.

B. **Removal of the Concessionaire's and Subconcessionaire's Property.** Prior to the expiration date of the Term, or in the event this Agreement is terminated, within thirty (30) days after the termination date, whichever is earlier, the Concessionaire shall ensure that all fixtures, furnishings, trade equipment and personal property owned or installed by the Concessionaire or any of its subcontractors in, on, or from the Monorail System other than items funded through Operating Expenses, or leased or purchased items of equipment that are to be assigned to or conveyed to the City under this Agreement, are removed from the areas made available to the Concessionaire under Section III, taking due care not to injure or damage the Monorail System or any portion thereof, and following removal, shall restore the Monorail System and facilities to their condition as of the Effective Date of this Agreement, ordinary wear and tear and casualty, and improvements, additions, and alterations approved by the City excepted. Improvements, additions, and alterations installed on the Monorail System by the City shall not be removed.

C. **Storage of the Concessionaire's and Subcontractor's Property.** If the Concessionaire fails to remove any fixtures, furnishings, trade equipment, and other personal property owned or installed by or for the Concessionaire or any of its subcontractors as required on or by the time specified in subsection B, the City may, but shall not be required to remove, such property and materials from the Monorail System and store the same, all at the Concessionaire's expense. If the City removes or arranges for the storage of such material, the City shall be reimbursed its actual cost of storage and a reasonable administrative fee for staff time, which reimbursement shall be a claim upon the Concessionaire or, at the City's option, may be deducted from the security provided by the Concessionaire under this Agreement.

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circumstance is such that Concessionaire may not reasonably cure it within thirty (30) days, the Concessionaire shall not be in Default so long as the Concessionaire commences the cure within thirty (30) days and thereafter diligently pursues the cure to completion within a time reasonable under the circumstances.

C. **City's Remedies Upon Termination.** If the Concessionaire is in Default, the City shall have the following non-exclusive rights and remedies, at its option: (i) to cure the Default on the Concessionaire's behalf and charge the Concessionaire for all of the City's actual and reasonable costs and expenses, and (ii) to terminate this Agreement and the Concessionaire's rights to the Concession without any further proceedings, re-enter the Monorail System, operate the Monorail System itself or lease and license others to operate the Monorail System and receive all associated revenues; provided termination shall not relieve the Concessionaire from liability to the City for any damages caused by the Concessionaire's Default, including the City's reasonable and actual expenses incurred in the leasing or licensing of the Monorail System.

D. **City's Remedies Cumulative; No Waiver.** The City's rights and remedies hereunder are not exclusive, but cumulative, and City's exercise of any right or remedy following the Concessionaire's Default shall not be deemed a waiver, nor shall it alter, affect or prejudice any other right or remedy that the City may have under this Agreement, or under law or equity. Neither the City's acceptance of payments nor any other action by the City after any event for which the City may terminate this Agreement shall operate as a waiver of any past or future Default by the Concessionaire, nor shall it deprive the City of its right to terminate this Agreement or exercise any other option, right or remedy that it may have under any term or provision of this Agreement.

E. **Default by the City.** The City shall be in Default if the City fails to perform any of its obligations under this Agreement and such failure continues for more than thirty (30) days after written notice by the Concessionaire to the City specifying the particular obligation that the City has failed to perform. If the nature of the City's obligation is such that more than thirty (30) days are required for performance, then the City shall not be in Default if the City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. If the City is in Default, the Concessionaire may pursue any rights or remedies available under law or equity.

XXXI. TRANSITION SERVICES

Upon the expiration of the Term or earlier termination of the Agreement, whether terminated by the City or by the Concessionaire, the Concessionaire shall reasonably cooperate with the City to effect an orderly transition to the new operator of the Monorail System. At its option, the City may require the Concessionaire to provide the following transition services:

A. General Manager or equivalent - Provide full-time training and Routine Maintenance support for up to four (4) months;

B. Operator Trainer or equivalent - Provide up to thirty (30) working days training for operators and other staff; and

C. Site Operations Manager or equivalent - Provide up to thirty (30) working days

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XXX. DEFAULT

A. **Definition of Default by the Concessionaire.** Any of the events or circumstances in Subsections 1 through 9 below that are not cured within the applicable cure period set forth below in Section XXX B. shall constitute a "Default" by the Concessionaire, and the Concessionaire shall be "in Default" under this Agreement.

1. The Concessionaire's failure to make any payment to the City in the time required under this Agreement; or

2. The Concessionaire's failure to provide insurance of the type and amount required under Section XIX at all times during the Term; or

3. The Concessionaire's violation of any law, Charter provision, ordinance, rule, regulation, order, or directive; or

4. The Concessionaire's failure to deliver to the City and maintain at all times during the Term, a security deposit or bond in the amount required under Section XXXIII; or

5. The Concessionaire's failure to submit in a timely manner all written reports due to the City; or

6. The Concessionaire's failure to continuously operate the Monorail unless such failure is excused under this Agreement; or

7. The Concessionaire's failure to perform any other obligation under this Agreement in the time required, or the Concessionaire's violation of any other condition or covenant of this Agreement; or

8. Concessionaire's assignment or subcontracting of its interest in this Agreement in violation of Section XXV; or the filing of a voluntary or involuntary petition in bankruptcy, or for reorganization or an arrangement; or the adjudication of the Concessionaire as being bankrupt or insolvent; or the appointment of a receiver of or for the Concessionaire if such appointment, adjudication or similar order or ruling remains in force or unstayed for a period of sixty (60) days.

9. Annual on-time performance standard of below 96.5% that is not excused under Section XI.E.

B. **City's Notice of Concessionaire's Failure of Performance.** Upon the occurrence of any of the events or circumstances listed in Section XXX.A., prior to exercising the right to terminate this Agreement, the Director shall provide written notice to the Concessionaire specifying such event or circumstance and the reasonable number of hours or days for the Concessionaire to cure, which, in any case, shall not be any less than ten (10) days for a monetary failure or failure to provide insurance, and shall not be less than thirty (30) days for any other event or circumstance; provided, however, that no cure period shall apply to the events set forth in Sections XXX.A.8. and 9. Except for a monetary failure, failure to provide insurance, or events and circumstances set forth in Sections XXX A 8 and 9, if the nature of the event or

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D. **City's Right to Terminate.** Notwithstanding any other provision of this Agreement to the contrary, the City shall have the right to terminate this Agreement by providing prior written notice to the Concessionaire in any of the following circumstances: (i) in the event that fifty percent (50%) or more of the Monorail System is destroyed or is so damaged by fire or other casualty as to be untenantable or commercially unusable, or (ii) if the City desires to discontinue the Concessionaire's operations because of substantial destruction of any other part of Seattle Center, regardless of whether the Monorail System is destroyed, or (iii) if the City determines that the insurance proceeds are not adequate to complete the repair or replacement.

E. **Notice of Termination.** Any notice of termination by the Concessionaire or City pursuant to this section shall be provided within sixty (60) days after the occurrence of the damage or destruction and shall specify the effective date of such termination.

XXVIII. SUSPENSION OF OBLIGATIONS (FORCE MAJEURE)

Whenever a party's performance of any obligation under this Agreement is prevented by an act of nature; war or war-like operation; civil commotion; riot; labor dispute including a strike, lock-out, or walk-out; sabotage; or governmental regulation or control (each an "Event of Force Majeure"), performance of such affected obligation shall be suspended, but only for so long as such performance remains beyond the reasonable control of such party. No suspension shall result in an extension of the expiration date of this Agreement unless specifically agreed upon, in writing, by the parties. No suspension under this Section XXVIII shall arise from a party's financial inability or insolvency. The City's performance under this Agreement shall not be excused by special legislation or regulation applicable only to Concessionaire or exercised primarily for the purpose of impairing Concessionaire's rights under this Agreement. Each affected party shall make reasonable efforts to remove the Event of Force Majeure so that its performance may resume.

XXIX. NOTICES AND DELIVERABLES

All notices and other materials to be delivered hereunder shall be delivered or mailed to the following unless a different address is provided by either party:

To City:
Seattle Center Director
Seattle Center Department
The City of Seattle
305 Harrison Street
Seattle, Washington 98109

Attn: Project Manager

To Concessionaire:
Tom Albro
Seattle Monorail Services LLC
310 30th Ave South
Seattle, Washington 98144

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Concessionaire shall constitute a transfer or assignment. If the Concessionaire is a joint venture or partnership, then a change in joint venturers or general partners or decision-making control of the partnership or joint venture shall also constitute a transfer or assignment. If the Concessionaire is a limited liability company, then a change in the manager of a manager-governed company or a change in the membership of a membership-governed company shall also constitute a transfer or assignment; provided however, that a change from Tom Albro as the current Seattle Monorail Services LLC Manager to Tina Albro (his spouse), shall not be considered a transfer, assignment, or change in ownership.

XXVI. SALE OR ASSIGNMENT BY CITY OF SEATTLE

If the City sells or otherwise transfers the Monorail System, such purchaser, transferee, or assignee thereof shall be deemed to have assumed City's obligations under this Agreement arising after the date of such transfer, and City shall thereupon be relieved of all liabilities under this Agreement arising thereafter but this Agreement shall otherwise remain in full force and effect. In the event of such sale or transfer, the Concessionaire may terminate this Agreement by providing written notice of such termination within sixty (60) days after the effective date of the sale or transfer, with the effective date of the termination being no less than one (1) year after the written notice.

XXVII. DAMAGE AND DESTRUCTION

A. **The Concessionaire's Report of Damage.** The Concessionaire shall immediately notify the Director of any occurrence of damage or destruction to the Monorail System. The Concessionaire shall further submit a written report to the Director, in care of the Transportation Services Office, regarding the circumstances of any such damage or destruction within twenty-four (24) hours after any such event.

B. **Obligation to Pay Fees and Charges in the Event of Damage or Destruction.** In the event the Monorail System is damaged or destroyed by fire or other casualty, or is damaged so extensively as to render the Monorail System unusable, so long as the damage or destruction is not the result of Concessionaire's negligence or intentional misconduct, the Concessionaire's obligation to pay fees and charges therefor shall be suspended until the Monorail System is made usable. If only a portion of the System is damaged or destroyed by fire or other casualty and the Monorail System remains usable, then so long as the damage is not the result of Concessionaire's negligence or intentional misconduct, the fees, charges, and Minimum Fees hereunder shall be prorated and the Concessionaire shall pay only fees and charges in an amount proportionate to the extent of the Monorail System that remains usable for the purposes identified in this Agreement.

C. **The Concessionaire's Right to Terminate.** Notwithstanding any other provision in this Agreement to the contrary, in the event that fifty percent (50%) or more of the Monorail System is destroyed or is so damaged by fire or other casualty as to be untenantable or commercially unusable and such event was not caused by the negligence or intentional misconduct of the Concessionaire, the Concessionaire may terminate this Agreement by providing written notice thereof to the City.

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Concession Fee per Section VI.B shall be reduced based on estimated Ridership Revenues realized during the equivalent operating days in the prior year. For example, a Thursday, Friday, Saturday closure during the second week of August would result in the minimum Concession Fee being adjusted downward by the estimated net revenues earned during the Thursday, Friday, and Saturday of the second week of August during the prior year. The City shall use all reasonable efforts to minimize damages or interference.

D. **City's Retention and Use of Key to Monorail System.** The City shall at all times have and retain a key with which to unlock all of the doors in, upon, and about the Monorail System, excluding the Concessionaire's vaults, safes, and files. In an emergency, the City shall have the right to use any and all means which the Director deems proper to obtain entry to any portion of the Monorail System, without liability to the Concessionaire or any subconcessionaire. Any entry to the Monorail System by the City in an emergency shall not be construed or deemed to be a forcible or unlawful entry into the Monorail System.

XXIV. NO NUISANCES OR OBJECTIONABLE ACTIVITY

The Concessionaire shall not willfully permit any excessive or objectionable noise, odor, dust, vibration, or other similar substance or condition to remain on or be emitted from the Monorail System, shall not willfully create any nuisance in or adjacent to the Monorail System; and shall not willfully do anything on the Monorail System that will create a danger to life or limb.

XXV. SUBCONTRACTING AND ASSIGNMENT

A. **Subcontracting and Assignment Conditioned Upon Director's Approval.** The Concessionaire's services and the concession rights granted by the City under this Agreement are personal to the parties. As a result, except as expressly permitted under this Agreement, Concessionaire shall not license, subcontract, sell or transfer any of Concessionaire's rights or obligations under this Agreement without the Approval of the Director in that official's sole discretion. Neither this Agreement nor any interest thereunder shall be assignable or transferable by the Concessionaire or by operation of law without the Director's Approval, in that official's sole discretion. Any assignment, subcontract, sale or transfer shall be subject to all the terms and provisions of this Agreement. Any purported or partial or complete assignment, license, subcontract, sale or transfer of this Agreement in violation of this paragraph shall be null and void and of no force and effect and shall further constitute a breach of this Agreement, at the Director's election. The Director's giving or withholding of Approval under this Section in one instance shall not be deemed to be an Approval to any subsequent assignment, license, subcontract, sale or transfer of this Agreement. Each assignment and subcontract shall be in a written form satisfactory to the Director. The Concessionaire shall not be released from any obligations under this Agreement by virtue of any assignment, license, subcontract, sale, or transfer, whether accomplished with or without the Director's approval, unless the Director expressly provides otherwise in writing.

B. **Change in Ownership Constitutes Transfer.** Any transfer of this Agreement as a result of merger, consolidation, liquidation, or any direct or indirect change in Concessionaire's ownership or legal entity structure that changes decision-making control of

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XXII. LICENSES, ROYALTIES AND TAXES

A. **Licenses and Similar Authorizations.** The Concessionaire, as an Operating Expense, shall secure and maintain in full force and effect during the Term of this Agreement, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

B. **Taxes.** The Concessionaire shall pay, before delinquency, all taxes, levies, and assessments arising from its activities on or occupancy of the Monorail System, including but not limited to taxes arising out of the activity or business conducted on the Monorail System, such as the rental or sale of goods or services, equipment and improvements on the Monorail System, and taxes on the Concessionaire's interest in this Agreement. The City shall pay all property taxes, if any, on the Monorail System's real or personal property.

C. **Royalties and Patents.** The Concessionaire shall pay all royalties and license fees. In addition to and without limiting any other indemnification obligation under this Agreement, the Concessionaire shall defend and indemnify the City from all suits or claims for the Concessionaire's infringement of any patent rights.

XXIII. CITY'S RIGHT TO MONORAIL SYSTEM: INSPECTION, REPAIR AND IMPROVEMENT OF MONORAIL SYSTEM AND OTHER PROPERTY

A. **Access to Monorail System.** The Concessionaire shall provide the City with access to the Monorail System at all reasonable times to inspect the same and to make any repair, improvement, alteration or addition thereto of any property owned by or under control of the City, deemed necessary by the Director; provided that this right of access shall not impose on the City any obligation to make any repair, alteration, addition, or improvement except as specifically provided in this Agreement.

B. **Permitted Interference With Concessionaire's Operations.** In inspecting, and in making repairs, alterations, additions, and improvements, the City may erect barricades and scaffolding in and outside of the Monorail System and may otherwise interfere with the conduct of the business and operations of the Concessionaire and any of its subcontractors, where such action is reasonably required by the nature of the City's work, and such interference shall not be deemed to be a breach or default under this Agreement. The City shall use its best efforts to minimize interference with access to and from the Monorail System and with business and operations in, on or from the Monorail System.

C. **Suspension of Concessionaire's Operations.** If any City inspection, repair, alteration, addition, or improvement work necessitates the temporary suspension of the business or operations of the Concessionaire or any of its subcontractors in, on, or from the Monorail System for a period of two (2) hours or more, the Director shall notify the Concessionaire as soon as reasonably possible in advance of the anticipated beginning and ending date and time of the suspension. The Concessionaire waives on behalf of itself and all of its subconcessionaires all claims for damages and for any injury to and interference with business operations and loss of revenues occasioned by such suspension; provided however, that in the event such suspension continues for more than 3 calendar days, the minimum

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3. Federal Energy Policy and Conservation Act. The Concessionaire shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq.).

C. **Non-discrimination.** The Concessionaire shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Concessionaire shall affirmatively try to ensure applicants are employed, and employees are treated during employment, without regard to race, color, age, sex, marital status, sexual orientation, gender identify, political ideology, creed, religion, ancestry, national origin, or any sensory, mental or physical handicap. Such efforts include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay or other compensation, and training.

D. **Equal Benefits.** The Concessionaire shall comply with SMC Ch. 20.45 and Equal Benefit Program Rules, which require the Concessionaire to provide the same or equivalent benefits ("equal benefits") to domestic partners of employees as the Concessionaire provides to spouses of employees. At City's request, the Concessionaire shall provide information and verification of the Concessionaire's compliance. Any violation of this Section is a material breach, for which the City may exercise enforcement actions or remedies defined in SMC Chapter 20.45.

E. **Training and Mentoring Programs.** The Concessionaire will provide employees with an opportunity for advancement through the use of training, cross training and mentoring. The Concessionaire shall provide the City with an annual update on these programs and their outcome.

F. **Prevailing Wages.** Any "public work" as defined by RCW 39 and performed by the Concessionaire under this Agreement shall be subject to prevailing wages. The Concessionaire and any subcontractor shall pay any laborer; worker or mechanic engaged in the "public work" according to the classifications provided for under RCW 39.12 no less than the prevailing hourly wage rates in effect for King County as issued by the Department of Labor and Industries for the State of Washington for King County on January 9, 2014. It will be the sole responsibility of the Concessionaire to assign the appropriate classification and associated wage rates to all laborers, workers or mechanics that perform "public work" under the concession agreement in conformance with the scope of work descriptions of the Industrial Statistician of the Washington State Department of Labor and Industries. On each contract anniversary, the Concessionaire and any subcontractors shall review the then current prevailing wage rates and shall increase wages paid if required to meet no less than the then-current prevailing wage rates. The prevailing wage rates may be found at: https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx

CITY AND CONCESSIONAIRE ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS CONCESSION AGREEMENT WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

C. **Cooperation.** The City shall provide Concessionaire with: (i) prompt written notice of any Claim made or threatened for which the obligations under Section XX.A. are or might be sought, or any events that might result in such a Claim; and (ii) its full cooperation in the investigation, defense or settlement of any Claim or suit covered herein; and (iii) control over the investigation, defense and settlement of any Claims; provided, that if the Director determines that one or more principles of governmental, City, or public policy or law are involved, the City retains the right to participate in such action, and provided further that Concessionaire shall not compromise or settle any Claim without the City's written consent.

D. **Insurance.** Notwithstanding anything contained in this Section XX to the contrary, it is the intention of the parties to avail themselves, to the maximum extent possible, of the proceeds of the insurance policies required.

XXI. COMPLIANCE WITH LAW

A. **General Requirement.** The Concessionaire shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle; and rules, regulations, orders, and directives of the administrative agencies of each of the foregoing.

B. **Environmental Compliance.**

1. Biodegradable Products/Recycling of Waste Materials. Wherever practical, the Concessionaire shall use biodegradable products for containers and supplies used on the Monorail System. The Concessionaire shall collect, sort and separate into such categories as may be legally required all solid waste products on the Monorail System and recycle all such products that are locally accepted for recycling. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by the City, which receptacle shall be dumped or removed from the Seattle Center at such minimum frequency as is specified by the Director. The City reserves the right to refuse to collect or accept from the Concessionaire any waste product that is not sorted and separated as required by law, ordinance, rule or regulation and to require the Concessionaire to arrange for the collection of the same using a contractor satisfactory to the City.

2. Federal Clean Air Act and Water Pollution Control Act. The Concessionaire shall comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738 and Environmental Protection Agency (EPA) regulations (40 CFR, Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List for Violating Facilities. Concessionaire shall report violations to FTA and to the USEPA Assistant Administrator for Enforcement (ENO329).

THIS VERSION IS NOT ADOPTED

THIS VERSION IS NOT ADOPTED

3. A copy of the CGL insurance policy provision(s) documenting the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement;

4. Pending receipt of the documentation specified in this Section XIX, Concessionaire may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

E. **Assumption of Property Risk.** The placement and storage of Concessionaire's Business Personal Property in or about the Premises shall be the responsibility, and at the sole risk, of Concessionaire.

F. **Adjustments of Claims.** The Concessionaire shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Concessionaire under this Agreement.

XX. INDEMNIFICATION

A. **Indemnity.** The Concessionaire shall defend, indemnify and hold the City, and its officers, employees, agents, contractors, and volunteers harmless from any and all losses, claims, actions, damages, and expenses of any kind, including reasonable attorney's fees alleged against or incurred by the City through any third party and arising from any damage to or loss of property or any bodily injury including death (collectively, "Claims"), to the extent that the Claims result from the following: (i) the negligence or intentional misconduct of Concessionaire or its officers, employees, contractors, agents, licensees, or invitees, including, but not limited to, negligence or intentional misconduct related to the operation and maintenance of the Monorail System; or (ii) Concessionaire's breach of this Agreement.

The Concessionaire's obligations to defend and indemnify the City shall not extend to any Claims to the extent of negligence or intentional misconduct of the City or its elected officials, agents, contractors, or employees. If any Claim arises from the joint or concurrent negligence or intentional misconduct of the City (including any of its employees, contractors or agents) and the Concessionaire (including any of its officers, employees, contractors, or agents), each party shall be liable to the extent of that party's fault.

B. **Waiver of Immunity.** The Concessionaire agrees that its obligation to defend and indemnify the City under this Section XX specifically applies to actions brought against the City by the Concessionaire's employees. As a result, the Concessionaire hereby expressly waives its immunity under RCW Title 51 or any applicable industrial insurance act, but only with respect to the City to the extent necessary to fulfill the Concessionaire's defense and indemnification obligation herein.

such cancellation, except ten (10) day written notice as respects cancellation for non-payment of premium, to the City at its notice address except as may otherwise be specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer.). The City and the Concessionaire mutually agree that for the purpose of RCW 48.18.290 (1), for both liability and property insurance the City is deemed to be a "mortgagee, pledge, or other person shown by (the required insurance policies) to have an interest in any loss which may occur thereunder."

3. Each insurance policy required hereunder shall be (1) subject to reasonable approval by the City that it conforms with the requirements of this Section, and (2) be issued by an insurer rated A–:VII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).

4. Any deductible or self-insured retention ("S.I.R.") must be disclosed to, and shall be subject to reasonable approval by, the City. Concessionaire shall cooperate to provide such information as the City may reasonably deem to be necessary to assess the risk bearing capacity of the Concessionaire to sustain such deductible or S.I.R. The cost of any claim falling within a deductible or S.I.R. shall be the responsibility of Concessionaire. If a deductible or S.I.R. for CGL or equivalent insurance is not "fronted" by an insurer but is funded and/or administered by Concessionaire or a contracted third party claims administrator, Concessionaire agrees to defend and indemnify the City to the same extent as the City would be protected as an additional insured for primary and non-contributory limits of liability as required herein by an insurer.

C. **Waiver of Subrogation.** Unless such waiver would void the property insurance coverage to be provided pursuant to this section, the City and Concessionaire waive all subrogation rights each may have against the other, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Monorail System, except such rights as they have to proceeds of such insurance held by the City or the Concessionaire or both as fiduciary. This waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, whether or not the person or entity paid the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged.

D. **Evidence of Insurance.** On or before 12:01 AM on January 1, 2015, and thereafter not later than the last business day prior to the expiration date of each such policy, the following documents must be delivered to City at its notice address as evidence of the insurance coverage required to be maintained by Concessionaire:

1. Certification of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein; and

2. A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements;

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under Section XXVII.C hereof, then the City shall be paid the portion of the insurance proceeds that is commensurate with the direct physical damage subject to the limit of insurance. Such payment shall be made to the City within seven (7) days after receipt by the Concessionaire of the insurance proceeds or the effective date of termination, whichever is later.

c. The following requirements pertain to the property insured under Clauses A. and B. above:

i. Coverage should be provided for business interruption and extra expense in amount not less than the estimated annual revenue less expenses and charges that would not continue.

ii. Coverage should be provided on a replacement cost new basis.

iii. No coinsurance shall apply to the coverage procured under Clauses A. and B. above, and Clause C.1).

iv. The deductible for all other losses under Clause A above shall not exceed $10,000, and the deductible for all other losses under Clause B above shall not exceed $25,000.

6. Pollution Legal Liability is required if the Concessionaire will be using or storing amounts and types of hazardous materials or regulated substances, such as fuel, beyond what is normally required for Monorail System operation. It is acceptable to add ISO endorsement CG 24 15 Limited Pollution Liability Extension or its equivalent to the CGL policy or obtain a separate pollution legal liability policy.

7. In the event that the City and the Concessionaire mutually agree and deem insurance to be inadequate to protect Concessionaire and the City, Concessionaire shall increase coverages and/or liability limits as jointly deemed reasonably adequate within sixty (60) days of agreement without further change to this Agreement. In the event that the City and the Concessionaire do not agree about how much insurance coverage is adequate to protect the Concessionaire and the City, the City may require Concessionaire to increase coverages and/or liability limits and, if the cost of such increased insurance coverage has a material adverse impact on the Monorail System Net Operating Income, the parties may renegotiate the financial terms of this Agreement and amend the Agreement to address the adverse impact created by the City's required coverage increase.

B. **General Requirements for Concessionaire's Insurance**.

1. The CGL insurance and Excess and/or Umbrella liability insurance shall include "The City of Seattle, its officers, officials, employees, agents and volunteers" as additional insureds. Concessionaire's insurance shall be primary and non-contributory to any insurance maintained by or available to the City. The term "insurance" in this paragraph shall include insurance, self-insurance (whether funded or unfunded), alternative risk transfer techniques, capital market solutions or any other form of risk financing.

2. Coverage shall not be cancelled without forty-five (45) day written notice of

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The limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by Concessionaire, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by Concessionaire as respects this Agreement, nor (2) construed as limiting the liability of any of Concessionaire's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

2. Automobile Liability insurance at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased or hired vehicles as applicable, with a minimum limit of $1,000,000 each accident for bodily injury and property damage.

3. Workers' Compensation insurance securing Concessionaire's liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington.

4. Umbrella or Excess Liability insurance if and as necessary to maintain total CGL insurance limits of $20,000,000 Each Occurrence and $25,000,000 General Aggregate and be no less broad than coverages described above.

5. Property Insurance. The procurement of property insurance shall be the responsibility of the Concessionaire. Coverage should be provided up to mutually agreed limits as follows:

a. Concessionaire's Business Personal Property. Coverage should be provided for Concessionaire's business personal property including, but not limited to, leasehold improvements, machinery, equipment, fixtures and inventory. Such property shall be covered for all risks of direct physical loss or damage and machinery breakdown in an amount not less than the total 100% value of the property on a replacement cost new basis. Coverage shall be written on a policy form not less broad than the insurance industry standard "Causes of Loss – Special Form" (ISO Form CP 1030 or equivalent).

b. Monorail System and Associated Property. Coverage should be provided for the Monorail System and associated property, including, but not limited to stations, cars, track, rail, support system, equipment, controls, ancillary buildings, storage areas, and other improvements. Such property shall be covered for all risks of direct physical loss or damage, machinery breakdown, upset, collision and overturn, in an amount not less than the total 100% value of the property on a replacement cost new basis. Coverage shall be written on an insurer policy form or manuscript policy form not less broad than the insurance industry standard "Causes of Loss – Special Form" (ISO Form CP 1030 or equivalent). This coverage shall be considered primary and non-contributory to any coverage that may be procured by the City. The City shall be a named as a named insured. Westlake Center Associates shall be named as an additional insured if such entity requires such action.

i. All losses shall be adjusted jointly by the Concessionaire and the City. Any loss payable under such insurance above shall be paid to the Concessionaire and the City for application to the cost of rebuilding, repairing, replacing or restoring the Monorail System; provided, that in the event the Concessionaire elects to exercise its termination right

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D. **Promotions, Advertising & Events.** Erect, display and remove promotional exhibits, advertising and materials and permit special events on the Seattle Center grounds and in or at any or every building and facility thereof including but not limited to the common areas of the Armory Building;

E. **Rules & Regulations.** Establish, from time to time, reasonable rules and regulations regarding the use and occupancy of any area of Seattle Center;

F. **Hours of Operation.** Determine the days and hours that the Seattle Center and the various business operations therein will be open to the public, provided that such determination will not restrict reasonable access to the Monorail Platform or Seattle Center grounds during the Monorail's hours of operation, including the Minimum Revenue Service Hours under Section XI B.; and

G. **Other Businesses, Activities, & Operations.** Change the size, number, type and identity of other businesses, activities and operations at Seattle Center; and authorize other lessees, licensees, and the sponsors of special events at Seattle Center, directly or indirectly, to offer for sale food and beverages, and for sale or rent any merchandise and services.

XIX. INSURANCE REQUIREMENTS

A. **The Concessionaire's Insurance Coverages and Limits.** Concessionaire shall, as an Operating Expense, maintain in full force and effect the following minimum limits and types of insurance throughout the entire Term:

1. Commercial General Liability (CGL) written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability:

$1,000,000 per Occurrence
$2,000,000 General Aggregate
$2,000,000 Products/Completed Operations Aggregate
$1,000,000 Personal/Advertising Injury Liability
$1,000,000 Damage to Premises Rented to You
Employers Liability / Washington Stop
$1,000,000 Each Accident / Each Disease / Policy Limit

Alternatively, may be evidenced as Employer's Liability insurance under Part B of a Workers Compensation insurance policy.

Coverage shall include: Premises and Operations (including for the Monorail System); Broad Form Property Damage (Including Completed Operations); Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract); Personal Injury and Advertising Liability; Fire Damage Legal; Per Location Aggregate CG2504; Independent Contractors; Severability of Interest Clause; Waiver of Subrogation endorsement in favor of Owner as required by contract; General Aggregate Limits of Insurance shall apply separately; "Claims Made" and "Modified Occurrence" policy forms are not acceptable.

Monorail System due to its environmental condition as the result of the Concessionaire's violation of the terms of this Agreement (even if such loss of revenue occurs after the expiration or earlier termination of this Agreement).

G. **Concessionaire's Environmental Indemnification Obligation.** In addition to all other indemnities provided in this Agreement, the Concessionaire shall indemnify, defend and hold the City free and harmless from any and all third-party claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation any required cleanup and other remedial or removal action costs (including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation) (collectively, "Claims"), to the extent such Claims result from the Concessionaire's use, release or disposal, of any Hazardous Substance during the term of this Agreement, or the migration of any Hazardous Substance released by the Concessionaire, its agents or employees during the term of this Agreement from the Monorail System to other properties or into the surrounding environment, whether (i) made, commenced or incurred during the Term of this Agreement, or (ii) made, commenced or incurred after the expiration or termination of this Agreement if resulting from the Concessionaire's, or its employees, agents, contractors, licensees, or invitee's acts, omissions, release of any Hazardous Substance, or breach of this Section XVII during the Term. Nothing contained in this Section XVII shall require the Concessionaire to indemnify City for any such Claims resulting from the presence of Hazardous Substances that have come to be located on, under or around the Monorail System areas or in the soil or ground water as a result of the use, storage, release or disposal by persons other than the Concessionaire, its agents, employees, or other persons under the control of the Concessionaire, unless the Concessionaire exacerbates or contributes to the migration or continued release of such Hazardous Substances in violation of applicable Environmental Laws.

H. **Rights Reserved.** Notwithstanding any other terms in this agreement, the City reserves all rights, claims, causes of action and defenses established under any Environmental Law, including but not limited to the Washington State Model Toxics Control Act and the Federal Comprehensive Environmental Response, Cleanup and Liability Act.

I. **Survival of Environmental Obligations.** The provisions of this Section XVII shall survive the expiration or earlier termination of this Agreement.

XVIII. CITY'S CONTROL OF BUILDINGS, GROUNDS AND ACTIVITIES

Notwithstanding any other provision of this Agreement the City, without liability of any kind, may:

A. **Physical Appearance.** Increase, reduce or change, in any manner the number, appearance, dimensions, and location of any Seattle Center walkway, landscaping, parking, service area, or building (including the Armory) as desired by the City;

B. **Traffic & Parking Regulation.** Regulate all traffic within and adjacent to the Seattle Center; and restrict or prohibit vehicle access and parking on Seattle Center grounds;

C. **Admission Charges.** Impose a temporary reasonable charge for admission to the Seattle Center and any of the facilities therein, including parking facilities for specific events;

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or air samples. The City will make its consultants available to Concessionaire so that the Concessionaire may, at its discretion and expense, arrange to procure and preserve split samples of any materials obtained from any testing or inspection; and the City will furnish Concessionaire and its consultants with access to any environmental reports obtained from the testing or inspection. Except as provided herein, the Concessionaire shall not conduct or permit others to conduct environmental testing in the Monorail System areas without obtaining the Director's approval. The Concessionaire shall promptly inform the Director of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the premises whenever the same becomes known to the Concessionaire, and the Concessionaire shall provide a copy of each of the same to the Director immediately following Concessionaire's receipt of the same.

D. **Concessionaire's Obligation to Remove Hazardous Substances.** Upon the expiration or termination of this Agreement, in addition to all other requirements under this Agreement, the Concessionaire shall remove any Hazardous Substance stored or released by the Concessionaire or its agents or employees in or around the Monorail System areas during the Term, and shall dispose of such Hazardous Substances in compliance with all applicable Environmental Laws. The Concessionaire is responsible for removal or remediation of any Hazardous Substances that the Concessionaire released during the Term even if such Hazardous Substances have migrated off of, or come to be located off of the Monorail System Areas. The Concessionaire shall provide copies to the City of all required paperwork related to the characterization, transportation and disposal of any Hazardous Substances from the Monorail System under this section within thirty (30) days after disposal of such Hazardous Substances.

E. **Concessionaire's Obligations upon Violation of Environmental Standards; City's Remedial Rights.** If Concessionaire violates any of the terms of this Section XVII concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, the Concessionaire shall promptly take such action as is necessary to mitigate and correct the violation. If the Concessionaire does not act in a prudent and prompt manner respecting a violation of the terms of this Section XVII after ten (10) days' notice from the City, the City reserves the right, but not the obligation, to take such action as the Director deems necessary to ensure compliance or to mitigate the violation, including but not limited to entering the exclusive use areas, as the Director deems necessary. If the City has reasonable belief that the Concessionaire's actions or inactions present an immediate risk to public health, safety or the environment, the City reserves the right, but not the obligation, to take corrective or mitigating action as the Director deems necessary, including but not limited to entering the exclusive use areas; and, except in an emergency, the City will give Concessionaire reasonable notice of its intention to take such action. All reasonable and actual costs and expenses incurred by the City in connection with any such actions shall become immediately due and payable by the Concessionaire upon presentation of an invoice therefore.

F. **Additional City Remedies for the Concessionaire's Violation of Environmental Standards.** No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the City shall be entitled to full reimbursement from the Concessionaire whenever the City incurs reasonable costs to the extent such reasonable costs result from the Concessionaire's violation of the terms of this Section XVII, including, but not limited to, remedial action costs, fines, penalties assessed directly against the City, and loss of revenues resulting from an inability to allow other persons or entities to use or occupy the

building or from any other place or for interference with light, view, or access caused by any operations by or for any governmental or quasi-governmental entity in the construction or repair of any public utility, but the City shall use its best efforts to remedy any such failure or interruption over which the City has control as quickly as practical. The Concessionaire shall not install any equipment that will exceed or overload the capacity of any utility facility. If any equipment installed by the Concessionaire requires additional utility facilities, the same shall be installed at no expense to the City, and only in accordance with, plans and specifications subject to the approval of the Director.

XVII. ENVIRONMENTAL STANDARDS

A. **Definitions.** As used in this Agreement, "Environmental Law" means any environmentally related local, state or federal law or regulation, ordinance or order as now or hereafter amended, including but not limited to: the Federal Clean Air Act; the Federal Clean Water Act; the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the Federal Hazardous Materials Transportation Control Act of 1980; the Federal Waste Management Recovery and Recycling Act; the Federal Toxic Substances Control Act; the Washington Hazardous Waste Management Act; Washington Model Toxics Control Act; the Washington Water Pollution Control Act; the Washington Underground Petroleum Storage Tanks Act; the Washington Industrial Safety and Health Act; the Washington Worker and Community Right to Know Act; the Washington Oil and Hazardous Substance Spill Prevention and Response Act; and any regulations developed under the authority of the above laws from time to time. As used in this Agreement, "Hazardous Substance" means any substance designated as, or containing any component designated as hazardous, toxic, or harmful under any Environmental Law.

B. **Concessionaire's General Obligations.** The Concessionaire shall not use any portion of the Monorail Annex, Westlake Center Station, Seattle Center Station, or any other area designated for the Concessionaire's use under this Agreement to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process Hazardous Substances, with the exception of Hazardous Substances necessary and customary for the operation and maintenance of the Monorail System (*e.g.*, solvents and petrochemicals). The Concessionaire shall store, handle, use and dispose of all Hazardous Substances in compliance with all applicable Environmental Laws and standard safety guidelines, such as customary office and cleaning supplies in reasonable, normal quantities handled in compliance with applicable law and safety guidelines and Material Safety Data Sheets. The Concessionaire shall promptly provide the Director with any correspondence the Concessionaire receives from, or provides to, any governmental unit or agency in connection with the Concessionaire's handling of any Hazardous Substance or the presence, or possible presence, of any Hazardous Substance in, on, or around the areas designated for Concessionaire's use under this Agreement.

C. **Environmental Testing.** Upon reasonable notice (not less than one business day) to the Concessionaire, the City shall have access to all Monorail System areas, including areas designated for the Concessionaire's exclusive use, for the purpose of conducting environmental inspections, including but not limited to collection and analyses of soil, groundwater

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i. Any fees paid to Concessionaire by subconcessionaires for activities or promotions conducted within the Monorail System.

j. Any fees paid to Concessionaire by licensees if the subject matter of the license pertains to the operation of the Monorail System or is derived from the Concessionaire's marketing activities under the agreement.

All non-fare revenue shall be included in Concessionaire's Total Revenue.

J. **Sponsorship Coordination with Seattle Center.** The Concessionaire will work cooperatively with Seattle Center in site enhancements and/or display of promotional materials supplied by Seattle Center to promote Seattle Center events and programs and in support of Seattle Center advertising and sponsorship, provided these are consistent with the mutually developed Monorail Strategic Marketing Plan and do not unreasonably interfere with Monorail operations, advertising, sponsorship or concession programs of the Concessionaire which have been previously approved by the Director. The City reserves the right to enter into, or grant a third party the right to enter into, naming rights, advertising or sponsorship agreements, including granting exclusive representation, applicable to any Seattle Center common area or Seattle Center facility, including the Monorail System such that the City, Concessionaire, or other Seattle Center tenants will be limited or prohibited from entering into new agreements or renewing advertising or sponsorship agreements with competing sponsors. Concessionaire shall not violate or interfere with any exclusivity right granted to a sponsor as of the effective date of this Agreement.

K. **Restrictions on the Concessionaire's Marketing Activities.** The Concessionaire shall not permit any promotion or advertisement that is inappropriate to the family orientation of Seattle Center, as determined by the Director, or that encourages the purchase or consumption of any tobacco product or alcoholic beverage or other product regulated by the Washington State Liquor Control Board, or that conflicts with an existing Seattle Center promotional agreement or marketing plan. In the event any such service or commodity, other than that specifically authorized by the Director, is offered for sale, promoted or advertised, the Concessionaire shall immediately cease and desist from any further sale, promotion or advertisement upon receipt of notice from the Director.

XVI. UTILITIES

The Concessionaire shall pay, as an Operating Expense, all charges for water, light, heat, gasoline, garbage collection, sewer, telephone service and all other utilities provided to the Monorail System; provided that if such utility services are furnished to the Monorail System and adjacent City property on a consolidated basis and are not separately metered, the Concessionaire shall reimburse the City for a pro rata share of the consolidated charge at the rate paid by the City in an amount to be reasonably determined by the Director. The Concessionaire shall pay all charges for utility hookups, connections and installations including those for telephone and high-speed internet service. The City shall not be liable for any failure or interruption of water, gas or electrical supply, or for loss of property, or for injury or damage to person or property resulting from steam, gas, electricity, water, rain or snow that may leak or flow from or into any part of any Seattle Center building, or from the pipes, appliances or plumbing of a

the hawking of concession food, beverages, or merchandise, on the Seattle Center Platform and the Monorail Trains. All income to the Concessionaire through any vending and hawking shall be included in Concessionaire's Total Revenue.

2. The location of points of sale, methods of sale, and prices for tickets sold or business transacted will be subject to the Approval of the Seattle Center Director.

I. **Non-Fare Revenue.**

1. Exclusive Right. The Concessionaire shall have the exclusive right, subject to the Director's Approval, to pursue non-fare revenue sources on the Monorail Trains and the Restricted Portion of the Seattle Center Platform. However, on the Restricted Portion of the Seattle Center Platform, the City retains the right to place advertising, sponsorship and marketing materials and implement programs in mutually agreeable locations that do not impact train operations. All income to the Concessionaire or to the City from advertising and sponsorship from use of the Monorail trains or the Restricted Portion of the Seattle Center Platform shall be included in Concessionaire's Total Revenue.

2. Non-Exclusive Right. The Concessionaire shall have the non-exclusive right, subject to the Director's Approval, and consistent with the Monorail Strategic Marketing Plan, to pursue non-fare revenues sources identified in Section XV.I.3. on those portions of the Monorail System to which the Concessionaire has not been granted exclusive rights, per Section XV.H and XV.I.1.

3. Non-Fare Revenue Sources May Include:

a. Direct sales or concessions (limitations exist on the City's ability to merchandise the Westlake Center station) such as sale of Monorail memorabilia, postcards, buttons, literature, T-shirts, newspapers, or coffee.

b. Advertising and sponsorship.

c. Promotional dollars or exchange of services, supplies, equipment or parts for promotional benefit.

d. A marketing program targeted to tour group promoters or other distribution channels to reach the tourist market.

e. Use of the Monorail by film companies in exchange for publicity and/or site use fees.

f. After hours rental of the Monorail.

g. Promotions with Seattle Center event clients, resident organizations, tenants, the Space Needle, Pacific Science Center, and Westlake Center.

h. Promotions with non-profit groups.

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Section XV.C.6, and signage on the Seattle Center Station exterior. In the portions of the Seattle Center Station where the Concessionaire does not have exclusive use, the Director retains the right to add such other signage as the Director may reasonably determine consistent with the Monorail Strategic Marketing Program. In addition, all Westlake Center Station signage requires Seattle Center approval. Removal and replacement of and/or modification to any of these signs will be subject to Seattle Center Approval.

2. The Concessionaire will be responsible for all Monorail System signage (including rate, directional and informational signage, and system signage). The Concessionaire will be responsible for any signage required by the FTA. A copy of the then current individual fares will be displayed on the Monorail in such a manner so as to be easily viewed by the public whenever the Monorail is open for business. Each party shall be responsible for updating and maintaining their advertising, sponsorship and promotional signage on the Monorail System.

3. Seattle Center retains the right to place and maintain signage, advertising and sponsorship on all Monorail columns in accordance with the Land Use and Traffic codes of the City of Seattle. All revenue from signage, advertising and sponsorship on the Monorail's columns from City use will be retained by the City. Subject to the Director's Approval and Land Use and Traffic Codes, the Concessionaire may utilize the Monorail columns for advertising, sponsorship and signage and all revenue from such Concessionaire use shall be included in Concessionaire's Total Revenue.

4. All graphic designs, text and images of any type or nature to be viewed by the general public and placed upon or affixed to the Monorail System, or used on materials in connection with the Monorail System including but not limited to printed materials, advertising, sponsorship and other promotional materials and the location thereof, will be subject to the Approval of the Seattle Center Director. Approval for designs, text and images on social networking platforms such as Facebook, Twitter, Flickr and Instagram may be granted on a platform basis.

5. All signs, advertisements, and verbal messaging must be consistent with current Seattle Center messaging.

6. The City grants the Concessionaire a non-exclusive, royalty-free license to use the Monorail logo for the term of this Agreement for the purpose of marketing activities conducted in compliance with this Agreement.

G. **Portable Stands.** The City may permit temporary or portable promotional stands to be located from time to time on the Monorail Platform. The Concessionaire will furnish, as an operating expense, all labor, equipment and supplies for the moving, setting up and dismantling of temporary or portable stands in such locations as are Approved by the Director and the City's Fire Department. The number and location of temporary or portable stands will be subject to mutual agreement of the Director and the Concessionaire.

H. **Vending and Hawking.**

1. To the extent that such activities are given Approval by the Director, the Concessionaire shall have the exclusive right to use vending machines and to engage in or permit

5. Provide campus electronic reader board space as outlined in the Strategic Marketing Program to promote the Monorail. The Concessionaire will provide the City with written reader board copy thirty (30) days in advance of posting. All reader board copy will be subject to City approval and will be posted at City expense.

6. The digital monitors on the Seattle Center Monorail platform shall be maintained in good repair and appearance, and/or removed by the City if necessary, at City expense. The City shall provide and update the digital monitor programming, which shall be augmented as outlined in the Strategic Marketing Program, and which at a minimum will provide the Concessionaire an opportunity to promote services, hours and special events on the monitors. All content must be approved by the Seattle Center.

7. Subject to event priorities and contractual event requirements, promote the Monorail System on the electronic scoreboard of the KeyArena at least once during events when the scoreboard is in use.

D. **Free or Discounted Passenger Trips**.

1. The Concessionaire shall provide free passenger trips requested by the Director for:

a. Uniformed Seattle Police Department employees;

b. Seattle Center Employees in accordance with Seattle Center policies and union contracts, with a Seattle Center ID card; and

c. No more than two hundred (200) round trip uses per calendar year by government officials, volunteers or employees of the City for official City business.

2. The Director may annually identify up to fifty-five hundred (5,500) free or discounted one-way Monorail System passenger trips in conjunction with Seattle Center promotions and events.

3. The Concessionaire shall be entitled to up to fifty-five hundred (5,500) free or discounted one-way Monorail System passenger trips annually in connection with special promotions or events and unlimited trips for employees, subconcessionaires or subconcessionaire employees while in the performance of their respective work duties.

E. **Media and Public Relations.** The Concessionaire shall handle its own media and public relations regarding maintenance and operation of the Monorail System. However, the Seattle Center shall be informed within twenty-four (24) hours of any media inquiries and immediately of any media issues of an emergency nature such as accidents, safety-related issues, or misappropriation of funds.

F. **Signage and Graphics.**

1. At the Seattle Center Station, Seattle Center retains the right to have site directories identifying some or all campus constituents, digital monitors on the Platform per

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efforts;

3. Determine the use of the Irrevocable Marketing Account;

4. Coordinate potential marketing and sponsorship opportunities for both Seattle Center and the Monorail System and their anticipated impact on the goals of the Strategic Marketing Program; and

5. Make recommendations to the Director and General Manager regarding scheduling windows and operational impacts of prospective opportunities and upcoming program plans, including advertising, sponsorship and promotional opportunities, for the Monorail System and for Seattle Center specific plans that would impact the Monorail System.

C. **City's Marketing Responsibilities.** To assist the Concessionaire in promoting the Monorail System, and where recommended by the Monorail Strategic Marketing Program, the City will feature Monorail information in the Seattle Center Marketing program. The City shall:

1. Provide opportunities to feature the Monorail in City marketing programs which may include:

a. marketing and communications ads and inserts in print advertising materials and other advertising mediums;

b. campus posters and brochures

c. e-newsletters (produced by Seattle Center)

d. seattlecenter.com, keyarena.com, mccawhall.com homepages

e. Seattle Center iPhone and Droid applications, or such other alternatives as may be available as technology develops

f. press materials

g. Event Sales materials

h. Events and Operations Calendars

2. When requested by members of the public, provide Monorail information from the Seattle Center's Customer Service Desk regarding rates and hours of operation (to walk-in customers as well as telephone inquiries).

3. Include Monorail information in Seattle Center's press materials.

4. Include Monorail information in promotional materials for major public programs produced by Seattle Center.

twenty-four (24) hours. Items which can be procured readily from commercial vendors (such as cable, switches, relays and lights) need not be kept in large quantities, so long as immediate emergency requirements can be met. A reasonable inventory of spare parts should include:

1. Electrical and mechanical components for propulsion, braking, doors, lights, air comfort, and other auxiliary systems
2. Wheels and tires
3. Power supplies
4. Batteries
5. Current collectors
6. Distribution system including brackets, hardware, fittings, power rail, insulators, feeder wire, bonding cable, expansion joints, midpoint anchor clamps, and rail butt splices. Spare parts needed for the Seattle Center and Westlake substations shall include but not be limited to circuit breakers, circuit breaker contacts, switches, diodes, instruments, relays, timers, fuses, annunciator lights and wiring.

C. **Equipment.** Any new or replacement equipment that the Concessionaire purchases as an Operating Expense shall be deemed City property and relinquished to the City at the expiration or earlier termination of the Term.

XV. MARKETING PLAN

A. **Cooperation and Coordination.** The Concessionaire and the City hereby acknowledge that successful promotion and marketing of the Monorail System requires the parties have aligned priorities and objectives, coordination, and mutual cooperation. The parties will work in good faith to build a common vision for the Monorail System and develop a work plan to pursue this vision. To this end, the Concessionaire and the City agree to ongoing, open and timely communication of prospective opportunities and upcoming program plans.

B. **Joint Marketing Plan.** The Concessionaire and City shall jointly develop, update, and implement a Monorail Strategic Marketing Program that shall strive to: i) optimize the gross receipts and net operating income from Monorail System operations, ii) grow opportunities and market demand for revenue enhancement such as advertising, merchandising, sponsorships, and special events, iii) build the image of the Monorail as a valuable public icon, and iv) align with the Seattle Center Strategic Marketing Plan, incorporated by reference and as amended from time to time in the City's discretion.

City and Concessionaire marketing staff shall meet quarterly to:

1. Develop and implement the Monorail Strategic Marketing Program in alignment with the Seattle Center Strategic Marketing Plan;

2. Look for ways to leverage and complement each organization's marketing

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and coordination with the Seattle Center related to the project;

c. Salaries and wages, including payroll taxes and benefits, of the Concessionaire's employees working on the approved project (including the Maintenance Manager, but not the General Manager);

d. The actual direct cost of parts, supplies and inventory items used, together with transportation charges and sales or use taxes thereon if procured by the Concessionaire;

e. The costs of independent vendors or professionals, together with sales or use tax thereon, who provide goods and services in connection with the CMMP;

f. Equipment rented or purchased by the Concessionaire, together with sales or use tax thereon, used in connection with CMMP projects and the costs thereof; and

g. Facility Repairs and upgrades

7. Improvements, Additions, and Alterations Become City Property. All improvements, additions, and alterations made to the Monorail System shall become the property of the City upon completion.

8. Concessionaire's and City's CMMP Expenditures. The Concessionaire shall document all CMMP Expenses and preserve all records of development, alteration, improvement, and construction costs during the Term of this Agreement and make the records available to the Director for audit.

XIV. SPARE PARTS, SUPPLIES AND EQUIPMENT

A beginning inventory of spare parts and supplies provided to the Concessionaire is identified in **Exhibit C.** This beginning inventory of parts and supplies is generally suitable for the ongoing operation of the Monorail System in its current configuration. Consistent with City accounting requirements, the Concessionaire shall manage and update this inventory annually, or as requested by the City, to provide for the ongoing operation of the Monorail System and at the end of the Term shall relinquish to the City an ending inventory with the same general level of utility as is reasonably practical. All system records, including any software, parts, and supplies are the property of the City and shall be relinquished to the City at the termination or expiration of this Agreement.

A. **Itemized inventory.** The Concessionaire will maintain an itemized inventory of critical Monorail System spare parts and supplies. All spare parts and supplies purchased shall be an Operating Expense, be the property of the City, and be relinquished to the City at the termination of this Agreement.

B. **Minimum Train Spare Parts.** To assure maximum train availability and to accommodate long lead times required to receive the following parts, a reasonable supply of spare parts must be acquired, stored, and replenished as necessary to be available within

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2. Major Maintenance, Capital Improvements, Alterations. The Concessionaire shall not perform or contract for any Major Maintenance, Capital Improvement, or substantial alteration to the Monorail System, regardless of the funding source, without the Approval of the Director, which may be granted, withheld, or conditioned in the Director's sole discretion. The Concessionaire shall submit to the Director all contract documents, schematic designs, design development drawings, and final working drawings and specifications for such work. The Concessionaire shall not begin any Major Maintenance or Capital Improvement or construction of any improvement, addition, or alteration of the Monorail System until after the Director has approved all applicable contract documents, plans, specifications, and drawings. All work carried out by Concessionaire shall be completed in compliance with this Agreement and with the terms of a Project Agreement (defined below) executed by the parties.

3. Project Agreements. Prior to beginning any CMMP Plan project, whether carried out by the Concessionaire or otherwise, the Director and the Concessionaire shall enter into a project specific construction agreement ("Project Agreement") that details the specific project scope, schedule, budget, and contracting method. If the Concessionaire will carry out the project, the Project Agreement shall also include all applicable state, federal and funding source requirements, and insurance provisions. Unless otherwise specified in the Project Agreement, the City shall own all improvements and alterations to the Monorail System. Each party hereby agrees to provide the other technical support and project coordination in support of CMMP projects performed by or managed by the other, and the Concessionaire agrees to reimburse the City for the same as a CMMP Expense, subject to a Project Agreement.

4. Permits, ADA. All CMMP Plan projects shall comply with all permitting and legal requirements, including but not limited to compliance with applicable building codes and with the Americans with Disabilities Act (ADA) and the requirements of the City of Seattle's ADA Compliance Team. The Concessionaire expressly acknowledges that the provisions of the ADA may exceed requirements contained in building codes and other regulations and that in such instances, the ADA requirements shall control.

5. Work Consistent With Approved Plans and Specifications. No Capital Improvement, Major Maintenance, or other improvement, alteration, or addition shall be constructed, placed, or erected except in accordance with final working plans and specifications to which the Director has given approval. Immediately following the Concessionaire's receipt of notice by the City of any variation between the approved plans and specifications and any improvement, addition, or alteration in, on, or being made to the Monorail System, the Concessionaire shall either desist from occupation, use, and operation of such improvement, addition, or alteration and remove it from the Monorail System or make it consistent with such approved plans and specifications.

6. CMMP Expenses. All CMMP Expenses shall be recorded separately from Operating Expenses. Any project funded all or partially with federal funds must meet all federal requirements. The CMMP Expenses that may be included in a Project Agreement may include:

a. Project planning and programming, including costs of developing and updating the CMMP;

b. Administration, record keeping, project related reporting requirements,

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2. Initial CMMP Plan. The CMMP will be prepared and maintained by the Concessionaire with input from the City and shall be mutually agreed to by both parties. The first five-year CMMP plan shall be prepared coincident with the execution of this Agreement and shall address the period January 1, 2015 through December 31, 2019. Annual approval of the CMMP Plan updates will provide the basis for City and Concessionaire to enter into Project Agreements which shall identify the budget, schedule and contracting methods for specific projects.

3. Criteria for Projects. Projects proposed for inclusion in the CMMP Plan shall be evaluated in relation to each of the following criterion:

a. Improves safety or security for riders and/or staff, and/or the public;

b. Enhances reliability;

c. Improves the appearance of the Monorail trains and/or stations

d. Improves efficiency of maintenance or operations;

e. Improves the long-term maintainability of the Monorail System;

f. Enhances the number of riders and/or increases revenue;

g. Improves the rider experience;

h. Reduces the cost of operations or maintenance;

i. Enhances revenue generation.

4. Annual Modifications and Plan Approval. On or before October 15th of each Contract Year, the Concessionaire shall propose and prepare updates and modifications to the CMMP Plan and submit them to the Director for review and Approval. It is the intent of the parties that the CMMP Plan shall be dynamic, be the result of a cooperative effort, and be consistent with the Monorail System Maintenance philosophy as described in Section XII. At the election of either party, review of the Plan may be aided by the expertise of a mutually selected independent engineer or consultant. The cost of utilizing such expert shall be a CMMP Expense. The existence of the CMMP Plan shall in no way limit the City's ability to perform capital improvements to the Monorail System which do not use funds from the Irrevocable Renewal Account. The CMMP Plan, when approved, shall identify the estimated cost, proposed funding source, the anticipated project schedule, and the proposed contracting method for each CMMP Plan project.

C. **CMMP Plan Projects.**

1. CMMP Plan Project Implementation. The Concessionaire will perform or manage and contract for CMMP Plan projects if mutually determined in a Project Agreement.

4. Maintenance Standards for City Services. The maintenance services Seattle Center provides shall be consistent with the standards provided to its other public facilities such as the Armory. The Concessionaire shall be responsible for identifying all repairs and services required for the Monorail System and notifying the Director in writing of any item which it believes are the City's responsibility. It is the Concessionaire's responsibility to notify the Director regarding any problems associated with the quality or timeliness of services provided by Seattle Center staff.

H. **Reimbursement for Services Provided by the City.** The Concessionaire shall accrue five thousand dollars ($5,000) per month, plus annual CPI-U adjustments in an amount equal to the percentage increase in the CPI-U for the immediately preceding calendar year, into a separate line item account, the "City Services Fund". This fund shall be used to reimburse the City for costs incurred by Seattle Center for graffiti removal or maintenance work performed on the Monorail System or, if City determines and has notified the Concessionaire in writing that the City will authorize Concessionaire to perform maintenance work which is the City's right, with the Director's Approval, Concessionaire may undertake the work and charge the actual Concessionaire's costs to the City Services Fund per Section XII.G. The fund may also be used for incremental security services beyond those provided for the rest of the resident organizations and public spaces at the Seattle Center and Approved by the Director in his sole discretion. The City will be reimbursed at the current Seattle Center Work Order Billing Rate for all hours of service provided by City personnel. At the end of each calendar year, any unspent funds remaining in the City Services Fund shall be remitted to the City.

XIII. CAPITAL AND MAJOR MAINTENANCE PROGRAM

A. Requirements for Capital and Major Maintenance Program Plan.

1. Capital and Major Maintenance Program Plan Purpose. The Concessionaire and City shall jointly prepare a rolling five-year (5) Capital and Major Maintenance Program Plan (CMMP Plan). The CMMP Plan will identify all planned Capital Improvement and Major Maintenance projects for the subsequent five years, whether anticipated to be funded by the Irrevocable Renewal Account, by a federal grant, by some other funding source, or any combination of sources. The CMMP Plan's purpose is to identify and prioritize current and future Capital Improvement and Major Maintenance needs of the Monorail System in a systematic manner.

B. CMMP Plan Overview and Requirements.

1. CMMP Plan Content. The CMMP Plan will be a rolling five-year plan addressing the required and anticipated capital improvement and major maintenance needs of the Monorail System and their anticipated funding sources. These projects shall include modifications, repairs and improvements to the Monorail System which are requested by the City or the Concessionaire to enhance the function and operation of the Monorail System, to add to the value of or extend the useful life of the Monorail System, improve the attractiveness of the Monorail System to users and the general public, and/or improve Monorail System operational, mechanical or financial performance.

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provide additional personnel and specialized equipment (e.g., service trucks, heavy equipment, lighting units, etc.) that may be needed to respond to major incidents. All Emergency Maintenance shall be included in Operating Expenses unless the Director and the Concessionaire mutually agree otherwise.

F. **Subconcessionaire Activities.** Concessionaire may subcontract for Ordinary Maintenance work performed requiring infrequently needed skills, specialized machinery and/or large production crews. Whether the Concessionaire chooses to perform the work with its staff or with a subcontractor, the work shall be the responsibility of the Concessionaire.

G. **Maintenance of Stations, Shop, Monorail System Annex, Storage Areas, Signage.**

1. Seattle Center Station, Annex and Storage Areas. The City shall be responsible for performing all Seattle Center Station, Shop, and Monorail System Annex maintenance (including mechanical, structural, painting, electrical, and plumbing work), except the Concessionaire shall be responsible for maintenance of the fare collection system, and all equipment, fixtures, and tools associated with Monorail System operation. Examples of equipment and fixtures, which are the responsibility of the Concessionaire, are the Westlake station gates and ramps, the Westlake station equipment electrical system, the Monorail System electrical equipment at both stations, two maintenance vehicles used for guideway repairs, the portable work stands, shelving for parts storage, the air compressor, the lathe and the joist/boom to lift the maintenance vehicles. The Concessionaire shall also be responsible for janitorial maintenance and re-lamping of light fixtures at the Seattle Center Station, shop, Monorail System Annex, and Armory storage area. The cost of maintenance performed by the Concessionaire under this Section shall be an Operating Expense. The maintenance performed by the City under this Section is subject to reimbursement through the City Services Fund.

If the Concessionaire requests that the City perform maintenance services which are the City's responsibility under this section, the City reserves the right, consistent with the City's labor agreements and in the Director's sole discretion, to authorize the Concessionaire to undertake and complete the requested work consistent with Seattle Center maintenance specifications, in which case the Director Approved cost of any such maintenance services may be charged to the City Services Fund.

2. Signage. Maintenance and repairs to all operational, directional, and informational signage at the Westlake Center Station and Seattle Center Station, and Monorail signs on Fifth Avenue shall be the responsibility of the Concessionaire, shall meet Seattle Center Signage Standards, and shall be an Operating Expense.

3. Westlake Center Station. The Concessionaire shall timely pay to Westlake Center the monthly fee as specified in the Westlake Center Operating and Easement Agreement. Proof of payment shall be sent to the City Coordinator at the City's request.

The Concessionaire shall notify Westlake Center Associates, in writing, of any deficiencies in the services it is required to provide. The Concessionaire shall also notify the City's Coordinator in writing regarding any such deficiencies.

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- Inspect and clean interior of gate enclosures, integrity of the gate linear actuators and inspect glass and frames of gates for damage
- Cleaning of cabinets, relays, annunciators, and signal heads
- Cleaning, lubrication and adjustment of gate and ramp operating mechanisms and bearings
- Inspect gear boxes and change gear box oil

f. Semi-Annual
- Motors Insulation Resistance test, inspect traction motor commutator, bearings and brushes
- Ramp inspection, lubrication and extensive cleaning as required
- Inspect and clean interior of gate enclosures
- Inspect and replace filters and oil in Shop air compressor
- Re-lamping of signals
- Clean and check integrity and function of detectors

g. Annual
- Inspect crane and hoist
- Beam and power rail inspection including checking integrity and tightness of all mounting hardware and fittings, checking/cleaning insulators for damage and replacement as necessary, checking integrity and continuity of expansion joints and bonding straps, checking tightness of butt splices and midpoint anchor clamps
- Check power rail wear at points of unusual stress, including splices, sections on curves, locations where the distance from beam surface to contact surface changes rapidly, and hard spots where arcing occurs from contact shoe bounce
- Calibration of shop tools requiring calibration
- Inspection at Seattle Center and Westlake Center substations, including gauge calibrations as required. Inspection will include a functional check be performed on all devices, switches and breakers; cleaning of all devices, buses, breakers, switches, fuse holders, contacts, terminals, batteries (for cleanliness, electrolyte level and state of charge),relays and annunciators
- Cleaning at Seattle Center and Westlake substations of devices, buses, breakers, switches, fuse holders, contacts, terminals, relays and annunciators; transformers and rectifiers; batteries and battery racks; Calibration of all meters and instruments; and check all terminals for tightness

h. Unplanned Ordinary Maintenance tasks are characterized as maintenance that is unplanned but is necessary for maintaining the operation of the Monorail System. All expenses related to unscheduled maintenance and repairs shall be included in Operating Expenses, unless agreed otherwise by the parties.

E. **Emergency Maintenance.** The Concessionaire shall respond to emergency situations in a timely fashion. Outside contractors should be available in "on-call" status to

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b. Weekly
   - Inspect Westlake/Seattle Center Substations to ensure operations within normal electrical and temperature control parameters, and all safety features are operating satisfactorily
   - Tire inspection for defects and satisfactory wear

c. Monthly
   - Inspection of station and train fire extinguishers
   - General inspection of train interior and exterior for signs of damage or deterioration
   - General inspection of train lower compartments for cleanliness, removing any accumulated oil, grease or flammable material that could contribute to a fire
   - Inspection of train doors, adjustment and lubrication of door operators and sensitive edges
   - Train batteries test and fill
   - Inspection of resistor racks for abnormal conditions
   - Inspection of on-train compressors for satisfactory operation
   - Inspection of shop air compressor for satisfactory operation
   - Inspection of the propulsion control electronics, including testing and adjustment of inputs and outputs including visual check/repair of low voltage contacts, rollers and wire
   - Inspection of air and electrical systems
   - Lubrication of brake shafts, guide tire hubs, air spring load arm pivot pin bushings
   - Inspect gates including condition of sensitive edges, tubing, rubber lip seals and wave switches
   - Clean and inspect ramp operating mechanisms for cracked welds, failed parts, and damage

d. Bi-Monthly
   - Inspect forklift for satisfactory operation, including battery check and safety features

e. Quarterly
   - Brake inspection including shoe wear, integrity linkages, actuator proper operation. Lubricate brake S-cam shaft bushings, brake shaft slip joints and U-joints
   - Visually check Bogie alignment
   - Inspect high speed and low speed shafts including lubrication of shaft slip-joints and U-joints
   - Lubricate collector assembly bushings
   - Lubricate car inter-car pins
   - Remove all excess oils/greases on interior of maintenance doors/compartments

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3. Computer-Based Maintenance Information Reporting System. The Concessionaire shall use a computer-based maintenance management system (CMMS) or other software and technology to efficiently collect and synthesize data on Ordinary Maintenance, schedules, purchase orders, inventory, and reports to proactively manage service requests, simplify work order administration, and track/oversee vendors. This system should make it possible to measure actual results and more readily identify existing and potential maintenance problems. The system shall support detailed analysis of Ordinary Maintenance schedules and practices by the Concessionaire management. At the termination of this Agreement, any software and all system data for the Ordinary Maintenance information reporting system shall become the property of the City.

4. Ordinary Maintenance Program. Maintenance tasks fall into two categories: planned and unplanned maintenance.

a. Planned Maintenance. Performed daily, weekly, monthly, quarterly, semi-annual, and annually, and consists primarily of scheduled inspections and repair(s) to ensure an item of equipment is operating correctly to avoid any unscheduled breakdown and downtime.

b. Unplanned Maintenance. Maintenance required to respond to system and/or component failures. These repair activities cannot be scheduled precisely, but resources need to be dedicated to them. Typically, this type of Ordinary Maintenance may be discovered during operations or during the routinely scheduled maintenance inspections.

5. Ordinary Maintenance Tasks. Ordinary Maintenance tasks shall emphasize exchange of system components, rather than repair of components on the trains, to assure maximum availability of trains for Revenue Service wherever practical. Components removed from the trains shall be tested, serviced, repaired, adjusted, and rebuilt as appropriate.

The specific cycles of vehicle Ordinary Maintenance work to be accomplished, determined based on the past history of the system, shall include the following tasks unless modified by the mutual agreement of the parties.

a. Daily

- Test drive each train to ensure satisfactory normal operation to include package control and braking systems (normal and emergency) prior to initiation of passenger service
- Functional test of all train doors, gates, ramps, and signals prior to initiation of passenger service and replacement or repair as necessary for safe and reliable operation
- Functional test of all safety devices, annunciators, switches, and the interlock, and replacement or repair as necessary for safe and reliable operation
- Tire inspection
- Visual inspection and functional test collectors
- Functional and/or visual inspection of all train safety-related items, including but not limited to lights, fire extinguishers, first aid kits and windshield washers/ wipers
- Visual inspection of beam

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8. Adequate spare replacement parts and consumables inventory, including software to track parts in support of Monorail operations;

9. Development of and adherence to an inspection schedule and reliability centered and/or preventive maintenance program, as applicable and represented in the Ordinary Maintenance Program and Plan;

10. Upkeep of system and component maintenance manuals;

11. Upkeep of current system and component drawings; and

12. All-encompassing system maintenance record keeping and reporting.

D. **Elements of Ordinary Maintenance Plan (OMP).** The OMP shall provide a framework for RCM, which provides flexibility to respond to modifications as dictated by inspections. The Plan's purpose is to identify, plan, coordinate, and accomplish the current and future Ordinary Maintenance needs of the Monorail System in an effective and systematic manner. Ordinary Maintenance can be either planned or unplanned. The Concessionaire shall submit the annual OMP to the City Coordinator. It is the intent of the parties that the Plan shall be consistent with the Monorail System maintenance philosophy. An annual update shall include the Concessionaire's modifications or elimination of maintenance elements, their frequency, and/or the type of maintenance.

1. Staffing Plan. The Concessionaire will prepare and implement an Ordinary Maintenance staffing plan that defines the qualifications and experience of maintenance personnel, the number of maintenance personnel and shift coverage for Ordinary Maintenance personnel, and maintenance call-out and emergency procedures.

2. Training for Multiple Tasks. The Concessionaire shall have a comprehensive training program for all Maintenance Technicians, and shall train all Maintenance Technicians to do as many different Ordinary Maintenance tasks as practical. The Concessionaire shall keep detailed records of all training activities, which shall be available for inspection by the Seattle Center at any time. Such training shall provide continuity for vacation relief and shall expedite the effective handling of emergency situations and unscheduled repairs.

Operator training shall include recognition of electrification system defects, particularly improper power system operation or performance. Technicians should be able to identify electrification and power system defects visually, with emphasis on breaks or damage to the conductor rails, bonds, expansion joints, splices, and support brackets.

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XII. ORDINARY MAINTENANCE REQUIREMENTS AND PLAN

A. **Maintenance Philosophy.** The objective of the Ordinary Maintenance Plan (OMP) is to maintain the Monorail System as a safe, reliable, maintainable, cost-effective and attractive transportation link between Seattle Center and the Seattle Downtown core. The Ordinary Maintenance philosophy shall be based on Reliability Centered Maintenance (RCM), which integrates planned preventative maintenance inspections, predictive testing and inspection, repair and proactive maintenance techniques to create a cost-effective maintenance strategy that addresses dominant causes of equipment failure. The OMP will be evaluated on the results achieved, and modified, by mutual agreement of the parties, as necessary to improve the performance of the Monorail System.

B. **Performance Measures.** A key measure of the effectiveness of the OMP is how well it prevents or avoids problems over both the long- and the short-term. Specific performance criteria, which may be modified by mutual agreement of the parties, shall include:

1. Technician hours for Routine Maintenance;

2. Number of "breakdowns" causing service failure;

3. Number of missed trips due to equipment failure;

4. Percent of scheduled Routine Maintenance done on time;

C. **General Ordinary Maintenance Responsibilities.** Ordinary Maintenance for all elements, components, facilities, equipment and infrastructure shall be the responsibility of the Concessionaire. The Concessionaire shall provide all the resources necessary for Ordinary Maintenance of the entire Monorail System, which includes the trains, guideway and support pylons, electrical rooms, train control systems, stations, maintenance and repair equipment as described in Section XII. D. Ordinary Maintenance shall include, but not be limited to:

1. Janitorial service for the entire Monorail System including all property and equipment as well as the Seattle Center Station platforms and the exterior ramp from the Seattle Center grounds that provides access to such platforms.

2. Routine inspections of trains, guideway, traction power systems, and train control systems.

3. Repairs - scheduled and minor unscheduled;

4. Component changeout;

5. Component and system element overhaul;

6. Testing;

7. System safety and assurance.

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personnel safety, and communications when persons are on the guideway. Rules and procedures for maintenance work on the beam shall include, but not be limited to, notification to management, shutdown and lockout procedures for traction electrification power, and fall protection requirements. Other components of the Plans shall include but not be limited to: documentation control; system safety and hazards analyses; system Ordinary Maintenance assurance plan; operator, attendant and maintenance personnel training program; and failure and Emergency Management Plan. The Concessionaire shall implement and update the SSPP and Maintenance Plans (and their regular updates) throughout the Term under this Agreement.

5. Ordinary Maintenance and Operation Inspections. The City may periodically conduct maintenance and operations inspections. The Concessionaire shall immediately correct any problems identified by the Director or Project Manager. The Director may request the Concessionaire to remove an employee or subconcessionaire from working on the Monorail System if the employee or subconcessionaire has not carried out his/her work in a safe manner and in accord with safety rules, regulations and procedures subject to applicable law, and the Concessionaire shall comply with such request if just cause for removal exists.

6. Station Security. The Seattle Center will provide security to the Seattle Center Monorail Station, Monorail Annex and storage areas consistent with the standards provided to its other public facilities and campus. The Concessionaire shall be responsible for identifying any additional security services or equipment necessary to maintain a safe operating and maintenance environment, and shall notify the Director in writing of any additional security services the Concessionaire believes are the City's responsibility. Subject to the Director's Approval, these additional services shall be funded by the City Services Fund identified in Section XII.H.

7. Communications System. The Concessionaire shall have an effective communication system for normal and emergency situations that includes telephones and a working public address system.

H. **Parking.** The Concessionaire shall have the right to park one maintenance vehicle in the exclusive use area adjacent to the maintenance bay and shall be issued four (4) parking permits in a City parking facility within three (3) blocks of Seattle Center without separate charge by the City. Additional parking spaces in City parking facilities for service and staff parking will be available at established City parking rates. No additional parking will be accommodated within the perimeter of Seattle Center. Contractor parking passes will be made available to SMS in accordance with Seattle Center established policies for accommodating contractor work on the Seattle Center campus.

I. **Delivery Access.** Deliveries shall be made to and on the Monorail System prior to 11:00 a.m. daily and in a manner that minimizes congestion and interface with users of the Seattle Center unless otherwise authorized by the Director. Emergency access after 11:00 a.m. may be arranged with the City Coordinator.

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additional reporting requirements and successor reports for WSDOT. These two Plans shall be kept current based on changing rules and continuous improvement action plans. This shall be accomplished through monthly letters to the WSDOT Rail Safety Office. In addition, the Concessionaire shall prepare for annual formal audits by WSDOT of the SSEPP and SSPP. The Concessionaire shall manage the Plans and audits, and provide an annual letter for the Director to sign for certification.

1. Passenger Safety. The Concessionaire shall provide an on-going safety program with the goal of ensuring passenger safety. During the Term, the Concessionaire shall implement procedures for the safe and efficient handling of both normal and emergency conditions. The procedures shall include provisions to enable the safe and timely evacuation of patrons and personnel from all fixed structures and facilities. These provisions shall include but not be limited to those required to safeguard patrons, system and emergency personnel, and the general public anywhere on the evacuation or access route from hazards created by the power distribution system, moving persons, vehicles, and potential falls.

2. Industrial Safety. The Concessionaire shall operate and maintain the Monorail System to provide health and safety provisions for maintenance and operations personnel that are equal to or exceed the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor (OSHA), and the Washington State Department of Labor and Industries.

3. Train Operations. The trains shall operate with human drivers and shall be governed by written rules and standard operating procedures developed by the Concessionaire with the Director's Approval. Trains shall be operated only by trained and qualified operators. Operating personnel shall be regularly monitored for conformance with operating rules and procedures, which shall be firmly and consistently enforced. Operating rules and procedures shall include, but not be limited to, the following:

a. Visual verification that all ramps and vehicle doors are clear before initiation of door closure;

b. Procedures for continued safe operation in the event of failure of signaling, or other wayside or train equipment;

c. Evacuation of patrons from the guideway under emergency or abnormal train/operating conditions;

d. Support of emergency response personnel during emergencies; and

e. Use of automatic stopping equipment.

4. Maintenance Safety Procedures. Standard safety procedures shall govern all Ordinary Maintenance and CMMP work on the Monorail System. During the Term, the Concessionaire shall employ all appropriate safety procedures which shall be included in an Ordinary Maintenance Plan approved by the Director. The Ordinary Maintenance Plan and Program shall include an Accident Prevention Program. The Concessionaire shall include safety procedures in the SSPP and the Ordinary Maintenance Plan to govern maintenance operations,

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The Concessionaire may utilize tickets, tokens, passes, commuter cards, credit/debit cards, or other non-cash fare substitutes with the Director's Approval.

4. Cashier Facilities and Equipment.

a. The City shall provide the Concessionaire with the current six (6) cashiering stations for its use for the duration of this Agreement, including two cashier booths at the Seattle Center station, two cashier booths at the Westlake Center station, and one cashier station on each of the two trains.

b. The high-security vault room located in the area described in Section III.A.6 containing safety deposit boxes for up to twenty (20) cashiers shall be provided to the Concessionaire "AS IS." The City makes no warranties or guarantees regarding the effectiveness of the existing security system.

c. The Concessionaire shall be responsible for all revenue counting, handling, transporting, and the deposit of revenue into an account which can be audited by the City.

d. The Concessionaire shall keep the process of acquiring a ticket, waiting in line and boarding the trains in line with efficient, cost-effective, up-to-date technology and operating standards.

5. Fare Data Collection and Reporting Systems. The Concessionaire shall maintain and operate a fare data collection and reporting system. The Concessionaire shall provide any and all maintenance for the fare collection system, facilities, equipment and software. Changes to a system with cashless options may be required by the City, subject to Approval by Concessionaire. Changes may be made by the Concessionaire subject to Approval by the Director. The Concessionaire's operators, cashiers or other authorized personnel shall enter all data necessary for the satisfactory operation of the fare data collection and reporting system. The Concessionaire shall produce daily, weekly and monthly revenue reports which shall be available upon request by the City Coordinator in a form subject to Approval by the Director.

G. **Security, Safety and Emergency Preparedness Requirements and Plan.** The Concessionaire shall take all reasonable steps and actions to maximize the safety of employees, patrons, and the general public. These provisions shall be required in all of the elements of operation and maintenance of the Monorail System including trains, equipment and fixed facilities and revenue collection. The safety of passengers, operating and maintenance personnel, and the general public shall be an overriding consideration in the development of operating rules and procedures. The Concessionaire shall meet or exceed safety-related codes, standards and regulations of the appropriate local, state and federal authorities.

The Concessionaire shall prepare and implement a System Safety Program Plan (SSPP) and a System Security and Emergency Preparedness Plan (SSEPP), which includes medical emergencies and fire evacuation procedures. These documents and the processes they describe are laid out in the WSDOT Program Standard as new Federal requirements under MAP-21. The Concessionaire shall also be responsible for preparing and implementing any

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viii. Compliance with governmental requirements, and

ix. Overall performance.

c. The Concessionaire agrees to cooperate with the City's selected reviewer to facilitate an accurate and efficient assessment of performance.

F. **Fares and Fare Collection System.**

1. Allowable Fares. Actual one-way fares shall be established by the Concessionaire, subject to the Approval of the Director, and will generally keep pace with inflation. One-way regular fares shall not exceed $4.00 and one-way discounted fares may not exceed $2.00 without amendment of this Agreement authorized by the Seattle City Council. Pass and group fares may be adjusted consistent with the one-way regular fare. The Concessionaire may, subject to the Director's Approval, institute alternative discount fares, modify the fare terms and/or implement variable pricing within the guidelines and limitations of this Section XI.F. As of the beginning of the term, fares, which have not increased since November 1, 2011, are:

Regular Fares:	
One way - regular fare (ages 13 - 64):	$ 2.25
Discounted Fares:	
One way - youth fare (ages 5 - 12):	$ 1.00
One way – discounted fare (seniors 65+, riders with disability or Medicare cards & active duty US military):	$ 1.00
Children under 4:	Free
Round trip fares shall be no more than twice one way fares.	
Passes and Group Fares:	
Monthly Pass (for unlimited transportation)	$ 45.00
Monthly Pass for seniors 65+, riders with disability or Medicare cards or active duty US military (for unlimited transportation)	$ 20.00
Group fares – 125 to 250 roundtrip tickets @ $4.00 each	
More than 250 roundtrip tickets @$3.50 each	

2. Price Policy. The Concessionaire and its employees shall not make or permit any misrepresentation of services offered for sale. The Concessionaire and its employees shall not sell single ride/round trip tickets at prices different than that approved in writing by the Director. A copy of the then current individual fares shall be displayed on the Monorail System in locations and in a manner easily viewed by the public whenever the Monorail System is open for business.

3. Fare Collection. The Concessionaire's operators, cashiers or other authorized personnel shall collect from all passengers on each train the amount of fare required for transportation on the Monorail (including collection of or notation of use of any passes, commuter cards, tickets, tokens, vouchers, coupons, and punching of cards). All fares collected shall be the property of the Concessionaire and shall be part of Concessionaire's Total Revenues. The Concessionaire shall maintain the security of all fare boxes, cash registers and associated revenue collection systems.

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the City as liquidated damages and not as a penalty, One Thousand Dollars ($1,000), for each 0.1% by which the Concessionaire's actual on-time performance is below the 99% annual on-time performance standard; provided, however, that the calculation of annual on time performance shall exclude (i) periods excused by events of Force Majeure (Section XXVIII), (ii) periods of interrupted service caused by casualty to the Monorail (unless the casualty resulted from the Concessionaire's negligence or intentional misconduct) and (iii) periods of suspended operations under Section XXIII.C; and provided further that the maximum annual liquidated damages shall not exceed $25,000. An annual average on-time performance standard below 96.5% shall be considered a failure to perform its obligations under this Agreement and shall constitute a default by the Concessionaire per Section XXX.A. The $1,000 per 0.1% in liquidated damages and the annual maximum shall both be increased annually in an amount equal to the percentage increase in the CPI-U for the immediately preceding calendar year. Liquidated damages assessed under this section shall not be included in Operating Expenses.

2. Appearance and Performance. The Concessionaire shall maintain the Monorail System so it is attractive to users and the general public and in keeping with the general appearance standards of the Seattle Center campus. The Concessionaire shall provide uniforms of a color and design including logos and symbols appropriate to the Monorail System activities that have been approved by the Director. The Concessionaire shall keep the uniforms in a clean and neat condition, providing laundering, repair, and replacement as necessary. Uniforms shall be worn by the Concessionaire's non-administrative employees whenever they are on duty on the Monorail System.

3. Annual Service Performance Review.

a. The City may conduct annual, written performance reviews focusing on Monorail System operating standards, performance and/or compliance with FTA or other regulations. This performance review may be conducted by any party selected by the City. The City's cost of performing any such performance review shall be borne by the City, which can elect to have such costs reimbursed by the Concessionaire as part of the City Management Fee as described in Section VI.C.

b. The performance review may include the following categories:

i. Marketing, advertising, promotions, program;

ii. Image and physical appearance of the stations and the trains;

iii. Routine Maintenance of the Monorail System;

iv. Operations in general;

v. Customer service;

vi. Safety;

vii. Financial performance;

train mileage logged for the Red Train shall be within ten percent (10%) of the train mileage logged for the Blue Train unless otherwise authorized in writing by the Director.

2. Minimum Revenue Service hours shall be:

Winter Hours	(January – April) from 8:30 am to 9 pm
Summer Hours	(April – January) from 8:30 am to 11pm

C. **Frequency of Service and Mode of Operation.**

Regular Operation. Regular Monorail System Revenue Service shall be a minimum of four (4) round trips completed each hour. Normal, efficient operations is five (5) trips per hour which is the operational goal. As soon as all waiting passengers on the platform are loaded onto the train, the appropriate departure procedures shall be employed by the operator and other Monorail System staff to maintain this frequency of service.

At no time should departures from a station exceed 15-minute intervals. During heavy ridership periods, Concessionaire will adjust staffing and train deployment to optimize service and minimize wait time.

D. **Additional Train Revenue Service.**

1. Additional Train Revenue Service. To serve Seattle Center event and programming needs, the Director may require the Concessionaire to provide up to one hundred (100) additional Revenue Service hours in excess of the minimum hours of Revenue Service during each Contract Year of this Agreement, at no additional cost to the City. Any hours of additional revenue service hours in excess of the one-hundred (100) hours per Contract Year shall be billed directly to Seattle Center (rather than applied to Operating Expenses) at the rate of four-hundred eighty Dollars ($480) per hour less any Ridership Revenues earned during the same. The Director shall notify the Concessionaire in writing a minimum of five (5) days in advance of the date for which the additional service is required. The per train hour dollar amounts due to the Concessionaire for additional Revenue Service shall be increased annually in an amount equal to the percentage increase in the CPI-U for the immediately preceding calendar year.

Nothing in this Section will be interpreted to limit the Concessionaire's ability to provide additional hours or frequency of Revenue Service.

E. **Service Performance Standards.**

1. On-Time Performance. On-time performance shall be defined as providing a minimum of four (4) train departures an hour with ten (10) to fifteen (15) minute headways. The Concessionaire shall achieve an annual average of ninety-nine percent (99%) on-time performance unless excused under Section XXVIII (Force Majeure). The parties acknowledge that the image and reputation of the Monorail as a robust and reliable transportation provider will be undermined if the Concessionaire fails to maintain on-time performance, and that any damage to the image and reputation of the Monorail would be difficult to calculate. Accordingly, if the Concessionaire fails to achieve the on-time performance standard, the Concessionaire shall pay

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d. Providing its employees with meal and rest breaks as required by applicable law;

e. Withholding all applicable taxes for the Concessionaire's employees;

f. Providing unemployment and workers' compensation coverage for the Concessionaire's employees;

g. Keeping all required recordkeeping documents pertaining to the Concessionaire's employees;

h. Properly completing all appropriate paperwork for the employment of such individuals, including, but not limited to, the I-9 form and applicable tax forms;

i. Ensuring that no improper deductions are taken from the wages of the Concessionaire's employees;

j. Complying with the requirements of Seattle's Paid Sick Time and Paid Safe Time Ordinance (Seattle Municipal Code Chapter 14.16; and

k. Providing health care benefits, to the extent and if required by federal, state, or local law.

4. General Manager. The Concessionaire shall designate a "General Manager" who shall serve as the transmitter to and receiver of all official communications with the City and who shall be responsible for the Concessionaire's overall performance under this Agreement.

The Concessionaire shall employ a qualified General Manager who shall oversee all concession operations and a qualified person who shall oversee the Ordinary Maintenance program for the entire Monorail System ("Maintenance Manager"). The General Manager selected by the Concessionaire shall be subject to the Director's approval.

XI. OPERATIONAL REQUIREMENTS

A. **System Operations Plan and Procedures.** The Concessionaire shall implement a System Operations Plan which strives to optimize system availability and safety, and minimize operation and maintenance costs.

B. **Days & Hours of Operation.**

1. Minimum City requirements for operations shall be as follows:

Either the Blue or Red Train shall operate daily except for Christmas Day, Thanksgiving Day and New Year's Day. Operation on those holidays shall be at the discretion of the Concessionaire. On Christmas Eve and the Wednesday before Thanksgiving, the Concessionaire may cease its operation of Monorail trains one (1) hour after the scheduled ending time of the last scheduled event at Seattle Center. On an annual basis the Concessionaire shall operate trains so that the

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4. Alert employees about programs available for employees whose personal problems, including alcohol or drug dependence, adversely affect their ability to perform their duties.

Upon request, the Concessionaire shall provide written evidence to the City of enforcement and results of employee testing for illegal substances (drugs) while on the job.

Concessionaire's full-time, part-time, and temporary employees shall be subject to drug and alcohol testing as a condition of employment. All of the Concessionaire's employees who perform safety-sensitive functions, and all employees of any company or organization who perform safety-sensitive functions on behalf of the Concessionaire, are subject to FTA prohibited drug and misuse of alcohol testing requirements of 49 CFR Part 655. If there is a conflict between any local law and the requirements of 49 CFR Part 655, the federal law shall govern.

C. **Concessionaire's Staff.**

1. The Concessionaire shall employ competent, courteous and efficient staff in numbers to adequately serve Monorail patrons. The Concessionaire shall ensure that its employees who interact with the general public are customer service oriented. The Concessionaire shall make every effort to resolve disputes with customers in a respectful and proactive manner. The Concessionaire shall conduct performance reviews with employees on a regularly scheduled basis as a means of fostering employee development and motivating employees to reach their potential. The Concessionaire shall take appropriate action consistent with law to correct, retrain or to discharge or immediately remove from employment, any employees whom the Concessionaire considers unsuitable for such work.

2. Neither the Concessionaire nor its employees shall represent directly or indirectly that they are employees, agents, or legal representatives of the City. The Concessionaire agrees its employees shall not be considered the employees of the City under any circumstances, including, but not limited to, under the Fair Labor Standards Act of 1938, the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Family and Medical Leave Act of 1993, the Employee Retirement Income Security Act of 1974, the Worker Adjustment and Retraining Notification Act, or any other city, local, state or federal laws, statutes, codes, ordinances, regulations or constitutions or common law.

3. Representations. The Concessionaire hereby warrants and represents that the Concessionaire is solely responsible for the following:

a. Paying its employees at least the applicable minimum wage (or Prevailing Wage if applicable) for all hours worked;

b. Paying its employees required premiums for overtime hours, spread of hours, and split shifts where required;

c. Paying its employees within the time period required by applicable law;

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System transportation services.

5. State and Federal Compliance and Coordination. The Concessionaire shall ensure all operations comply with all state and federal requirements, including reports of the United States Federal Transit Administration (FTA) and Washington Department of Transportation (WSDOT). The Concessionaire shall keep accurate, timely, complete and useful records to inform management decisions for operations and maintenance. The Concessionaire's obligations include the following:

a. Complete and file monthly National Transit Data Base (NTDB) reports on ridership, mileage and hours of train operations (using the NTD MR-20 form); and safety issues (using the NTD S-50 form).

b. Prepare and file annual reports for government agencies and additional reports as required by the City, State and Federal governments.

c. In the event of an incident on the train or platforms, Concessionaire's personnel who witnessed or were involved in the event shall complete an incident report. Incident reports shall be reviewed by the General Manager and reported to Seattle Center and WSDOT per provisions in the Washington State Rail Safety Oversight Program Standard.

6. Marketing. Develop and implement advertising and sponsorship efforts to increase ridership and revenue to the Monorail System.

7. Janitorial. Provide janitorial service for the entire Monorail System including all property and equipment as well as the Seattle Center Station platforms and the exterior ramp from the Seattle Center grounds that provide access to such platforms.

8. Maintenance Management. Provide oversight and monitoring of performance measures for Ordinary Maintenance (does not include CMMP projects).

B. **Substance Abuse Program.** Throughout the Term, the Concessionaire shall maintain and update an employee substance abuse program that complies with state and federal regulations to assure safe operation of the Monorail System and supply to the City, when requested, documentation veryifing Concessionaire's compliance with program requirements. The Substance Abuse Program shall:

1. Assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthful manner;

2. Create a workplace environment free from the adverse effects of drug use and alcohol abuse;

3. Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and,

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whichever is greater, into an IMA, which will be a reserve account maintained by the Concessionaire. The IMA shall be used for the purpose of joint Monorail – Seattle Center marketing campaigns that have been mutually agreed upon between the parties to benefit the Monorail and Seattle Center. At the completion of the Initial Term, or the end of the Extended Term if the Agreement is extended, any balance in the IMA shall be remitted to the City.

X. MANAGEMENT REQUIREMENTS AND PLANS

A. **Oversight and Monitoring.** The Concessionaire shall provide a management team that is committed to ensuring reliable, on-time, cost-effective service for the operation, Ordinary Maintenance and marketing of the Monorail System that is in accordance with FTA and other applicable requirements. The Concessionaire shall implement management and monitoring procedures designed to measure human and systems performance, and periodically update and modify these procedures/plans as appropriate. Key management processes and plans shall include:

1. Monitoring. Regular monitoring of Ordinary Maintenance and operations programs and systems performance, including but not limited to ridership information, Concessionaire's Total Revenue and cash systems, and cost control.

2. Safety. Oversight of safety programs for employees and riders.

3. On-time performance and service reliability.

4. Training. Throughout the Term, the Concessionaire shall maintain and annually update a Personnel Training Program to create growth opportunities for staff, and make the Monorail System safe, reliable, and welcoming. The Concessionaire's training shall include the following:

a. The ongoing Training Program shall be vetted by the General Manager, Chief Systems Engineer, Maintenance Manager, and Training Manager to emphasize safe train operations, proper maintenance, and exceptional customer service, including drills to reinforce retention of information and improve performance under stressful situations.

b. The Training Program shall ensure employee training meets all the requirements established by the FTA and Washington State Departments of Transportation (WSDOT) and Labor and Industries.

c. The Concessionaire shall provide first aid training to all permanent staff during the first ninety (90) days of each staff person's employment with the Concessionaire. Documentation of the Concessionaire's training program shall be available to the City upon request.

d. All train operators shall have appropriate training and certification as agreed between Concessionaire and the City. Should Monorail System operators or other personnel become subject to local, state or federal regulations, then the Concessionaire shall ensure all employees meet any regulations affecting employment as a provider of Monorail

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there is any balance remaining in the IRA at the end of the final Contract Year, the remaining balance shall be treated as Net Operating Income.

The primary purpose of the IRA is to fund, leverage or facilitate other funds or financing for agreed upon CMMP projects expected to add life to the trains or monorail facilities, to modernize facilities or systems, to improve the customer experience or to demonstrably improve ridership or revenues. Intended uses of the IRA include:

1. To obtain grants or other matching funds or financing. Expenditures from the IRA may be used for matching funds for grants or other fund sources where expenditures are expected to extend the life or improve the Monorail System.

2. Station Improvements. To make CMMP improvements to either the Seattle Center or Westlake Center Stations.

3. Train Refurbishment and Major Maintenance. For substantial train refurbishment (e.g. floor replacement, car body repair), installation or reinstallation of systems (e.g. speed control, pneumatic suspension), or replacement of obsolete systems (e.g. Westlake Center ramps, gates and signaling components).

4. Guideway Improvements. For CMMP improvements involving the guideway and supporting pylons.

5. Contingency Funds for Emergency Maintenance. Fifty Thousand Dollars ($50,000), or such other amount as is mutually agreed to by the Concessionaire and the City, shall be set aside in the IRA so this amount is available in each Contract Year for Emergency Maintenance as described in Section XII.E. As emergencies occur, the use of these funds shall be upon mutual agreement of the Director and the Concessionaire.

6. Miscellaneous. Other major Monorail System projects upon mutual agreement of the Director and the Concessionaire.

A commitment of funds from the IRA will be made only upon the mutual agreement of the Concessionaire and the City and as specified in the CMMP and supplementary project specific agreements.

C. **Initial Carry Over Balance.** Effective January 1, 2015, Concessionaire shall ensure that the IRA has an initial balance of $80,000, which amount the City and Concessionaire agree represents the remaining balance of the irrevocable renewal account created under the prior concession agreement. The parties agree that the initial balance shall be in addition to all amounts required to accrue under this Agreement and that the initial balance shall be available for all purposes under this Agreement.

IX. IRREVOCABLE MARKETING ACCOUNT (IMA)

Beginning on January 1, 2015, and thereafter monthly during the Term, the Concessionaire will accrue six-tenths of a percent (0.6%) of each month's ridership revenue, or $25,000 per year,

Director's determination, the matter shall be resolved by the dispute resolution process in Section XXXV. If there is any overpayment to the City, the City Services Fund, IMA, or the IRA, the Director will elect one of the two following options: 1) the overpayment shall be credited against any future payment due to the City or the applicable account, or 2) the overpayment shall be refunded to the Concessionaire. If there is any underpayment, the full amount shall be due and payable to the City or the applicable account within ten days of invoice. The Concessionaire shall ensure that the City's rights to inspect, audit and copy records and books under this section is a condition of any subcontract or other arrangement under which any other person or entity is permitted to carry on a business activity in, on or from the Monorail System.

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VII. CONCESSIONAIRE MANAGEMENT FEE

For purposes of calculating Net Operating Income, the Concessionaire may include in its Operating Expenses a Concessionaire's Management Fee of five percent (5%) of the Concessionaire's Total Revenue for each Contract Year during the Term. The Concessionaire's Management Fee shall be accrued monthly based on the Concessionaire's Total Revenues during that month.

VIII. IRREVOCABLE RENEWAL ACCOUNT (IRA)

A. **Annual Contribution.** To provide funding or matching funds for mutually agreed upon Capital and Major Maintenance Program planning and projects, effective January 1, 2015, during each Contract Year of the Agreement, Concessionaire shall accrue seven and a half percent (7.5%) of monthly Ridership Revenues, or such other higher amount to which the parties may agree, into the IRA, which shall be a reserve account maintained by the Concessionaire. In addition, the Concessionaire will accrue to the IRA all interest earnings received on its cash holdings net of any banking fees. The IRA shall only be used for the purposes provided for under this Agreement and shall be committed and spent only in accordance with the process described in this Section VIII.

Accruals to the IRA, shall be recorded as an Operating Expense in the calculation of Net Operating Income.

B. **Use of Funds.** The IRA shall be used for projects identified in the CMMP and for a contingency to fund Emergency Maintenance. No less than once a year during the Term, the Concessionaire and City shall meet to arrive at mutual agreement on modifications and/or reprioritizations to the rolling five (5) year CMMP plan. As the CMMP changes, the IRA funds may be applied to new or different projects, but they will not be refundable or available for any other purpose, except in the final year of the Agreement.

In the October before the final Contract Year of the Initial Term, or the Extended Term, if any, the Concessionaire and the City shall meet and agree upon an estimate of the uncommitted and unexpended balance expected to remain in the IRA at the end of the Contract Year, including payments and net interest accruals during the year. The agreed upon uncommitted amount shall be used to pay Monorail System Operating Expenses in the last year of the Agreement. The estimate will be included in the budget for the final year of the Agreement. If

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F. **Required Reports.**

1. Monthly Reports. Within thirty (30) days after the end of each calendar month during the Term, the Concessionaire shall deliver to the Director a written report detailing, by separate revenue or expense category in accordance with generally accepted accounting principles, the Concessionaire's Total Revenues, Operating Expenses, and profit or loss from the Monorail Concession during the previous calendar month and calendar year-to-date period. The statement shall include comparative data and the prior year for the same periods. The Director's acceptance of the report without objection shall not in any way be deemed a waiver of the City's right to examine and audit the Concessionaire's books and records regarding its business activity relating to the Monorail System, nor shall it in any way act as a modification of either party's rights or obligations under this Agreement.

2. Annual Report. Beginning in 2016 and thereafter annually, no later than March 31st of each calendar year during the Term, the Concessionaire shall deliver to the Director a written final annual report of the Concessionaire's Total Revenues, Operating Expenses, and total profit or loss for the operation of the Monorail concession during the preceding calendar year. The Annual Report shall be prepared and reviewed by a certified public accountant whose name and address shall be provided with the report.

3. Annual Budget. Upon execution of this Agreement, Concessionaire shall submit its 2015 budget to the City Coordinator for review and Approval. Thereafter, the Concessionaire shall submit its proposed annual budget to the City Coordinator for review and Approval no later than October 31st of the prior year.

G. **Records and Audits.**

1. Records. The Concessionaire shall keep true, separate, accurate, complete and auditable records according to generally accepted accounting principles detailing Concessionaire's Total Revenues and all expenses of all business, operations, maintenance, and repairs of anything conducted in, on or from the Monorail System, which records shall be subject to the approval of the City. The Concessionaire shall retain in King County, Washington, for at least six (6) years after the close of each calendar year during the Term, a copy of each sales receipt, the tape from each cash register and adding machine, documentation of each payment made by the Concessionaire, and collateral supporting data regarding Concessionaire's Total Revenues, expenses, and profit or loss from the operation of the Monorail System concession. The Concessionaire shall ensure that the obligation to keep accurate and auditable records is a condition of any subcontract or other arrangement under which any other person or entity is permitted to carry on a business activity in, on, or from the Monorail System.

2. Audit. Concessionaire shall permit the City at its expense, from time to time as the City deems necessary, to inspect and audit, at a reasonable time, all Concessionaire's books and records relating in any way to the Concessionaire's business conducted in, on, or from the Monorail System, including all expenses. Upon City's request, the Concessionaire shall permit the City to make copies of Concessionaire's books and records, at the City's expense. The Director shall notify the Concessionaire of the amount of any over- or underpayment discovered as a result of any audit. If the Concessionaire disagrees with the

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B. **City's Concession Fees.** Each Contract Year during the Term the Concessionaire shall pay the City, an annual fee ("City Concession Fee"). The City Concession fee shall be the greater of two-thirds (66.67%) of Net Operating Income for the applicable Contract Year or Five Hundred and Fifty Thousand Dollars ($550,000) (the "Minimum Fee"). The Minimum Fee shall be adjusted as fares are adjusted from time to time in accordance with Section XI.F.1. and prorata with the change in the blended average fare (total Ridership Revenue divided by the total number of riders). In no case shall the Minimum Fee be less than Five Hundred and Fifty Thousand Dollars ($550,000). The annual City Concession Fee shall be payable in installments as provided under Section VI.E.1. In the event of an insured loss under Section XIX, the City Concession Fee shall be a continuing cost for the purposes of determining any business interruption claim. The Concessionaire shall retain the Net Operating Income in each Contract Year in excess of the City Concession Fee for the Contract Year.

C. **City Management Fee.** Each Contract year during the Term the Concessionaire shall pay the City a maximum of Thirty Thousand Dollars ($30,000) annually for labor and expenses for the City's Coordinator(s) to administer and oversee the Concession contract which includes coordinating with the Concessionaire, SDOT, WSDOT and FTA, coordinating efforts with City staff to maximize the efficiency and effectiveness of work funded by the City Services Fund, and if the City elects to do so, retaining the services of a third party to conduct the performance review identified in Section XI.E.3. The City shall invoice the Concessionaire for these expenses on a quarterly basis and the City Management Fee shall be included in Operating Expenses. The maximum City Management Fee of $30,000 shall be increased annually in an amount equal to the percentage increase in the CPI-U for the prior calendar year, regardless of whether the City invoices Concessionaire for the maximum amount in any given year.

D. **City Services Fund.** Each Contract Year during the Term the Concessionaire shall pay the City the balance remaining as of December 31st, if any, in the City Services Fund as provided under Section XII.H.

E. **Form, Time and Place of Payment.** Concessionaire's payments to the City are due as follows:

1. The City Concession Fee is due and payable in quarterly installments, as accrued, within thirty (30) days after the end of each calendar quarter (due no later than April 30, July 30, October 30, and January 30). The City Concession Fee shall be accompanied by the monthly reports for that quarter as required under Section VI.F.1. The City Management Fee is due and payable within thirty (30) days of invoice. The unexpended portion of the City Service Fund for any Contract Year shall be due to the City no later than January 30 of the following calendar year.

2. All payments shall be sent to the Seattle Center Accounting Office, at the address specified in Section XXIX, or to such other address as the Director shall specify by notice to the Concessionaire. Payments may be made in cash, or by check or money order. Payments not received within ten (10) days after the date due shall be considered delinquent. In the event of any delinquency, a late charge of one and one-half percent (1.5%) of the delinquency shall be added to the outstanding balance and the total sum shall be immediately due and payable. Any late charge shall not be included as an Operating Expense.

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the Monorail System, including, images and videos, consumer and other ancillary products, events, and all associated collateral materials. The Concessionaire's use of any of the copyrighted materials in support of Monorail System operations, maintenance, and marketing shall be incidental and without charge as an Operating Expense during the Term. The Concessionaire grants the City an irrevocable, perpetual, royalty-free non-exclusive license to use content, images and videos of the Monorail System which Concessionaire utilized in marketing materials and social media accounts. At the end of the Term, as between the Concessionaire and the City, Concessionaire shall retain the rights to the content, images and videos subject to the City's license.

B. **Patents.** The Concessionaire hereby assigns to the City an irrevocable, perpetual, royalty-free license to use any invention, improvement, or discovery, with all related information, including but not limited to designs, specifications, data, patent rights and findings developed by Concessionaire for use in support of the Monorail System. Notwithstanding the above, the Concessionaire does not convey to the City, nor does the City obtain, any right to any document or material utilized by the Concessionaire created or produced separate from the Agreement or was pre-existing material (not already owned by the City), provided that the Concessionaire has identified in writing such material as pre-existing prior to Effective Date of theAgreement. If pre-existing materials are incorporated in the Monorail System, the Concessionaire grants the City an irrevocable, perpetual, royalty-free non-exclusive right and/or license to use or replicate the materials, but only for purposes of operating the Monorail System.

C. **Employee and Contractor Agreements.** Concessionaire shall ensure that its agreements with employees and any contractors for work in support of or relating to the Monorail System include terms and conditions consistent with this section.

V. WESTLAKE CENTER

To facilitate the Concessionaire's performance of the Monorail System operation and maintenance responsibilities described in this Agreement the City hereby assigns to the Concessionaire those of the City's rights under the Monorail Operating and Easement Agreement, that are necessary for the Concessionaire's activities and obligations under this Agreement and to the extent permitted by Westlake Center LLC. During the Term, the Concessionaire shall assume all of the City's obligations and comply with all restrictions imposed on the City under the Monorail Operating and Easement Agreement, which is attached as **Exhibit B,** and made a part of this Agreement. The City shall retain all underlying ownership rights under the Monorail Operating and Easement Agreement and Concessionaire's rights shall terminate upon the expiration or termination of the Term. The Concessionaire shall have no authority to amend or waive any right or power of the City under the Monorail Operating and Easement Agreement.

VI. PAYMENTS TO THE CITY

A. **Fees and Charges.** In consideration of the exclusive Concession rights granted herein, the Concessionaire shall pay to the City the fees and charges described in this Section VI, plus any additional amounts described in this Agreement.

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6. Monorail System Annex. Approximately 2,400 square feet of space on the upper level of the 370 Thomas Street Building located on the East 70 Feet of Lot 6, Block 51, D. T. Denny's Third Addition to North Seattle, as recorded in Vol. 1 of Plats, Page 145, Records of King County Washington; together with the bridge walkway between the Seattle Center Station exit platform and the building's second story, which space shall be used exclusively for administrative offices, cash handling, and storage, or, subject to the Director's approval, for other purposes ancillary to operation of the Monorail system. At such time that the Director may determine that the Monorail System Annex will no longer be available for Monorail System use; the Director shall identify a different comparable space with similar utility of at least 1800 square feet in the vicinity of the Seattle Center Station for the Concessionaire's use.

7. Supplemental Storage Area. Approximately 318 square feet (Room # 40) in the basement of the Armory.

B. **Non-Exclusive Access to Common Areas.** The City also grants to the Concessionaire, and its officers, employees, agents, customers, and invitees non-exclusive rights during the Term of this Agreement to access the Seattle Center Common Areas, as from time to time constituted, which access shall be in common with all members of the public and other visitors and users of the Seattle Center, subject to rules and regulations as may be promulgated by the Director from time to time and also subject to the other provisions of this Agreement. Such Common Areas include the pedestrian bridge connecting the Seattle Center Platform and Armory, the staircase from the pedestrian bridge to the Seattle Center grounds.

C. **Condition of Monorail System.** The City grants the Concessionaire the right to use the Monorail System in its "AS IS" condition and the Concessionaire accepts the same as of the date this Agreement is fully executed. The City disclaims all representations, statements, and warranties of any kind with respect to the condition of the Monorail System or its suitability for the Concessionaire's use, except as expressly set forth in this Agreement.

D. **City's Reserved Rights Regarding the Availability of Monorail System.** The City reserves the right to adjust, substitute, or relocate any part of the exact area in which any part of the Monorail System's facilities or equipment are located or area where Monorail services are provided, if the Director concludes that it is necessary in the interest of the public and/or the City's operation of the Seattle Center. If the Director determines that such adjustment of space is necessary, the City will use its best efforts to provide similar space and square footage to enable the Concessionaire to operate the Monorail System in the same manner as prior to such adjustment of space. The parties shall cooperate so that such change in space shall not unnecessarily interrupt the quality, quantity, or efficiency of service rendered by the Concessionaire under this Agreement, significantly damage the business of the Concessionaire or reduce the amounts payable to the City. The City shall bear the cost of moving its equipment and the Concessionaire's equipment, supplies, and fixtures if any space adjustment or relocation is necessary, and the City shall bear the cost, if any, of providing utilities to such relocated space.

IV. INTELLECTUAL PROPERTY

A. **Copyrights.** The Concessionaire shall retain the copyright (including the right of reuse) to all materials and documents developed by Concessionaire or its employees relating to

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concessionaire to operate the Monorail System after the expiration of the Initial Term. Nothing in this Section shall be interpreted as unilateral rights, and each party reserves the right to reject, for any reason, the other party's request for the Extended Term.

III. GRANT OF CONCESSION RIGHTS TO MONORAIL SYSTEM & ANCILLARY AREAS

A. **Monorail System Concession Right.** The City hereby grants to the Concessionaire the right and privilege to maintain and exclusively operate the Monorail System during the Term, subject to all terms, conditions, and limitations in this Agreement. The Concessionaire's right to maintain and operate the Monorail System includes the right to use and occupy the facilities and areas described below, the right to Concessionaire's Total Revenues, and the personal property and equipment therein. Portions of the Seattle Center Station have been made available for non-exclusive use by the Concessionaire.

1. Trains. Two (2) four-unit, triple-articulated, double-ended, electric trains riding on dual pneumatic rubber traction tires with horizontal pneumatic rubber tires pressing against the sides of the guideway beam for stability and guiding.

2. Guideway. The approximately nine-tenths of a mile long, dual, three (3) foot wide by five (5) foot high, pre-stressed concrete beam guideway structure together with its supporting "T-shaped" pylons approximately 25' high, which structure extends from the Seattle Center Station, over a portion of the Seattle Center campus, and along 5th Avenue to the Westlake Center Station.

3. Westlake Center Station. The Equipment Room, the cashiering booths, any janitor's closet; the Rectifier Room, Ramp Protection System Equipment Room, electrical vault in the basement; and associated areas of Westlake Center to which the City has been granted easement rights, all as described in that certain 1987 Monorail Operating and Easement Agreement with Westlake Center Associates LLC (successor to Westlake Center Limited Partnership) authorized by Ordinance 113272 and recorded under King County Recording No. 8702170365 (the "Monorail Operating and Easement Agreement"), amended on September 18, 2014, and attached as **Exhibit B**.

4. Exclusive Use Portions of Seattle Center Station. All of the lower level of the Seattle Center Station, including the open air maintenance bays, emergency exit pathways, storage yard, and the areas below the Platform level serving as administrative space, a maintenance work area, parts storage space, a parking space immediately adjacent to maintenance bays; and the Restricted Portion of the Seattle Center Platform as defined in Section I.DD. The City reserves certain rights on the Restricted Portion as described in Section XV.

5. Non-Exclusive Use Portions of Seattle Center Station. All of the "E" shaped Seattle Center Platform area at the Seattle Center Station together with the ramp that connects this "E" shaped area to the Seattle Center grounds, except the Restricted Portion which is the Concessionaire's Exclusive-Use space.

THIS VERSION IS NOT ADOPTED

CC. **Private Assets** means that property that is owned exclusively by the Concessionaire, however used or not by the Concessionaire in performing its duties under this agreement, and to which ownership remains with the Concessionaire after the conclusion of the term, subject to Sections IV and XXXII. Private Assets may include intellectual property, patents, social media content, images and videos, consumer and other ancillary products, trademarked events, and all associated collateral materials relating to the Monorail System.

DD. **Restricted Portion of Seattle Center Platform or Restricted Portion** means the center loading bay of the Seattle Center Platform to which public access is restricted to Monorail riders with a ticket, pass, or approved identification.

EE. **Revenue Service** means operation of the Monorail System for the general public for compensation from the individual passengers under the rates specified in Section XI.F hereof, compensation for extended hours of operation for prearranged commuter service, or from another source under other arrangements.

FF. **Ridership Revenue** means all revenue generated from ticket sales, including adult, discounted and group tickets, monthly passes, and commuter service.

GG. **Seattle Center** means the real property described on **Exhibit A** hereto, or when indicated by context, the Seattle Center Department governing it.

HH. **Seattle Center Platform** means the "E" shaped area at the Seattle Center Station that includes a center loading bay with an exit stairway to the ground, north and south train exit bays with exit stairways to the ground, and the area between these bays and the Armory (excluding the pedestrian bridge to the Armory) together with the ramp that connects this "E" shaped area to the Seattle Center grounds. The Seattle Center Platform is divided into three parts, a) the center loading bay and stairway, access to which is restricted to Monorail riders with tickets, passes or approved identification cards, the "Restricted Portion; b) the two exit bays, north and south of the center loading bay and their associated stairways to the ground, access to which is restricted to people offloading from the trains and c) the rest of the platform

II. **Term** means the Initial Term and the Extended Term, if any, as provided under Section II.

II. TERM; OPTION TO EXTEND TERM

A. **Initial Term.** The Initial Term of this Agreement shall begin on January 1, 2015 at 12:00 AM and end on December 31, 2024 at 11:59 PM. unless terminated earlier under the terms and conditions of this Agreement.

B. **Extended Term.** This Agreement may be extended under the same terms and conditions for one additional ten (10) year term (the "Extended Term") by mutual agreement of the Director and the Concessionaire. Either party may provide written notice to the other party of its desire to extend at any time after October 1, 2022. If the parties have not mutually agreed in writing to the Extended Term by December 31, 2022, the City reserves the right to take whatever action the Director deems appropriate, including but not limited to seeking another

THIS VERSION IS NOT ADOPTED

10. The aggregate of all costs and expenses incurred by the Concessionaire in the course of providing or making provisions for all Ordinary Maintenance on the Monorail System, exclusive of developing, performing and implementing the CMMP. These expenses include:

a. Maintenance training, maintenance plan programming, and record keeping of the Monorail System by the Concessionaire's staff;

b. The actual direct cost of parts and supplies, together with transportation or shipping charges and applicable sales or use taxes;

c. The costs of independent contractors who provide goods and services in connection with Ordinary Maintenance, including any applicable tax;

d. Equipment rented or purchased by the Concessionaire and used in connection with providing Ordinary Maintenance including any applicable tax, insurance, and cost of maintenance;

e. Street tree trimming costs;

f. Electrical vault and breaker maintenance costs, whether provided by the Concessionaire or by a third party by agreement with the City;

g. Any other expense or cost reasonably and necessarily incurred in connection with providing Ordinary Maintenance;

11. All costs associated with providing necessary operating capital in the event operating funds need to be augmented to meet cash flow requirements, including but not limited to interest and loan fees.

12. The City Management Fee under Section VI.C.

13. All costs associated with the 1987 Monorail Operating and Easement Agreement with Westlake Center Associates LLC, as amended.

14. All other reasonable and actual operating, administration and management expenses incurred by the Concessionaire in connection with operation and management of the Monorail System in accordance with this Agreement, except any Late Fees as described in Section VI.E.1.

BB. **Ordinary Maintenance** means the scheduled and unscheduled routine maintenance tasks performed on any part of the Monorail System on a daily, weekly, monthly, quarterly, semi-annual, annual, and as needed basis consisting primarily of inspections, repairs and service with a goal of making the Monorail System safe, reliable and attractive. In addition, Ordinary Maintenance includes unscheduled emergency repairs that are not Major Maintenance repairs made as part of the CMMP and are required to respond to system and/or component failures. All maintenance and repairs included in the CMMP are not Ordinary Maintenance.

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Improvements or Major Maintenance, as mutually agreed to by the parties and generally reflected in the Capital and Major Maintenance Program plan.

X. **Major Maintenance** means those activities that pertain to system-wide refurbishment or renewal of key system components and/or subsystems that improve attractiveness, operational, mechanical and/or financial performance of the Monorail System. Activities in this category will generally be made as part of the CMMP. If activity is limited in scope and necessary for the continuing operation of the Monorail System it will be undertaken as part of the Ordinary Maintenance program.

Y. **Monorail System** means the facilities, equipment, and areas described in Section III.A., and made available to the Concessionaire for use under this Agreement.

Z. **Net Operating Income** means Concessionaire's Total Revenue less Operating Expenses during each Contract Year.

AA. **Operating Expenses** means all costs and expenses necessary and incurred by the Concessionaire in the course of operating, maintaining, administering, managing and marketing the Monorail System, excluding CMMP Expenses. Operating Expenses include but are not limited to the following:

1. All utility fees and charges;

2. All wages, salaries and other labor costs, including taxes, insurance, retirement, medical and other employee benefits paid to the Concessionaire's employees and administrative personnel in connection with the Monorail System's operation, excluding CMMP Expenses and the labor costs of any person having an ownership interest in Seattle Monorail Services, LLC.

3. Fees, charges and other costs, including training costs, consulting fees, legal fees and accounting fees, of all independent contractors engaged by the Concessionaire in connection with the ordinary course of business of the Monorail System;

4. All local and state taxes, including but not limited to public utility taxes, business taxes and leasehold excise tax, imposed or incurred in connection with the Monorail System (excluding any federal income taxes);

5. The costs of fire, public liability and property damage insurance and all other insurance carried by the Concessionaire under this Agreement;

6. All marketing costs, including accruals to the IMA;

7. All accruals to the City Services Fund;

8. All accruals to the IRA;

9. The Concessionaire's Management Fee.

THIS VERSION IS NOT ADOPTED

Concessionaire; (d) income or reimbursement to Concessionaire or its partners or affiliates pursuant to any separate contract for Capital Improvements or Major Maintenance set forth in a separate contract with the City, such as those set forth in Section XIII; or (e) the gross receipts of subconcessionaires or licensees (other than that portion thereof received by the Concessionaire).

N. **Consumer Price Index (CPI-U)** means the CPI for All Urban Consumer Items, Seattle-Tacoma Metropolitan Area using the base 1982-84 = 100, as published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor. If there is a change in the index base or other modification of the index, the City shall apply whatever conversion factors are necessary to establish an adjusted CPI-U base that produces the percentage increase in the CPI-U for each annual period that would have been produced had no change been made in the index by its publisher. If the CPI-U index is discontinued, the Director shall select a similar index that reflects consumer price changes.

O. **Contract Year** means each individual calendar year during the Term or the Extended Term, if any. The first Contract Year begins January 1, 2015 and ends December 31, 2015.

P. **Default** shall have the meaning set forth in Section XXX.

Q. **Director** means the Director of the Seattle Center Department or his/her designee.

R. **Emergency Maintenance**. Emergency Maintenance repair refers to those maintenance actions which must be performed to correct conditions caused by random events such as accidents, severe weather or unexpected equipment failure. As such, Emergency Maintenance cannot be scheduled by time interval, predictable occurrence, or failure rate, but must be performed promptly in response to developing situations.

S. **FTA** means the United States Federal Transit Administration.

T. **General Manager** means the employee or agent of the Concessionaire responsible for managing the Concessionaire's responsibilities and resources as described in this Agreement and for coordination of same with the City during the Term.

U. **Include**, and **including** whether capitalized or not, shall be treated as introducing non-limiting examples.

V. **Irrevocable Marketing Account (IMA)** means the reserve account funded by the monthly accrual of six-tenths of a percent (0.6%) of Ridership Revenue, or $25,000 per year, whichever is greater, to be used as further described in Section IX, for mutually agreed upon joint Monorail – Seattle Center marketing campaigns.

W. **Irrevocable Renewal Account (IRA)** means the reserve account funded by the monthly accrual of seven and a half percent (7.5%) of Ridership Revenue plus interest earnings on all cash balances net of banking expenses. The purpose of the IRA is to fund and leverage or facilitate other funds or financing for capital improvements as further described in Section VIII, for substantial train refurbishment, emergency maintenance, or for other Monorail System Capital

THIS VERSION IS NOT ADOPTED

G. **City Concession Fees** shall have the meaning set forth in Section VI B.

H. **City Coordinator(s)** means the Director's designee(s) responsible for administering the Agreement for the City, including coordinating with the Concessionaire regarding the Concessionaire's responsibilities described in this Agreement and reviewing/approving the Concessionaire's annual budget.

I. **City Services Fund** means a separately maintained fund identified in Sections XII G. and H. to be used to reimburse the City for certain costs at the Seattle Center Station or on the Monorail System.

J. **Common Areas** means those portions of the Seattle Center campus, as now or hereafter constituted, designated by the Director for use by the general public in common with all other users and visitors of Seattle Center including without limitation, parking lots and garages, walkways, seating areas, public restrooms, landscaped areas, public stairs, ramps, escalators and shelters, subject to such general rules, regulations, and hours as the Director may from time to time establish.

K. **Concession** means the rights granted to the Concessionaire to operate and maintain the Seattle Center Monorail as provided in this Agreement.

L. **Concessionaire's Management Fee** means 5% of Concessionaire's Total Revenues.

M. **Concessionaire's Total Revenues** means the total revenues and income of the Concessionaire from conducting business in, on or from the Monorail System pursuant to this Agreement including, but not limited to:

1. All Ridership Revenue;

2. All income received by the Concessionaire from any third parties or entities for the use or occupation of any portion of the Monorail System;

3. All income received by the Concessionaire from any other person or entity acting on behalf of Concessionaire and generated from the retail or wholesale sale of food, beverage, or merchandise, of any kind whatsoever, for cash, barter, exchange or credit (regardless of collections) on, from, or at any place on the Monorail System; and

4. All income derived by the Concessionaire during the Term from marketing, promotion, advertising, or sponsorship arrangements using or referring, in any way, to the Monorail System or any portion thereof and derived from any Private Asset of the Concessionaire.

5. All interest income from Concessionaire's cash holdings.

The term "Concessionaire's Total Revenues" shall not include (a) federal, state or local excise, sales, use, ticket, or other similar taxes collected from patrons based on gross receipts or admissions; (b) insurance proceeds other than proceeds to compensate for loss of Concessionaire's Total Revenues; (c) the proceeds of any financing or capital contributions to the

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MONORAIL SYSTEM CONCESSION AGREEMENT

THIS MONORAIL SYSTEM CONCESSION AGREEMENT is made between **THE CITY OF SEATTLE** (the "City") operating through its Seattle Center Department (the "Seattle Center") and its Director of Seattle Center ("the Director") and **SEATTLE MONORAIL SERVICES, LLC**, a Washington limited liability company organized and existing under the laws of the State of Washington (the "Concessionaire"). In consideration of the mutual covenants contained herein, the parties agree as follows:

I. DEFINITIONS

As used in this Agreement, the following terms have the meanings given in this Section.

A. **Agreement** means this Concession Agreement, as amended from time to time.

B. **Approval or Approved,** whether or not capitalized, means the prior written consent of a party hereto or a designated representative thereof. Except as otherwise expressly provided herein, any approvals hereunder shall not unreasonably be withheld, conditioned, made or delayed.

C. **Armory** means the multi-use office, food and entertainment facility known as the "Seattle Center Armory" located on the Seattle Center campus and connected to the Seattle Center Monorail Station by an existing pedestrian bridge. If the name of the Armory is changed during the Term, all references in this Agreement to the "Armory" shall be deemed to refer to the re-named facility.

D. **Capital and Major Maintenance Program (CMMP) Expenses** means all costs and expenses incurred in the course of developing and updating the CMMP, and planning, providing or managing a Capital Improvement and/or Major Maintenance project that is identified in the rolling five year Capital and Major Maintenance Program plan and such expenses are Approved by the City.

E. **Capital and Major Maintenance Program (CMMP) Plan** means the rolling five-year plan cooperatively prepared by the City and the Concessionaire which identifies, sequences, and prioritizes current, future and potentially emergent Capital Improvement and Major Maintenance projects, including FTA eligible improvements, needed by the Monorail System, as amended from time to time and more completely described under Section XIII.B. These projects generally are intended to enhance the function and operation, add to the value of or extend the useful life of the Monorail System, improve the attractiveness of the Monorail System to users and the general public, and/or improve Monorail System operational, mechanical or financial performance.

F. **Capital Improvement(s)** means those physical alterations that substantially add to the value or appreciably prolong the useful life of the Monorail System. Activities in this category will generally be made as part of the CMMP.

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Attachment 1

Monorail System Concession Agreement

by and between

Seattle Monorail Services, LLC

and

The City of Seattle

THIS VERSION IS NOT ADOPTED

Section 5. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2014, and signed by me in open session in authentication of its passage this _____ day of _____, 2014.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2014.

_____

Edward B. Murray, Mayor

Filed by me this ____ day of _____, 2014.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

Attachment 1: Monorail System Concession Agreement
Exhibits to Attachment:
Exhibit A: Seattle Center Description
Exhibit B: 1987 Monorail System Operating and Easement Agreement
Exhibit C: Inventory of Spare Parts

the right to operate and maintain the Seattle Center Monorail for an initial ten year term. The Director is authorized to extend the Concession Agreement for an additional ten year term on the same terms and conditions as provided for under the Concession Agreement.

Section 2. Fares for the Monorail are established in the amount provided under the Concession Agreement. The Director is hereby authorized to approve increases to the fares in a manner consistent with the Concession Agreement so long as the fares do not exceed the maximum fares established under the Concession Agreement.

Section 3. The Director is hereby authorized to enter into subsequent project agreements with Seattle Monorail Services for capital projects and major maintenance of the Monorail System as provided for and in compliance with the requirements and limitations of the Concession Agreement.

Section 4. Any act consistent with the authority of this ordinance taken after its passage and prior to its effective date is hereby ratified and confirmed.

THIS VERSION IS NOT ADOPTED

THIS VERSION IS NOT ADOPTED

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 118280

AN ORDINANCE relating to the Seattle Monorail; authorizing the Director of the Seattle Center to execute a concession agreement granting Seattle Monorail Services the right to operate and maintain the Monorail system for ten years, with an additional ten year extension by mutual agreement; authorizing the Director to enter into project agreements for Monorail capital improvements and major maintenance projects as provided for in the agreement; authorizing the Director to establish Monorail fares within the limitations provided in the agreement; and ratifying and confirming certain prior acts.

WHEREAS, the Seattle Center Monorail was constructed in 1962 by Alweg International of Germany as part of the 1962 Seattle World's Fair and is an iconic symbol of Seattle; and

WHEREAS, the Monorail trains are a designated Seattle Historic Landmark; and

WHEREAS, the Monorail provides a public transportation link between downtown Seattle and Seattle Center; and

WHEREAS, more than two million riders utilize the Monorail each year; and

WHEREAS, in 2013 Seattle Center published a request for proposals seeking a concessionaire to operate the Seattle Monorail as a concession and to provide management, marketing, and maintenance of the Seattle Monorail to maximize accountability for safety, service reliability, cost control, revenue, and business development; and

WHEREAS, Seattle Monorail Services submitted the successful proposal, and the Director of the Seattle Center and Seattle Monorail Services have negotiated an agreement; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Director of the Seattle Center (the "Director") and recommended by the Mayor, the Director or his designee is authorized to execute, for and on behalf of The City of Seattle, a concession agreement with Seattle Monorail Services, substantially in the form of the Monorail System Concession Agreement attached hereto as Attachment 1 (the "Concession Agreement") under which Seattle Monorail Services is granted

STATE OF WASHINGTON -- KING COUNTY

--ss.

319380

No. 124672,673,674,675,676

CITY OF SEATTLE,CLERKS OFFICE

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:TITLE ONLY ORDINANCES

was published on

01/15/15

The amount of the fee charged for the foregoing publication is the sum of $116.25 which amount has been paid in full.

Subscribed and sworn to before me on

01/15/2015

Notary public for the State of Washington,
residing in Seattle

JENNIFER A. BORRERO
COMMISSION EXPIRES
NOTARY
PUBLIC
10-24-15
STATE OF WASHINGTON

Affidavit of Publication

State of Washington, King County

City of Seattle

Title Only Ordinances

The full text of the following legislation, passed by the City Council on December 15, 2014, and published below by title only, will be mailed upon request, or can be accessed at http://clerk.seattle.gov. For information on upcoming meetings of the Seattle City Council, please visit http://www.seattle.gov/council/calendar.

Contact: Office of the City Clerk at (206) 684-8344.

ORDINANCE NO. 124672

AN ORDINANCE relating to Seattle Public Utilities; accepting easements granted to the City of Seattle for installation, operation, and maintenance of water mains, fire and domestic water services, water service vaults, hydrants, water facilities, water supply pipelines, water meters, access and appurtenances necessary for water utility purposes at various locations in Seattle and unincorporated King County, Washington; placing the easements under the jurisdiction of Seattle Public Utilities; and ratifying and confirming certain prior acts.

ORDINANCE NO. 124673

AN ORDINANCE relating to Seattle Public Utilities; accepting easements situated in southeast Seattle granted to the City of Seattle for installation, operation and maintenance of sewer lines necessary for drainage and wastewater utility purposes; placing the easements under the jurisdiction of Seattle Public Utilities and ratifying and confirming certain prior acts.

ORDINANCE NO. 124674

AN ORDINANCE relating to the Seattle Monorail; authorizing the Director of the Seattle Center to execute a concession agreement granting Seattle Monorail Services the right to operate and maintain the Monorail system for ten years, with an additional ten year extension by mutual agreement; authorizing the Director to enter into project agreements for Monorail capital improvements and major maintenance projects as provided for in the agreement; authorizing the Director to establish Monorail fares within the limitations provided in the agreement; and ratifying and confirming certain prior acts.

ORDINANCE NO. 124675

AN ORDINANCE relating to the Bell Harbor Marina; authorizing the Mayor to execute a Termination of Agreement and Release of the Memorandum of Understanding between the City and the Port of Seattle for the operation and maintenance of the marina; and ratifying and confirming prior acts.

ORDINANCE NO. 124676

AN ORDINANCE authorizing, in 2014, acceptance of funding from non-City sources; authorizing the heads of the Executive Department, Department of Information Technology, Department of Neighborhoods, Seattle Fire Department, Seattle Police Department, Seattle City Light and the Seattle Department of Transportation to accept specified grants and private funding and to execute, deliver, and perform corresponding agreements; and ratifying and confirming certain prior acts.

Date of publication in the Seattle Daily Journal of Commerce, January 15, 2015.

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