

Excise Tax Exempt

Pierce County, WA

03/03/2023 12:00 PM

Electronically Submitted

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Pierce County, WA ACLARK1

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WHEN RECORDED RETURN TO:

SOUND TRANSIT
 Real Property Division
 401 South Jackson Street
 Seattle, WA 98104

Document Title: Pedestrian Bridge Airspace Easement Agreement

Reference Number of Related Document(s): N/A

Grantor: City of Puyallup

Grantee: Central Puget Sound Regional Transit Authority

Abbreviated Legal Description: Por J.P. Stewart's Addn Book 1 P 39 Plats, in the SW1/4 and SE1/4 Sec28 T20N R4E, more particularly described on Ex. "A"

Assessors Tax Parcel No.: N/A (Public Street)

PEDESTRIAN BRIDGE AIRSPACE EASEMENT AGREEMENT

This Pedestrian Bridge Airspace Easement Agreement (this "Agreement") is entered into as of the date of the last signature below by and between the City of Puyallup, a Washington municipal corporation ("Grantor"), and the Central Puget Sound Regional Transit Authority, commonly referred to as Sound Transit, a regional transit authority under the laws of the State of Washington, ("Grantee").

RECITALS

A. Grantor is a non-charter optional municipal code city organized pursuant to Chapter 35A RCW and incorporated under the laws of the State of Washington with authority to enact laws and enter into agreements to promote the health, safety and welfare of its citizens and for other lawful purposes.

B. Grantee is a regional transit authority created pursuant to Chapters 81.104 and 81.112 RCW with all the powers necessary to implement a high capacity transit system within its boundaries in King, Pierce, and Snohomish Counties, including the power to acquire real property for such purposes.

C. Grantor is the owner of that certain right-of-way located in Puyallup, Washington known as 5th Street NW ("Grantor's Right-of-Way") and has the authority to grant easements and other interests over, upon, and through Grantor's Right-of-Way.

D. Grantee is in the process of building its Puyallup Station Parking and Access Improvement project (the "Project") within the boundaries of the City of Puyallup, which will consist of a parking garage (the "Parking Garage") and other improvements, and will improve access to

CHICAGO TITLE INSURANCE COMPANY HAS PLACED THE DOCUMENT OF RECORD AS A CUSTOMER COURTESY AND ACCEPTS NO LIABILITY FOR THE ACCURACY OR VALIDITY OF THE DOCUMENT.

Grantee's Puyallup Sounder commuter rail station (the "Puyallup Station") for the benefit of residents of Puyallup and the surrounding area. One component of the Project is a pedestrian bridge from the Parking Garage over Grantor's Right-of-Way to the Puyallup Station (the "Pedestrian Bridge").

E. Grantor and Grantee are parties to that certain Puyallup Station Parking and Access Improvements Development Agreement-GA 0224-19 dated April 7, 2020 pertaining to the Project (the "Development Agreement"), which provides in pertinent part that Grantor will grant Grantee an airspace easement in perpetuity over Grantor's Right-of-Way for the Pedestrian Bridge. Under the Development Agreement, Grantor agreed to grant the airspace easement for no monetary consideration, upon the ground that the Pedestrian Bridge is of mutual benefit to both parties.

AGREEMENT

Now, therefore, in consideration of the public benefit and the performance of the covenants, terms and conditions set forth herein and in the Development Agreement, the parties agree as follows:

1. Grant of Easement. Grantor hereby conveys to Grantee a non-exclusive easement (the "Easement") across, over, and upon that portion of Grantor's Right-of-Way described on Exhibit A hereto, for the purposes and uses listed below.

2. Purposes. Grantee shall use the Easement for the purpose of providing members of the general public with pedestrian access over and across Grantor's Right-of-Way between the Parking Garage and the Puyallup Station. Grantee shall have air rights over and across Grantor's Right-of-Way for construction, maintenance, operation, use, repair, and replacement of the Pedestrian Bridge structure and all components appurtenant thereto as shown on the approved City of Puyallup permit #B-20-0982. To the extent reasonably necessary, Grantee shall have surface rights within the Easement Area and the areas immediately adjacent thereto for construction, maintenance, repair, and replacement of the Pedestrian Bridge.

3. Use of Easement Area. The following conditions apply to Grantee's occupancy, use, and operations in the Easement Area:

a. The Pedestrian Bridge shall be constructed and maintained solely within the areas and elevations depicted on Exhibit B hereto.

b. Grantee shall not construct or maintain any permanent structures upon or within the Easement Area other than the Pedestrian Bridge and related appurtenances as depicted on Exhibit B.

c. Grantee's use of the Easement Area shall at all times be designed to minimize interference with the normal and safe operations of Grantor's Right-of-Way.

d. Grantee will not permit any other party, except Grantee's duly authorized representatives, employees, agents and independent contractors (collectively "Representatives") to enter or use the Easement Area for the purpose of repairs and maintenance. Grantee will be responsible for its Representatives' compliance with the terms of the Easement at all times.

e. Grantee shall be solely responsible for the maintenance, inspection and repair of the Pedestrian Bridge and all appurtenances thereto in the Easement Area. Grantee will maintain the Pedestrian Bridge in a state of good repair and efficiency so as to avoid damage to Grantor's Right-of-Way. Grantee shall be responsible for and promptly repair any damage to Grantor's Right-of-Way as a result of Grantee's use of the Easement.

f. Grantee shall conduct its activities on the Easement Area in a safe manner.

g. In the event Grantee disturbs or damages the Easement Area, Grantee shall at its sole cost repair or restore the surface of the Easement Area to a condition as good or better than that which existed before such disturbance or damage.

4. Non-Exclusive. Grantor reserves the right to grant other non-exclusive easements, franchises, and/or permits on and across Grantor's Right-of-Way; provided, that such easements, franchises, and/or permits shall not allow uses that interfere with Grantee's authorized use under this Agreement. Such non-exclusive rights shall not allow attachment to, or use of the Pedestrian Bridge or appurtenances thereto, except as otherwise authorized in writing by Grantee.

5. Indemnification. Grantee shall defend, indemnify and hold harmless Grantor and its successors, assigns, agents, contractors, subcontractors, tenants, licensees, invitees, officials, and employees (collectively, the "Indemnified Parties") from and against any and all claims, demands, losses, liabilities, damages, actions, proceedings, expenses and costs (including reasonable attorneys' fees) (collectively, "Claims") arising out of or resulting from the use of the Pedestrian Bridge by Grantee and/or its successors, assigns, agents, contractors, subcontractors, employees, invitees acting within the scope of the invitation, and licensees; provided, however, that Grantee's indemnification obligations as set forth herein shall not apply to the extent that any such Claims arise as a result of the negligence or willful misconduct of an Indemnified Party, and the foregoing defense, indemnity and hold harmless obligation shall not extend to and in no event shall Grantee be liable with respect to any pre-existing hazardous substances in, on or under the Easement Area. Solely for the purpose of effectuating the indemnification obligations hereunder, and not for the benefit of any third parties (including employees of the parties), each party specifically and expressly waives any immunity that may be granted it under applicable federal, state or local worker compensation acts or other employee benefit acts. The parties acknowledge that the foregoing waiver has been specifically and mutually negotiated between the parties.

The Grantee's obligations contained in this section shall survive any termination or expiration of this Easement and any subsequent transfer by the Grantor of its interest in the Easement Area.

6. Insurance. For so long as the Easement remains in effect, Grantee shall maintain commercial general liability insurance with reasonable limits of liability covering Grantee, its agents, contractors and permittees as to the exercise of Grantee's rights under this Agreement within the Easement Area. Grantee must provide Grantor, on request, certificates of insurance

evidencing such coverage. Grantee may provide the coverage required herein under blanket policies provided that the coverage is not diminished as a result.

7. Entire Agreement. This Agreement supersedes any prior agreements, arrangements and understandings relating to the subject matter of this Agreement. In the event of a conflict or ambiguity between this Agreement and the Development Agreement with respect to the Easement granted herein, the terms of this Agreement shall control.

8. Amendment. This Agreement may not be amended or modified except in writing signed by each of the parties hereto.

9. Counterparts. This Agreement may be executed in counterparts, which, when taken together, shall constitute one Agreement.

10. Governing Law. This Agreement shall be governed by the laws of the State of Washington without regard to the conflict of law provisions therein.

11. Venue. Venue for any action pertaining to this Agreement will be in Pierce County Superior Court, Pierce County, Washington.

12. Authorized Signature. Each party to this Agreement warrants and represents to the other parties that the individual signing this Agreement on behalf of such party has been duly authorized to execute this Agreement.

13. Covenants Run with the Land. The terms and conditions of this Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, and legal representatives.

14. Abandonment. The rights herein granted shall continue until such time as Grantee or its successors or assigns ceases to use and maintain the Easement Area for the purposes defined herein for a period of three (3) successive years. In such event, the Easement shall terminate along with all rights hereunder, and any improvements remaining in the Easement Area shall revert to or otherwise become the property of Grantor. In the event of abandonment, the Grantor may require Grantee to remove the Pedestrian Bridge from Grantor's Right-of-Way to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. Grantee shall complete such removal in accordance with a reasonable schedule set by the Grantor. Until such time as Grantee removes the Pedestrian Bridge as directed by the Grantor, or until the rights to and responsibility for the Pedestrian Bridge are accepted by another person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and maintenance of the Pedestrian Bridge, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the Grantor may choose to use such facilities for any purpose whatsoever including, but not limited to, pedestrian access purposes.

15. Reservation of Grantor Use of Right-of-Way. Nothing in this Easement shall prevent the Grantor from constructing sewers; grading, paving, repairing or altering Grantor's Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public

work or improvement that is necessary for public safety or public purpose. All such work shall be done, insofar as practicable, in a manner that will not obstruct, injure, require modification of, or prevent the use and operation of Grantee's Pedestrian Bridge or otherwise interfere with the easement rights granted herein. Provided, however, that insofar as the Pedestrian Bridge, or any portion thereof, is required to be modified to accommodate the Grantor's use of Grantor's Right-of-Way as described in this section, Grantor shall cooperate with Grantee in the design of Grantor's project and performance of its work in an effort to minimize impacts to the Pedestrian Bridge and related appurtenances. In the event modification of the Pedestrian Bridge to accommodate Grantor's use of Grantor's Right-of-Way is necessary within twenty years after the grant of the final city permit or other approval relative to the initial construction of the Pedestrian Bridge, Grantor shall be solely responsible for any and all costs associated with such modification; thereafter, Grantee shall be solely responsible for any and all costs associated with such modification. The Parties agree to amend this Agreement and the legal description of the Easement Area to the extent necessary to accommodate any necessary modification of the Pedestrian Bridge and related appurtenances as described herein.

In witness whereof, the parties have executed this Easement as of the date set forth below.

GRANTOR:

CITY OF PUYALLUP

By:  _____

Print Name: Steve Kirkelie

Title: City Manager

Date: 2/27/23

GRANTEE:

SOUND TRANSIT

By:  _____

Print Name: Michelle Reuss

Title: Acting Deputy Executive Director

Date: 03/03/2023

(ACKNOWLEDGMENT FOR GRANTOR)

STATE OF WASHINGTON)

) ss.

County of Pierce)

On this 24 day of February 2023, before me, the undersigned notary public in and for the State of Washington, duly commissioned and sworn, personally appeared Steve Kirkelie to me known to be the City Manager of the City of Puyallup, the authority that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said authority, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute the same.

WITNESS my hand and official seal hereto the day and year in this Certificate first above written.



Mary E Winter Notary Public in
and for the State of Washington, residing at University
My appointment expires 12/4/24 Place

Approved as to Form

DocuSigned by:
Joseph N Beck
By: _____
EF58A5DC2E5544B.
Joseph N. Beck

Its: City Attorney

(ACKNOWLEDGMENT FOR GRANTEE)

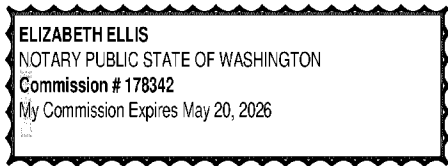
STATE OF WASHINGTON)

) ss.

County of King)

On this 3 day of March, 2023, before me personally appeared Michelle Reuss, to me known to be the Acting Deputy Executive Director, DECM of Sound Transit, the authority that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said authority for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

WITNESS my hand and official seal hereto the day and year in this Certificate first above written.



[Signature] Notary Public in and for the State of Washington, residing at Kirkland, Washington
My appointment expires 05/20/2026

Approved as to Form

By: **Paul Moomaw**
Sound Transit Legal Counsel
Digitally signed by Paul Moomaw
Date: 2023.02.28 15:40:43 -08'00'

Exhibit A

AN EASEMENT, 16 FEET IN WIDTH, COMMENCING AT THE NORTHWEST CORNER OF THE PARCEL DESCRIBED AS FOLLOWS:

A PORTION OF THE PARCEL OF LAND DESCRIBED IN STATUTORY WARRANTY DEED FILED UNDER PIERCE COUNTY AUDITOR'S FILE NO. 2688841 AND BEING A PORTION OF J.P. STEWART'S ADDITION ACCORDING TO PLAT RECORDED IN BOOK 1 OF PLATS AT PAGE 39, RECORDS OF PIERCE COUNTY, WASHINGTON LOCATED IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 20 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, CITY OF PUYALLUP, PIERCE COUNTY, WASHINGTON AND BEING FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE ABOVE DESCRIBED PARCEL, SAID POINT ALSO BEING THE INTERSECTION OF THE EASTERLY RIGHT OF WAY LINE OF 5TH STREET NW 30 FEET EAST OF CENTERLINE AND THE SOUTHERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD RIGHT OF WAY 33 FEET SOUTHERLY OF CENTERLINE; THENCE SOUTH 74° 07' 11" EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE A DISTANCE OF 168.46 FEET, THENCE SOUTH 15° 52' 49" WEST A DISTANCE OF 53.09 FEET; THENCE NORTH 89° 02' 18" WEST A DISTANCE OF 149.96 FEET TO A POINT ON SAID EAST LINE OF 5TH ST NW RIGHT OF WAY; THENCE NORTH 01° 09' 57" EAST ALONG SAID EAST LINE A DISTANCE OF 94.67 FEET THE POINT OF BEGINNING.

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THENCE SOUTH 01° 09' 57" WEST ALONG THE EASTERLY RIGHT OF WAY LINE OF 5TH STREET NW A DISTANCE OF 33.50 FEET TO THE **POINT OF BEGINNING**;

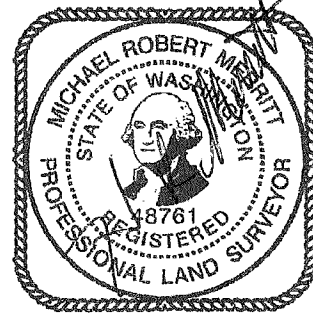
THENCE NORTH 89° 05' 29" WEST A DISTANCE OF 60.97 FEET TO THE WESTERLY RIGHT OF WAY LINE OF 5TH STREET NW;

THENCE SOUTH 01° 12' 16" WEST ALONG THE WESTERLY RIGHT OF WAY LINE OF 5TH STREET NW A DISTANCE OF 16.00 FEET;

THENCE SOUTH 89° 05' 29" EAST A DISTANCE OF 60.99 FEET TO THE EASTERLY RIGHT OF WAY LINE OF 5TH STREET NW;

THENCE NORTH 01° 09' 57" EAST ALONG THE EASTERLY RIGHT OF WAY LINE OF 5TH STREET NW A DISTANCE OF 16.00 FEET TO THE **POINT OF BEGINNING**.

SAID EASEMENT CONTAINING 976 SQUARE FEET, MORE OR LESS, WHICH IS CONTAINED WITHIN A HORIZONTAL PLANE OF WHICH IS ABOVE ELEVATION 66.0 AND BELOW ELEVATION 81.0, NORTH AMERICAN VERTICAL DATUM OF 1988.



05/11/2022

Exhibit B

BURLINGTON NORTHERN RAILROAD

POINT OF COMMENCEMENT

POINT OF BEGINNING

S 01°12'16" W 16.00'
 N 89°05'29" W 60.97'
 PROPOSED EASEMENT
 S 89°05'29" E 60.99'

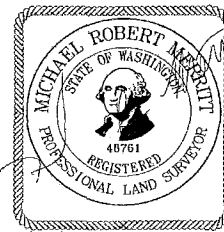
5TH ST. NW

S 01°09'57" W 33.50'
 N 01°09'57" E 16.00'

SOUND TRANSIT PARCEL
 # 04220281171



NOTE: EASEMENT IS CONTAINED WITHIN A HORIZONTAL PLANE WHICH IS ABOVE ELEVATION 66.0 AND BELOW ELEVATION 81.0 (NAVD 88 DATUM)



01/10/2023

File: C:\Users\Jared Branch\Desktop\UCBS\2020\2020-046_PUYALLUP STATION PARKING\2020-046 EASEMENT 102021.dwg ID: Jared Branch Date: 10-Jan-23 2:12:53pm



O'Benko Engineering (OEI)
 Engineering, Surveying & Construction Management
 1042 West James Street, Suite 201
 Kent, Washington 98032
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PUYALLUP STATION
 BRIDGE AIRSPACE EASEMENT
 5TH STREET NW, PUYALLUP, WA

Scale: 1" = 20'
 Project: 2020-046
 Date: January 10, 2023