

## COOPERATIVE AGREEMENT

### Operation and Maintenance of the Pear Orchard Park and Ride

THIS COOPERATIVE AGREEMENT (Agreement) for the operation and maintenance of the **Pear Orchard Park and Ride** is made and entered into by and between the **city of Shelton** hereinafter called (CITY) and the **Mason County Public Transportation Benefit Area dba Mason Transit Authority** hereinafter called (TENANT).

#### RECITALS

- A. TENANT desires to constructed and operate a park and ride lot commonly known as the Pear Orchard Park and Ride located near SR 3 and Front Street in Shelton, WA);
- B. The Park and Ride Lot is located on real property owned by the CITY;
- C. The TENANT provides public transportation within the city of Shelton and Mason County, and has adopted a comprehensive plan to provide mass transit for said rural area, which includes providing transit services at the Park and Ride Lot;
- D. The TENANT agrees to operate and maintain the Park and Ride Lot in exchange for the right to operate transit services; and
- E. The City and the TENANT are authorized to enter into this agreement pursuant to Chapter 39.34 RCW.

#### AGREEMENT

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

#### 1. PREMISES.

A. The premises covered by this Agreement is shown hachured on **Exhibit A**, attached hereto and by this reference made a part hereof, and defined as follows:

#### **Legal Description attached**

B. TENANT has examined the Premises and accepts it in its present condition as part of the consideration of this Agreement.

**2. USE OF PREMISES.**

A. No use other than operation and maintenance of a park and ride lot in conjunction with transit services shall be permitted without the prior written approval of the CITY. Operation of transit services are the transfer of motorists from private vehicles to buses or to or from private carpool vehicles, bus to bus transfers, transfers to TENANT van pools, and necessary security activities. Any other use authorized by the CITY will be pursuant to separate written agreement. This provision applies to other uses by TENANT and uses by third parties.

B. TENANT shall have access to the Premises at the location shown on **Exhibit A**.

C. In using the Premises, TENANT must comply with all City municipal codes, policies, and regulations heretofore adopted or hereafter promulgated by the CITY relative to the location, operation, and maintenance of improvements located on the Premises.

D. In using the Premises, it is expressly agreed that TENANT must comply with all applicable federal, state, and local laws, ordinances, and regulations, including environmental requirements, that are in force or which may hereafter be in force and secure and maintain all necessary permits and licenses.

E. TENANT agrees to maintain the following park and ride parking spaces on the Premises, unless otherwise agreed to in writing by the parties: Total of 32 as follows: 30 Standard; 0 Compact; 0 Handicapped; and 2 Handicapped Vans.

F. Signs, display lights, or advertising media/materials are not permitted on the Premises except on transit buses, unless shown on a separate plan sheet and must receive prior written approval by the City. The signs as shown on **Exhibit B**, attached hereto and by this reference made a part hereof, are hereby approved.

G. TENANT will not disturb markers installed by a franchise or permit holder and will contact the franchise or permit holder prior to any excavation in order that the franchise or permit holder may locate the utility. It is TENANT's responsibility to protect legally installed underground utilities from damage caused by itself, its contractors, agents, employees, tenants, and/or invitees. Prior to any operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced to a vertical depth of twelve inches (12") or greater, TENANT must call the one-number locator service in TENANT's area as required by RCW 19.122 to ascertain the existence of underground utilities. TENANT must comply with all provisions of ch. 19.122 RCW relating to underground facilities. ~~Excavation on the Premises is new construction subject to the terms and conditions set forth in Section C herein.~~

**3. TERM.** This Agreement shall be a 20-year tenancy, commencing on April 1, 2019.

**4. RENEWAL.**

A. This Agreement may be renewed for a 20-year period; provided that;

(1) TENANT is not in default and has not been in default during the term or any Renewal Period of this Agreement;

(2) there is no other public need for the Premises;

(3) the Park and Ride Lot is, in the CITY's determination, continuing to serve a functional highway purpose; and

(4) the terms and conditions of this Agreement conform to then existing city policies or practices, laws, regulations, and contracts, or provided TENANT is willing to amend this Agreement to bring it into compliance with such policies, practices, laws, regulations, and contracts.

B. The Agreement for the Renewal Period shall be on the same terms and conditions as set forth herein, except as modified by any changes in policies, practices, laws, regulations, or contracts, as reflected in a written amendment signed by both parties.

C. TENANT shall give notice of its intent to renew this Agreement for the Renewal Period at least ninety (90) calendar days, but not more than six (6) months prior to the expiration of this Agreement, or any renewal thereof.

**5. TERMINATION BY CITY.**

A. The CITY may terminate this Agreement, in whole or in part, without penalty or further liability as follows:

(1) upon thirty (30) calendar days' written notice to TENANT, if TENANT defaults, and fails to cure such default within that thirty (30) calendar day period, or such longer period, as may be determined by the CITY in its sole judgment, if TENANT is diligently working to cure the default; and

(2) immediately, upon written notice, if a receiver is appointed to take possession of TENANT's assets, TENANT makes a general assignment for the benefit of creditors, or TENANT becomes insolvent or takes or suffers under the Bankruptcy Act.

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

C. If TENANT defaults on any provision in this Agreement three (3) times within a twelve (12)-month period, then the third default shall be deemed “non-curable” and this Agreement may be terminated by the CITY on thirty (30) days written notice.

## **6. TERMINATION BY TENANT.**

A. TENANT may terminate this Agreement, in whole or in part, without penalty or further liability as follows:

(1) upon not less than thirty (30) calendar days’ prior written notice,

(2) upon not less than thirty (30) calendar days’ prior written notice to the CITY, if the CITY defaults, and fails to cure such default within that thirty (30) calendar day period, or such longer period, as may be determined by TENANT in its sole judgment, if the CITY is diligently working to cure the default.

(3) Immediately, upon written notice, if in TENANT’s judgment the Park and Ride Lot is destroyed or damaged so as to substantially and adversely affect TENANT’s authorized use of the Park and Ride Lot.

**7. CONSIDERATION.** In exchange for the use of the Premises by TENANT to operate a park and ride lot in conjunction with transit services, as described elsewhere herein, the TENANT agrees to perform the maintenance services on the Premises, as provided elsewhere herein.

## **8. MAINTENANCE.**

A. TENANT agrees to maintain the Premises in accordance with CITY standards set forth in the CITY Maintenance Manual, and any amendments thereto, which by this reference are incorporated herein.

B. Fences shall be maintained by TENANT. If any fence is damaged as a result of TENANT’s activities, TENANT will promptly repair such damage at its cost to the CITY’s satisfaction.

C. The CITY reserves the right to periodically observe and inspect the maintenance work conducted by TENANT on the Premises. The CITY shall provide written notice to TENANT to include details of those elements or areas not in compliance with specifically referenced CITY maintenance requirements. The notice will set a specified reasonable period of time in which requested corrective action must be taken; provided that, if an emergency exists, corrective action must be taken immediately. If corrective measures are not completed within the specified time

period, the CITY may either perform the maintenance as provided elsewhere herein and seek reimbursement from the TENANT, or issue a notice of default as provided elsewhere herein.

**9. IMPROVEMENTS.** TENANT may install improvements on the Premises at the locations previously agreed to by the parties and as shown on **Exhibit C**. Prior to the installation of these improvements TENANT shall notify the CITY and the parties shall coordinate their activities to facilitate such installations. The above approved improvements shall be in accordance with the Plans and Specifications dated March 26, 2019, which by this reference are incorporated herein.

**10. PERSONAL PROPERTY.**

A. The CITY shall not be liable in any manner for, or on account of, any loss or damage sustained to any property of whatsoever kind stored, kept, or maintained in or about the Premises, except for such claims or losses that may be caused by the CITY, its authorized agents, or employees.

B. TENANT shall not be liable in any manner for, or on account of, any loss or damage sustained to any CITY, its franchisees, lessees, and permittees, or other authorized users' personal property of whatsoever kind stored, kept, or maintained on or about the Premises, except for such claims or losses that may be caused by TENANT, its authorized agents, or employees.

C. Upon termination of this Agreement, the CITY or its agent may remove all personal property of TENANT and TENANT improvements or modifications to the Premises remaining on the Premises at TENANT's expense and dispose of it in any manner the CITY deems appropriate. TENANT agrees to reimburse the CITY for the costs of such removal and disposal within thirty (30) calendar days of the date of the CITY's invoice.

**11. CONSTRUCTION.** No construction of new or reconstruction of existing improvements is permitted without the prior written approval of the CITY. TENANT covenants that any regrading or improvements to be constructed on the Premises will not at any time during or after construction either damage, threaten to damage, or otherwise adversely affect any part or element of the highway facility or the operation thereof. The CITY shall be furnished with one (1) set of complete plans, details, and specifications and revisions thereto for grading and all improvements proposed to be placed on the Premises, and no work shall be done without prior written approval of such plans by the CITY. All construction work shall be done in conformity with the plans and specifications as approved. All construction shall comply with the City municipal code, regulations, construction standards, permit requirements, or other applicable rules, which includes but is not limited to inspection by a certified project inspector. The CITY may take any action necessary, including directing that work be temporarily stopped or that additional work be done, to ensure observation of the plans and specifications, protection of all parts and elements of the facility, and compliance with the CITY's construction and safety standards. The improvements

shall be designed and constructed in a manner that will permit access to the Premises for the purpose of inspection, maintenance, and construction when necessary.

## **12. CITY RESERVATION OF RIGHT.**

### **A. Right of Entry.**

(1) Nothing herein shall affect the CITY's, its agent's, and/or contractor's right to enter upon and use the Premises at any time for any purpose.

(2) Other than in an emergency, the CITY, as a matter of courtesy, will attempt to give TENANT a minimum of thirty (30) calendar days' notice of any entry that will unreasonably disrupt TENANT's operation or maintenance on the Premises. All reasonable steps will be taken to minimize impacts to TENANT's operation and maintenance, however, the CITY assumes no liability of any kind for any such disruption.

### **B. Right to Grant/Maintain/Operate Utility Franchises/Permits/Easements/Leases.**

(1) Nothing in this Agreement shall affect the CITY's right to grant franchises, easements, permits, or enter into leases or other documents concerning the use of the Premises; provided that, such use does not unreasonably interfere with TENANT's operation or maintenance of the Premises.

(2) Nothing in this Agreement shall affect the right for franchisees, permittees, or lessees, to enter upon the Premises to maintain, repair, and enhance existing facilities and install, maintain, and repair new facilities.

(3) Any installation, maintenance, and repair of the Premises by a franchisee, permittee, or lessee will be accomplished in such a manner as to minimize any disruption to TENANT's operation and maintenance on the Premises. Except in the event of an emergency, the franchisee, permittee, or lessee will be required to notify TENANT of activities that will involve the use of the Premises prior to such use. In addition, the franchisee, permittee, or lessee will be required to restore paving and grading damaged by the installation, maintenance, and/or repair.

**13. VACATION OF PREMISES.** Upon termination of this Agreement, TENANT shall cease its operations on the Premises and, if so directed by the CITY, restore the Premises to its condition prior to TENANT's occupancy. This restoration may include the removal of personal property and any TENANT improvements or modifications to the Premises. This work shall be done at TENANT's expense and to the reasonable satisfaction of the CITY. In the event TENANT fails to vacate and, if so directed by the CITY, restore the Premises prior to the date of termination, TENANT shall be liable for any and all costs to the CITY arising from such failure and agrees to

reimburse the CITY for all such costs within thirty (30) calendar days of the date of the CITY's invoice for such costs.

#### **14. TAXES/ASSESSMENTS/UTILITIES.**

A. TENANT agrees to pay all assessments that benefit the Premises, and/or which may hereafter become a lien on the interest of TENANT. TENANT shall have the right to appeal disputed charges.

B. TENANT also agrees to pay all taxes that may hereafter be levied or imposed upon TENANT or by reason of this Agreement. TENANT shall have the right to appeal disputed charges.

C. TENANT agrees, except as noted herein, to pay the cost for all utility bills incurred at the Park and Ride Lot, including, but not limited to, sewer, electric, water, surcharges, and rate adjustments that serve the Premises. TENANT also agrees to pay any other fee associated with the Premises that may be required by the City municipal code, including but not limited to General Facilities Fees.

#### **15. LIENS.**

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

B. TENANT shall at all times indemnify and save the CITY harmless from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including attorney fees.

C. In the event a lien is filed upon the Premises, TENANT shall either (1) record a valid release of lien; or (2) deposit sufficient cash with the CITY to cover the amount of the claim on the lien in question, and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim; or (3) procure and record a bond which releases the Premises from the claim of the lien and from any action brought to foreclose the lien. Should TENANT fail to accomplish either C. (1), (2) or (3) above within thirty (30) calendar days after the filing of such a lien, this Agreement shall be in default per **Section 5.A.(1)**.

## 16. ENVIRONMENTAL REQUIREMENTS.

A. The CITY and TENANT each represent, warrant, and agree that it will conduct its activities on and off the Premises in compliance with all applicable environmental laws. As used in this Agreement, "Environmental Laws" means all federal, state, and local environmental laws, rules, regulations, ordinances, judicial, or administrative decrees, orders, decisions, authorizations, or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et. seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., the Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., and Washington or any other comparable local, state, or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto, including all amendments and/or revisions to said laws and regulations.

B. Toxic or hazardous substances are not allowed on the Premises without the express written permission of the CITY and under such terms and conditions as may be specified by the CITY. For the purposes of this Agreement, "Hazardous Substances," shall include all those substances identified as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., and the Washington Model Toxics Control Act, RCW 70.105D et seq., including all amendments and/or revisions to said laws and regulations, and shall include gasoline and other petroleum products. TENANT is hereby authorized to bring on to the Premises gasoline and petroleum products necessary to carry out the maintenance and operation requirements set forth in this Agreement. In the event such permission is granted, the disposal of such materials must be done in a legal manner by TENANT.

C. TENANT agrees to cooperate in any environmental investigations conducted by the CITY staff or independent third parties where there is evidence of contamination on the Premises, or where the CITY is directed to conduct such audit by an agency or agencies having jurisdiction. TENANT will reimburse the CITY for the cost of such investigations, where the need for said investigation is determined to be caused by TENANT's operations. TENANT will provide the CITY with notice of any inspections of the Premises, notices of violations, and orders to clean up contamination. TENANT will permit the CITY to participate in all settlement or abatement discussions. In the event that TENANT fails to take remedial measures as duly directed by a state, federal, or local regulatory agency within ninety (90) calendar days of such notice, the CITY may elect to perform such work, and TENANT covenants and agrees to reimburse the CITY for all direct and indirect costs associated with the CITY's work where those costs are determined to have resulted from TENANT's use of the Premises. TENANT further agrees that the use of the Premises shall be such that no hazardous or objectionable smoke, fumes, vapor, odors, or discharge of any kind shall rise above the grade of the right of way.



D. For the purposes of this Agreement, "Costs" shall include, but not be limited to, all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorney fees and other litigation costs incurred in complying with state or federal environmental laws, which shall include, but not be limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq.; the Clean Water Act, 33 U.S.C. § 1251; the Clean Air Act, 42 U.S.C. § 7401; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901; and the Washington Model Toxics Control Act, RCW 70.105D et seq., including all amendments and/or revisions to said laws and regulations.

E. TENANT agrees to defend, indemnify, and hold the CITY harmless from and against any and all claims, causes of action, demands, and liability including, but not limited to, any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments, and attorneys' fees associated with the removal or remediation of any Hazardous Substances that have been released, or otherwise come to be located on the Premises, including those that may have migrated from the Premises through water or soil to other properties which are caused by or result from TENANT'S activities on the Premises. TENANT further agrees to retain, defend, indemnify, and hold the CITY harmless from any and all liability arising from the offsite disposal, handling, treatment, storage, or transportation of any such Hazardous Substances removed from said Premises.

F. The CITY agrees to indemnify, defend, and hold TENANT harmless from and against any and all claims, causes of action, demands, and liability including, but not limited to, any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments, and attorneys' fees associated with the existence of, and/or removal or remediation of any Hazardous Substances that have been released, or otherwise come to be located on the Premises, including those that may have migrated from the Premises through water or soil to the other properties, which are caused by or result from the CITY's activities on the Premises. The CITY further agrees to retain indemnify, defend, and hold TENANT harmless from any and all liability arising from the off-site disposal, handling, treatment, storage, or transportation of any such Hazardous Substances removed from the Premises.

G. The provisions of this Section shall survive the termination or expiration of this Agreement.

## **17. INSURANCE.**

MASON TRANSIT AUTHORITY: MASON TRANSIT AUTHORITY will maintain general, auto and completed operations liability coverage to assume the general, auto, and completed operations liability risks associated with the work under this agreement. CITY OF SHELTON understands and acknowledges that MASON TRANSIT AUTHORITY is a member of a risk-sharing program, the Washington State Transit Insurance Pool. As such, the Washington

State Transit Insurance Pool provides the equivalent of these coverages normally found under a commercial lines policy or policies:

- Auto liability coverage for any auto (owned or non-owned) no less than \$1 million each accident.
- General liability coverage no less than \$5 million per occurrence and a \$10 million aggregate limit. This also provides products and completed operations and personal injury.
- Pollution liability insurance for this specific location no less than \$1 million per pollution condition with an annual aggregate of at least \$1 million and shall cover bodily injury, property damage, cleanup costs and defense including costs and expenses incurred in the investigation, defense or settlement of claims.

MASON TRANSIT AUTHORITY maintains workers' compensation as required by the Industrial Insurance laws of Washington through the state of Washington Department of Labor and Industries.

Should MASON TRANSIT AUTHORITY add structures or personal property to this property, MASON TRANSIT AUTHORITY agrees to insure such in the following manner:

- All risk property insurance coverage

MASON TRANSIT AUTHORITY is solely responsible for the payment of any deductible or self-insured retention.

## **18. INDEMNIFICATION.**

A. TENANT, its successors, and assigns, will protect, save, and hold harmless the CITY, its authorized agents, and employees, from all claims, actions, costs, damages, (both to persons and/or property) or expenses of any nature whatsoever by reason of the acts or omissions of TENANT, its assigns, subtenants, agents, contractors, licensees, invitees, employees, or any person whomsoever, arising out of or in connection with any acts or activities related to this Agreement on or off the Premises. TENANT further agrees to defend the CITY, its agents, or employees, in any litigation, including payment of any costs or attorney's fees, for any claims or actions commenced, arising out of, or in connection with acts or activities related to this Agreement, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the Premises. This obligation shall not include such claims, actions, costs, damages, or expenses which may be caused by the negligence of the CITY or its authorized agents or employees.

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the TENANT and

the CITY, its officers, officials, employees, and volunteers, the TENANT'S liability hereunder shall be only to the extent of the TENANT'S negligence

B. **WAIVER:** TENANT agrees that its obligations under this Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents while occupying the Premises for any purpose. For this purpose, TENANT, by MUTUAL NEGOTIATION, hereby waives with respect to the CITY only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions chapter 51.12 RCW.

C. The provisions contained in this Section shall survive the termination or expiration of this Lease.

**19. INDEPENDENT CAPACITY.** TENANT shall be deemed an independent contractor for all purposes and the employees of TENANT or any of its contractors, subcontractors, and employees thereof shall not in any manner be deemed employees of the CITY.

**20. NONDISCRIMINATION.** TENANT, for itself, its successors and assigns, as part of the consideration hereof, do hereby agree to comply with all applicable civil rights and antidiscrimination requirements, including but not limited to chapter 49.60 RCW.

**21. ASSIGNMENT.** Neither this Agreement nor any rights created by it may be assigned, sublet, or transferred.

**22. BINDING CONTRACT.** This Agreement shall not become binding upon the CITY unless and until executed by CITY signatories.

**23. PERFORMANCE BY CITY.**

A. If TENANT defaults in the performance or observation of any covenant or agreement contained in this Agreement, the CITY, without notice if deemed by the CITY that an emergency exists, or if no emergency, with thirty (30) calendar days' written notice, may direct TENANT to stop work and may itself perform or cause to be performed such covenant or agreement. Such emergency shall include, but not be limited to, endangerment of the life or safety of users of the Park and Ride Lot and the adjacent highway facility, or the endangerment of the Park and Ride Lot or the adjacent highway facility.

B. TENANT shall reimburse the CITY the entire cost and expense of such performance by the CITY within thirty (30) calendar days of the date of the CITY's invoice.

C. Any act or thing done by the CITY under the provisions of this Section shall not be construed as a waiver of any agreement or condition herein contained or the performance thereof.

**24. MODIFICATIONS.** This instrument contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto. No failure on the part of either party to enforce any covenant or provision herein contained, nor any waiver of any right thereunder, unless in writing, shall discharge or invalidate such covenant or provision or affect the right of the either party to enforce the same in the event of any subsequent breach or default.

**25. INTERPRETATION.** This Agreement shall be governed by and interpreted in accordance with the laws of the state of Washington. The title to paragraphs or sections of this Agreement are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

**26. SEVERABILITY.** If any covenant or provision or part thereof, of the Agreement be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision or part thereof, which in itself is valid, if such remainder conforms to the terms and requirements of applicable law and the intent of this Agreement.

**27. TOTALITY OF AGREEMENT.** It is understood that no guarantees, representations, promises, or statements expressed or implied have been made by either party except to the extent that the same are expressed in the Agreement.

**28. DISPUTE RESOLUTION.**

A. The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this Agreement:

CITY: City Administrator

TENANT: MTA General Manager

B. CITY Designated Representative and TENANT Designated Representative shall confer to resolve disputes that arise under this Agreement as requested by either party. The Designated Representatives shall use their best efforts and exercise good faith to resolve such disputes.

C. In the event the Designated Representatives are unable to resolve the dispute, the appropriate CITY Administrator and the MTA General Manager for TENANT shall confer and exercise good faith to resolve the dispute.

D. In the event the CITY Administrator and the MTA General Manager for TENANT are unable to resolve the dispute, the parties may, if mutually agreed in writing, submit the matter to non-binding mediation. The parties shall then seek to mutually agree upon the mediation

process, who shall serve as the mediator, and the time frame the parties are willing to discuss the disputed issue(s).

E. Each party shall bring to the mediation session, unless excused from doing so by the mediator, a representative from its side with full settlement authority. In addition, each party shall bring counsel and such other persons as needed to contribute to a resolution of the dispute. The mediation process is to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conference from later discovery or use in evidence; provided that, any settlement executed by the parties shall not be considered confidential and may be disclosed. Each party shall pay its own costs for mediation and share equally in the cost of the mediator. The venue for the mediation shall be in Shelton, Washington, unless the parties mutually agree in writing to a different location.

F. If the parties cannot mutually agree as to the appropriateness of mediation, the mediation process, who shall serve as mediator, or the mediation is not successful, then either party may institute a legal action in the County of Mason, State of Washington, unless other venue is mutually agreed to in writing. The parties agree that they shall have no right to seek relief in a court of law until and unless each of the above procedural steps has been exhausted.

**29. ATTORNEYS' FEES.** In the event of any controversy, claim, or dispute arising out of this Agreement, each party shall be solely responsible for the payment of its own attorney's fees and costs.

**30. VENUE.** In the event any party deems it necessary to institute legal action or proceedings to ensure any right or obligation under this Agreement, the parties hereto agree that such action or proceedings shall be brought in a court of competent jurisdiction situated in Mason County, Washington.

**31. AGREEMENT MANAGEMENT.**

A. The Program Manager for each of the parties shall be responsible for administration of this Agreement and shall be the contact person for all communications and billings regarding the administration of this Agreement, which expressly excludes notices of default and reporting, and correcting defects covered under warranty.

B. The Program Manager for TENANT is: MTA General Manager.

C. The Program Manager for the CITY is: Public Works Director,

D. Either party may, from time to time, by notice in writing served upon the other party as required elsewhere herein, designate an additional and/or a different mailing address or an

additional and/or different person to whom such notice, request, report or other communication are thereafter to be addressed.

**32. NOTICES.**

A. Wherever in this Agreement written notices are to be given or made, they will be served, personally delivered or sent by certified mail or overnight mail addressed to the appropriate party(ies) at the addresses provided herein, unless a different address is designated in writing or delivered to the other party.

B. Notices of default of this Agreement shall be given to the Program Manager and the individuals listed below:

(1) TENANT: MTA General Manager

(2) CITY: City Administrator

C. Either party may, from time to time, by notice in writing served upon the other party as required elsewhere herein, designate an additional and/or a different mailing address or an additional and/or different person to whom notices of default are to thereafter to be addressed.

Mason County Public Transportation Benefit  
Area dba Mason Transit Authority

By: *Matthew Pfeiffer*  
Title: General Manager  
Date: 7/23/2020

City of Shelton

By: *Jeff Durb*  
Title: City Manager  
Date: 9.29.2020  
  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO FORM

By: *[Signature]*

APPROVED AS TO FORM

By: *Kathleen Haggard*

TENANT ACKNOWLEDGEMENT

STATE OF WASHINGTON )

) ss

COUNTY OF Mason )

On this 23<sup>rd</sup> day of July 2020, before me personally appeared, Danette Van Fleet to me known to be the General Manager of the Mason Transit Authority that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said General Manager for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

GIVEN under my hand and official seal the day and year last above written.



Tracy Becht

Notary Public in and for the state of Washington,  
residing at Shelton, Washington  
My commission expires August 9, 2021.



CITY ACKNOWLEDGEMENT

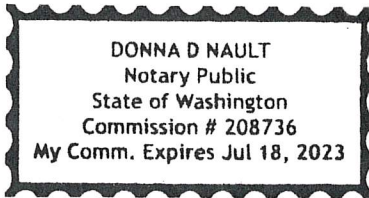
STATE OF WASHINGTON )

) ss

COUNTY OF Mason )

On this 29<sup>th</sup> day of September, 2020 before me personally appeared Jeff Niten, to me known to be the duly appointed City Manager, and that s/he executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath states that s/he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the 29<sup>th</sup> day of September, 2020.



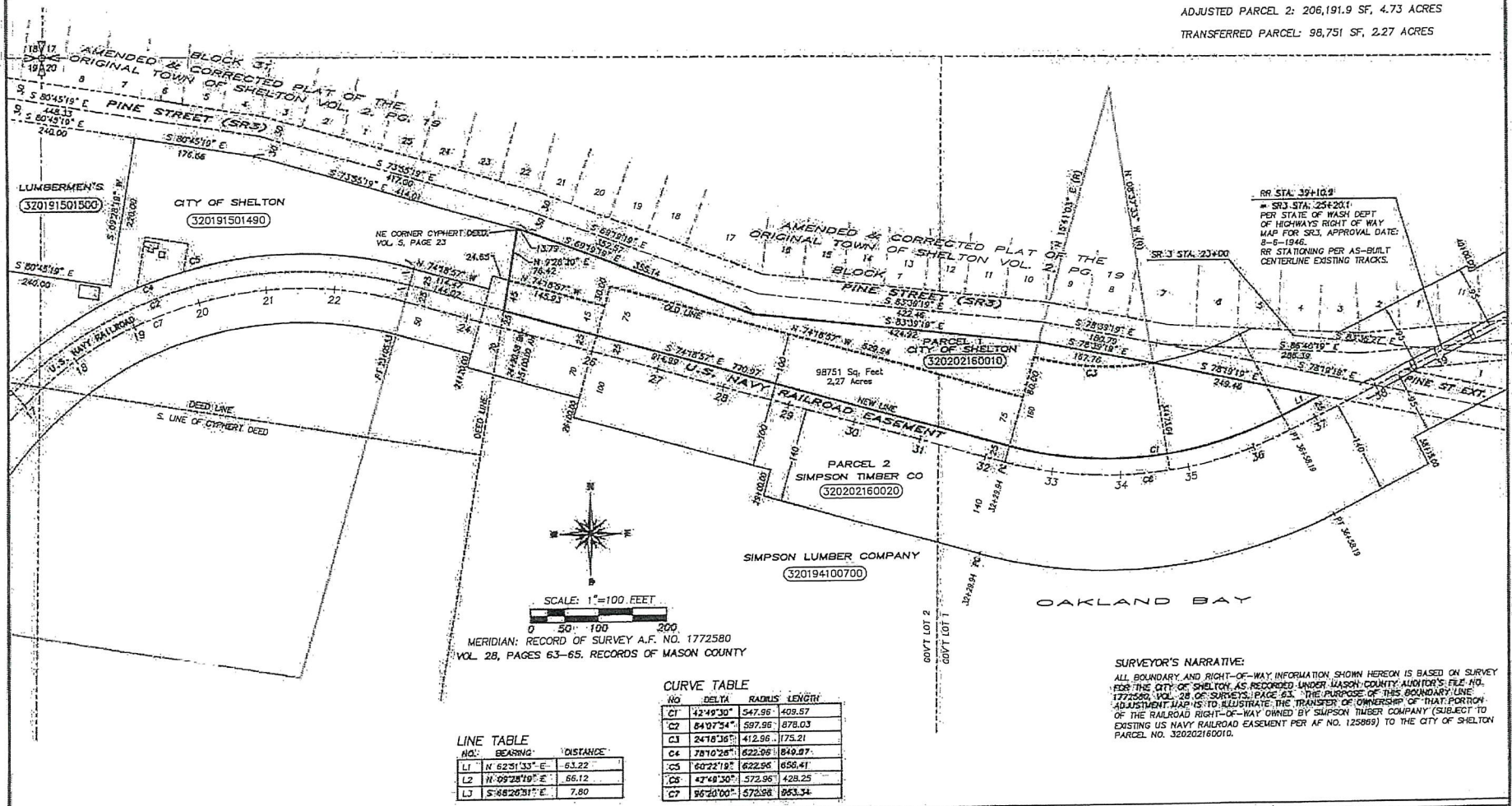
Donna D Nault

Notary Public in and for the state of Washington,  
residing at Shelton, WA  
My commission expires 7/18/2023.

BOUNDARY LINE ADJUSTMENT  
 GOV'T LOTS 1 AND 2 SECTION 20, TOWNSHIP 20N, RANGE 3W, W.M.

PARCEL AREAS:

ORIGINAL PARCEL 1: 39,301.5 SF, 0.90 ACRES  
 ORIGINAL PARCEL 2: 304,942.9 SF, 7.00 ACRES  
 ADJUSTED PARCEL 1: 138,052.5 SF, 3.17 ACRES  
 ADJUSTED PARCEL 2: 206,191.9 SF, 4.73 ACRES  
 TRANSFERRED PARCEL: 98,751 SF, 2.27 ACRES



LINE TABLE

NO.	BEARING	DISTANCE
L1	N 62°51'33" E	63.22
L2	N 09°28'39" E	66.12
L3	S 68°28'31" E	7.80

CURVE TABLE

NO	DELTA	RADIUS	LENGTH
C1	42°49'30"	547.96	409.67
C2	84°07'54"	587.96	878.03
C3	24°18'36"	412.96	175.21
C4	78°02'51"	622.96	840.87
C5	160°22'02"	622.96	826.41
C6	47°48'30"	572.96	428.25
C7	96°20'00"	572.96	863.34

SURVEYOR'S NARRATIVE:  
 ALL BOUNDARY AND RIGHT-OF-WAY INFORMATION SHOWN HEREON IS BASED ON SURVEY FOR THE CITY OF SHELTON AS RECORDED UNDER MASON COUNTY AUDITOR'S FILE NO. 1772580, VOL. 28 OF SURVEYS, PAGE 63. THE PURPOSE OF THIS BOUNDARY LINE ADJUSTMENT MAP IS TO ILLUSTRATE THE TRANSFER OF OWNERSHIP OF THAT PORTION OF THE RAILROAD RIGHT-OF-WAY OWNED BY SIMPSON TIMBER COMPANY (SUBJECT TO EXISTING US NAVY RAILROAD EASEMENT PER AF NO. 125869) TO THE CITY OF SHELTON PARCEL NO. 320202160010.

**kpff** CONSULTING ENGINEERS  
 4200 6TH AVENUE SE, SUITE 309  
 LACEY, WASHINGTON 98503  
 (360) 292-7230 FAX (360) 292-7231

SURVEYOR'S CERTIFICATE  
 I HEREBY CERTIFY THAT THE LEGAL DESCRIPTIONS OF THIS BOUNDARY LINE ADJUSTMENT ARE THE FULL AND CORRECT DESCRIPTIONS.  
 THOMAS J. SWIFT CERTIFICATE No. 36489



BOUNDARY LINE ADJUSTMENT  
 FOR  
 CITY OF SHELTON  
 NW NE MW 20 20 N 3 W, W.M.  
 QTR-QTR QTR, SECTION TWP, RANGE  
 MASON COUNTY WASHINGTON

AUDITOR'S INDEX DATA

1	2	3	4
5	6	7	8
9	10	11	12
13	14	15	16

SEC. 20, TWP. 20N, RING. 3W

JOB No.: 414008  
 DWG NAME: 5414008.BLA  
 DRAWN BY: JIS  
 CHECKED BY: JIS  
 DATE: 11/29/2016  
 SCALE: 1"=100'  
 SHEET: 3 OF 2

SHEET INDEX	
SHEET NO.	DESCRIPTION
1 OF 2	NOTES, DESCRIPTIONS, SIGNATURES
2 OF 2	MAP

**BOUNDARY LINE ADJUSTMENT**  
**GOV'T LOTS 1 AND 2 SECTION 20, TOWNSHIP 20N, RANGE 3W, W.M.**  
**CITY OF SHELTON, MASON COUNTY, WASHINGTON**

**COUNTY'S TREASURER'S CERTIFICATE**

ALL TAXES AND DELINQUENT ASSESSMENTS FOR WHICH THE PROPERTY MAY BE LIABLE AS OF THE DATE OF THIS CERTIFICATION HAVE BEEN DULY PAID, SATISFIED, OR DISCHARGED.

TREASURER OF MASON COUNTY \_\_\_\_\_ DATE \_\_\_\_\_

**AUDITOR'S CERTIFICATE**

FILED FOR RECORD THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016, AT \_\_\_\_\_ M, IN VOLUME \_\_\_\_\_ OF \_\_\_\_\_ PAGE \_\_\_\_\_ AT THE REQUEST OF \_\_\_\_\_ AUDITOR'S FILE NUMBER: \_\_\_\_\_

MASON COUNTY AUDITOR \_\_\_\_\_

**LEGAL DESCRIPTION OF EXISTING LOTS:**

PARCEL 1: CITY OF SHELTON PARCEL NO. 320202160010

A TRACT OF LAND IN GOVERNMENT LOTS 1 AND 2, SECTION 20, TOWNSHIP 20 NORTH, RANGE 3 WEST, W.M., BEING A PORTION OF PARCELS A AND C OF BOUNDARY LINE ADJUSTMENT NO. 02-16, AS RECORDED UNDER MASON COUNTY AUDITOR'S FILE NO. 2057467, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY BOUNDARY OF PINE STREET AS SHOWN ON THE AMENDED AND CORRECTED PLAT OF SHELTON, 660 FEET EASTERLY FROM THE INTERSECTION OF SAID SOUTHERLY BOUNDARY WITH THE WESTERLY BOUNDARY OF SAID SECTION 20, SAID POINT BEING THE NORTHEASTERLY CORNER OF A TRACT OF LAND CONVEYED TO MARY E. CYPHERT IN DEED RECORDED IN VOLUME 5 OF DEEDS, PAGE 23; THENCE SOUTHERLY ALONG THE EASTERLY BOUNDARY OF SAID CYPHERT TRACT TO THE NORTHERLY RIGHT-OF-WAY BOUNDARY OF THE U.S. NAVY RAILROAD; THENCE EASTERLY ALONG SAID NORTHERLY RAILROAD RIGHT-OF-WAY LINE TO AN INTERSECTION WITH THE SOUTHERLY BOUNDARY OF PINE STREET; THENCE WESTERLY ALONG SAID SOUTHERLY BOUNDARY TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, RIGHT-OF-WAY FOR STATE ROUTE 3 (FORMERLY STATE ROUTE 14A).

CONTAINING 39,301.5 SF, 0.90 ACRES.

PARCEL 2: US NAVY RAILROAD RIGHT-OF-WAY EASEMENT PARCEL NO. 320202160020

THAT PORTION OF RAILROAD RIGHT-OF-WAY ACQUIRED BY THE UNITED STATES OF AMERICA UNDER JUDGMENT ON THE DECLARATION OF TAKING ENTERED ON JULY 19, 1948, IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON SOUTHERN DIVISION UNDER COURT CAUSE NO. 819, RECORDED ON JULY 24, 1948, UNDER MASON COUNTY AUDITOR'S FILE NO. 125869, LYING SOUTHERLY OF PINE STREET AND EASTERLY OF A TRACT OF LAND CONVEYED TO MARY E. CYPHERT IN DEED RECORDED IN VOLUME 5 OF DEEDS, PAGE 23;

CONTAINING 304,942.9 SF, 7.00 ACRES.

**LEGAL DESCRIPTION OF ADJUSTED LOTS:**

**ADJUSTED PARCEL 1**

A TRACT OF LAND IN GOVERNMENT LOTS 1 AND 2, SECTION 20, TOWNSHIP 20 NORTH, RANGE 3 WEST, W.M., BEING A PORTION OF PARCELS A AND C OF BOUNDARY LINE ADJUSTMENT NO. 02-16, AS RECORDED UNDER MASON COUNTY AUDITOR'S FILE NO. 2057467, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY BOUNDARY OF PINE STREET AS SHOWN ON THE AMENDED AND CORRECTED PLAT OF SHELTON, 660 FEET EASTERLY FROM THE INTERSECTION OF SAID SOUTHERLY BOUNDARY WITH THE WESTERLY BOUNDARY OF SAID SECTION 20, SAID POINT BEING THE NORTHEASTERLY CORNER OF A TRACT OF LAND CONVEYED TO MARY E. CYPHERT IN DEED RECORDED IN VOLUME 5 OF DEEDS, PAGE 23; THENCE SOUTHERLY ALONG THE EASTERLY BOUNDARY OF SAID CYPHERT TRACT TO THE NORTHERLY RIGHT-OF-WAY BOUNDARY OF THE U.S. NAVY RAILROAD; THENCE EASTERLY ALONG SAID NORTHERLY RAILROAD RIGHT-OF-WAY LINE TO AN INTERSECTION WITH THE SOUTHERLY BOUNDARY OF PINE STREET; THENCE WESTERLY ALONG SAID SOUTHERLY BOUNDARY TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, RIGHT-OF-WAY FOR STATE ROUTE 3 (FORMERLY STATE ROUTE 14A).

TOGETHER WITH THAT PORTION OF RAILROAD RIGHT-OF-WAY ACQUIRED BY THE UNITED STATES OF AMERICA UNDER JUDGMENT ON THE DECLARATION OF TAKING ENTERED ON JULY 19, 1948, IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON SOUTHERN DIVISION UNDER COURT CAUSE NO. 819, RECORDED ON JULY 24, 1948, UNDER MASON COUNTY AUDITOR'S FILE NO. 125869, LYING EASTERLY OF A TRACT OF LAND CONVEYED TO MARY E. CYPHERT IN DEED RECORDED IN VOLUME 5 OF DEEDS, PAGE 23, AND LYING SOUTHERLY OF STATE ROUTE 3, AND LYING NORTHERLY OF A LINE DRAWN 25 FEET NORTH OF AND PARALLEL WITH THE CENTERLINE OF THE RAILROAD RIGHT-OF-WAY AS NOW CURRENTLY LOCATED AND DEPICTED ON RECORD OF SURVEY RECORDED ON JANUARY 17, 2002, UNDER MASON COUNTY AUDITOR'S FILE NO. 1772580.

CONTAINING 138,052.5 SF, 3.17 ACRES.

**ADJUSTED PARCEL 2**

A TRACT OF LAND IN GOVERNMENT LOTS 1 AND 2, SECTION 20, TOWNSHIP 20 NORTH, RANGE 3 WEST, W.M., BEING A PORTION OF PARCELS A AND C OF BOUNDARY LINE ADJUSTMENT NO. 02-16, AS RECORDED UNDER MASON COUNTY AUDITOR'S FILE NO. 2057467, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF RAILROAD RIGHT-OF-WAY ACQUIRED BY THE UNITED STATES OF AMERICA UNDER JUDGMENT ON THE DECLARATION OF TAKING ENTERED ON JULY 19, 1948, IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON SOUTHERN DIVISION UNDER COURT CAUSE NO. 819, RECORDED ON JULY 24, 1948, UNDER MASON COUNTY AUDITOR'S FILE NO. 125869, LYING EASTERLY OF A TRACT OF LAND CONVEYED TO MARY E. CYPHERT IN DEED RECORDED IN VOLUME 5 OF DEEDS, PAGE 23, AND LYING SOUTHERLY OF STATE ROUTE 3, AND LYING SOUTHERLY OF A LINE DRAWN 25 FEET NORTH OF AND PARALLEL WITH THE CENTERLINE OF THE RAILROAD RIGHT-OF-WAY AS NOW CURRENTLY LOCATED AND DEPICTED ON RECORD OF SURVEY RECORDED ON JANUARY 17, 2002, UNDER MASON COUNTY AUDITOR'S FILE NO. 1772580.

CONTAINING 206,191.9 SF, 4.73 ACRES.

**LEGAL DESCRIPTION TRANSFERRED PARCEL 3:**

A TRACT OF LAND IN GOVERNMENT LOTS 1 AND 2, SECTION 20, TOWNSHIP 20 NORTH, RANGE 3 WEST, W.M., BEING A PORTION OF PARCELS A AND C OF BOUNDARY LINE ADJUSTMENT NO. 02-16, AS RECORDED UNDER MASON COUNTY AUDITOR'S FILE NO. 2057467, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF RAILROAD RIGHT-OF-WAY ACQUIRED BY THE UNITED STATES OF AMERICA UNDER JUDGMENT ON THE DECLARATION OF TAKING ENTERED ON JULY 19, 1948, IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON SOUTHERN DIVISION UNDER COURT CAUSE NO. 819, RECORDED ON JULY 24, 1948, UNDER MASON COUNTY AUDITOR'S FILE NO. 125869, LYING EASTERLY OF A TRACT OF LAND CONVEYED TO MARY E. CYPHERT IN DEED RECORDED IN VOLUME 5 OF DEEDS, PAGE 23 AND LYING NORTHERLY OF A LINE DRAWN 25 FEET NORTH OF AND PARALLEL TO THE CENTERLINE OF SAID RAILROAD RIGHT-OF-WAY AS NOW CURRENTLY LOCATED AND DEPICTED ON RECORD OF SURVEY RECORDED ON JANUARY 17, 2002, UNDER MASON COUNTY AUDITOR'S FILE NO. 1772580.

CONTAINING 98,751 SF, 2.27 ACRES.

**SURVEYOR'S CERTIFICATE**

THIS MAP IS A TRUE AND CORRECT REPRESENTATION OF LANDS SURVEYED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE PROVISIONS OF RCW 58.17, LAWS OF WASHINGTON AT THE REQUEST OF THE CITY OF SHELTON.



THOMAS J. SWIFT, PLS 38489 \_\_\_\_\_ DATE \_\_\_\_\_

**CERTIFICATE OF OWNERSHIP**

THIS BOUNDARY LINE ADJUSTMENT HAS BEEN MADE WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE OWNER

OWNER'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

**NOTARY:**

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ AD, 2016, BEFORE ME, THE UNDERSIGNED A NOTARY IN AND FOR THE STATE OF \_\_\_\_\_ DULY COMMISSIONED AND SWORN TO ME PERSONALLY APPEARED TO ME KNOWN TO BE THE INDIVIDUALS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AS A FREE AND VOLUNTARY ACT AND DEED FOR THE USES AND PURPOSES THEREIN MENTIONED. WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR ABOVE WRITTEN.

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON

RESIDING AT \_\_\_\_\_ MY COMMISSION EXPIRES: \_\_\_\_\_

**DIRECTOR'S APPROVAL**

APPROVED FOR RECORDING PURSUANT TO TITLE 19 OF THE SHELTON MUNICIPAL CODE

COMMUNITY & ECONOMIC DEVELOPMENT DIRECTOR \_\_\_\_\_ DATE \_\_\_\_\_

**kpff** CONSULTING ENGINEERS  
 4200 6TH AVENUE SE, SUITE 309  
 LACEY, WASHINGTON 98503  
 (360) 292-7230 FAX (360) 292-7231

**SURVEYOR'S CERTIFICATE**

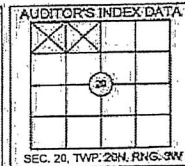
I HEREBY CERTIFY THAT THE LEGAL DESCRIPTIONS OF THIS BOUNDARY LINE ADJUSTMENT ARE THE FULL AND CORRECT DESCRIPTIONS.

THOMAS J. SWIFT CERTIFICATE No. 38489



**BOUNDARY LINE ADJUSTMENT**

FOR  
**CITY OF SHELTON**  
 NW NW 20 20 N 3 W, W.M.  
 NE NW 20 20 N 3 W, W.M.  
 QTR-QTR QTR SECTION TWP. RANGE  
**MASON COUNTY WASHINGTON**



JOB No. 414008  
 DWG NAME: 5414008-BA  
 DRAWN BY: JIS  
 CHECKED BY: JIS  
 DATE: 11/21/2018  
 SCALE: 1"=100'  
 SHEET: 1 OF 2



# MASON TRANSIT AUTHORITY PARKING AREA

PARKING AREA AVAILABLE TO PUBLIC TRANSPORTATION USERS

## 48 HOURS MAXIMUM STAY

FOR THE SAFETY AND CONVENIENCE OF EVERYONE USING THE FACILITY, PLEASE PARK ONLY IN THE DESIGNATED SPACES. VEHICLES BLOCKING ACCESS LANES, ENTRANCES, EXITS, AND OTHER VEHICLES; OR LEFT UNATTENDED FOR OVER 48 HOURS WILL BE REMOVED AT THE OWNER'S EXPENSE. (RCW 46.61.570,577)

MASON TRANSIT AUTHORITY DOES NOT ASSUME LIABILITY FOR ANY LOSS, THEFT, OR DAMAGE TO A VEHICLE OR ITS CONTENTS. UNAUTHORIZED VEHICLES AND VEHICLES "FOR SALE" ARE NOT PERMITTED ON THIS FACILITY AND WILL BE REMOVED AT OWNER'S EXPENSE.

CALL (360) 426-9434 FOR MAINTENANCE, SECURITY CONCERNS,  
AND RIDESHARE INFORMATION

## EXHIBIT C

### Pear Orchard Park and Ride Improvements

Mason Transit Authority will construct a new park and ride facility at the Pear Orchard property owned by the city of Shelton. The plans will include new pavement, pavement reconstruction, stormwater facilities, illumination, signing, security cameras, striping, bus shelter and other work, all in accordance with the Contract Plans, Provisions and Standard Specifications approved by the city of Shelton and dated March 26, 2019.