



## RESOLUTION NO. U-11236

1 A RESOLUTION related to amend the Joint Use Agreement with Sound Transit,  
2 and enter into a radio spectrum license User Agreement for Non-  
3 Members Operating Under Trackage Rights with Sound Transit and  
4 PTC-220, LLC.

5 WHEREAS the City of Tacoma, Department of Public Utilities, Beltline  
6 Division (d.b.a. "Tacoma Rail") requests approval to amend the Joint Use  
7 Agreement with Sound Transit, and enter into a radio spectrum license User  
8 Agreement for Non-Members Operating Under Trackage Rights with Sound  
9 Transit and PTC-220, LLC, and

10 WHEREAS Positive Train Control (PTC) arose out of a congressional  
11 mandate, with regulatory implementation required by December 31, 2020, and

12 WHEREAS Tacoma Rail has an obligation to operate in PTC service on  
13 railroad track segments shared for regularly scheduled passenger train service,  
14 and  
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16 WHEREAS industry-wide interoperable functionality requires a  
17 combination of train control computers onboard equipped locomotives,  
18 communicating through dedicated PTC radios to track-side antennas which  
19 pass real-time encrypted data to Class 1 Railroad PTC servers used to  
20 calculate braking algorithms necessary to stop a train in certain circumstances,  
21 in the event an operator fails to do so, and  
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23 WHEREAS PTC-220 LLC is a consortium held by seven Class 1  
24 railroads and is the Licensee for Federal Communication Commission (FCC)  
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radio spectrum in the 219 and 220/221 MHz bands used for PTC and other  
1 railroad industry safety control and communication purposes, and

2           WHEREAS, as the owner of PTC equipped railroad track segments,  
3 Central Puget Sound Regional Transit Authority d.b.a. Sound Transit, entered  
4 into a Spectrum Management Lease Agreement with PTC-220, LLC for their  
5 wayside PTC antennas, and

6           WHEREAS Tacoma Rail does not own any PTC equipped  
7 Railroad track segments, wayside equipment, or a PTC Back Office Server  
8 System, and therefore Tacoma Rail is designated as a tenant railroad operating  
9 over Sound Transit's Lakewood Subdivision, and  
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11           WHEREAS, as a tenant railroad, Tacoma Rail is required to execute a  
12 User Agreement for Non-Members Operating Under Trackage Rights with PTC-  
13 220, LLC and Sound Transit, and  
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15           WHEREAS the Amendment to the Joint Use Agreement with Sound  
16 Transit references the PTC-220, LLC Agreement with Tacoma Rail, and  
17 extends the territorial limits beyond the Tacoma Dome area to include the entire  
18 Lakewood Subdivision, and  
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20           WHEREAS there is no licensing fee associated with the Tacoma Rail  
21 Agreement, however, there is no end date as long as freight rail service  
22 continues on PTC equipped track segments traversed by a Tacoma Rail  
23 locomotive; Now, Therefore,  
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BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

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That the amended Joint Use Agreement with Sound Transit and the User Agreement for Non-Members Operating Under Trackage Rights between Sound Transit and PTC-220, LLC is approved, and the appropriate officers of the City are authorized to execute said agreements, substantially in the form on file with the Clerk of the Board and as approved by the City Attorney.

Approved as to form:

	_____
	Chair
<i>/s/</i>	_____
Chief Deputy City Attorney	Secretary
_____	Adopted _____
Clerk	



## Board Action Memorandum

**TO:** Jackie Flowers, Director of Utilities  
**COPY:** Charleen Jacobs, Director and Board Offices  
**FROM:** **Alan Matheson, Asst. Superintendent, Tacoma Rail**  
**MEETING DATE:** Requested Board Meeting Date: January 27, 2021  
**DATE:** January 14, 2021

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### **STRATEGIC DIRECTIVE ALIGNMENT (select as many that apply):**

Please indicate which of the Public Utility Board's Strategic Directives is supported by this action.

- |  |   |
|--|---|
| <input type="checkbox"/> SD1 – Equity & Inclusion                  | <input type="checkbox"/> SD8 – Telecom                            |
| <input type="checkbox"/> SD2 – Financial Sustainability            | <input type="checkbox"/> SD9 – Economic Development               |
| <input type="checkbox"/> SD3 – Rates                               | <input type="checkbox"/> SD10 – Government Relations              |
| <input type="checkbox"/> SD4 – Stakeholder Engagement              | <input type="checkbox"/> SD11 – Decarbonization/Electric Vehicles |
| <input type="checkbox"/> SD5 – Environmental Leadership            | <input type="checkbox"/> SD12 – Employee Relations                |
| <input checked="" type="checkbox"/> SD6 – Innovation               | <input type="checkbox"/> SD13 – Customer Service                  |
| <input checked="" type="checkbox"/> SD7 – Reliability & Resiliency | <input type="checkbox"/> SD14 – Resource Planning                 |

**SUMMARY:** Tacoma Rail requests approval to amend the Joint Use Agreement with Sound Transit, and enter into a radio spectrum license User Agreement for Non-Members Operating Under Trackage Rights with Sound Transit and PTC-220, LLC.

**BACKGROUND:** Positive Train Control (PTC) arose out of a Congressional mandate, which took effect nationwide on December 31, 2020. Tacoma Rail has an obligation to operate in PTC service on railroad track segments we share with regularly scheduled passenger train service.

Industry wide interoperable functionality requires a combination of train control computers onboard equipped locomotives, communicating through dedicated PTC radios to track-side antennas which pass real-time encrypted data to Class 1 Railroad (AAR-Members) PTC servers used to calculate braking algorithms necessary to stop a train in certain circumstances, in the event an operator fails to do so.

PTC-220, LLC. is a consortium held by seven (7) Class 1 railroads and is the Licensee for Federal Communication Commission (FCC) radio spectrum in the 219 and 220/221 MHz bands, used for PTC and other railroad industry safety control and communication purposes. As the owner of PTC equipped railroad track segments, Central Puget Sound Regional Transit Authority d.b.a. Sound Transit, entered into a Spectrum Management Lease Agreement with PTC-220, LLC. for their wayside PTC antennas.

Given that Tacoma Rail does not own any PTC equipped railroad track segments, wayside equipment, or a PTC Back Office Server System, we are designated as a tenant railroad operating over Sound Transit's Lakewood Subdivision. As such, Tacoma Rail is required to execute a User Agreement for Non-Members Operating Under Trackage Rights with PTC-220, LLC and Sound Transit. The Amendment to the Joint Use Agreement with Sound Transit references the aforementioned PTC-220, LLC. Agreement with Tacoma Rail, and extends the territorial limits beyond the Tacoma Dome area to include the entire Lakewood Subdivision.





## Board Action Memorandum

There is no licensing fee associated with the Tacoma Rail Agreement, however there is no end date so long as freight rail service continues on PTC equipped track segments traversed by Tacoma Rail locomotives.

**ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes**

**IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW IT IS TO BE COVERED.**

Explain how expenditures are to be covered and if budget modifications are required. **N/A**

**IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? No**

**ATTACHMENTS:** Amendment to Joint Use Agreement  
Joint Use Agreement (Tacoma Dome Segment)  
User Agreement for Non-Members Operating Under Trackage Rights  
Spectrum Manager Lease Agreement  
Fourth Amended and Restated Shared Use Agreement

**CONTACT:**

Primary Contact: Alan Matheson, Asst. Superintendent, Tacoma Rail, (253) 405-6782  
Supervisor's Name: Dale King, Superintendent, Tacoma Rail  
Additional staff requiring a Zoom presentation link: N/A

## AMENDMENT TO JOINT USE AGREEMENT

**THIS AMENDMENT TO JOINT USE AGREEMENT** (this “**Amendment**”) is entered into as of this \_\_\_\_\_, 2021, between Central Puget Sound Regional Transit Authority, a regional transit authority under the laws of the state of Washington (sometimes referred to as “**Sound Transit**”) and City of Tacoma, Department of Public Utilities, Beltline Division dba Tacoma Rail (the “**City**”).

**WHEREAS**, Sound Transit and PTC-220, LLC (“**FCC Licensee**”) are parties to a Spectrum Manager Lease Agreement (the “**Spectrum Lease**”), pursuant to which FCC Licensee authorizes Sound Transit to use certain spectrum licenses (the “**Spectrum**”) on a shared-use basis for the purposes of positive train control;

**WHEREAS**, Sound Transit and the City are parties to that certain Joint Use Agreement, dated January 22, 2015 (as amended, the “**Original Agreement**”), authorizing the City to use certain track owned by Sound Transit; and

**WHEREAS**, Sound Transit and the City desire to amend the Original Agreement, as set forth herein, to permit the City to use the Spectrum consistent with the requirements of the Spectrum Lease, and in connection therewith, on or about the date hereof, the South Transit, the City and FCC Licensee are entering into a User Agreement for Non-Members Operating Under Trackage Rights, setting forth additional term and conditions governing the City’s use of the Spectrum.

**NOW THEREFORE**, in consideration of the mutual promises herein and other good, valuable and sufficient consideration, the parties agree as follows:

1. The Original Agreement is hereby amended by adding a new Section 1.6A, inserted following Section 1.6, which states: “Lakewood Subdivision means the trackage between Tacoma, Washington (at approximately Sound Transit mile post 1) and Nisqually, Washington (Sound Transit mile post 20.73), owned by Sound Transit.”

2. The Original Agreement is hereby amended by adding a new Section 2.1.A(6), which states:

In connection with the City’s freight railroad operations on the Lakewood Subdivision, the City shall use, and Sound Transit shall permit the City to use, all of Sound Transit’s communications networks appurtenant to the Lakewood Subdivision (the “**Communications Network**”), including without limitation such radio spectrum, base stations and wayside equipment as may be required by applicable law or agreement, including for positive train control. The City’s use of the Communications Network shall be at all times subject to applicable law and all policies, restrictions and limitations as may be required by Sound Transit in its sole discretion.

3. Section 6.2 of the Original Agreement is hereby amended by adding the following provisions at the end of the paragraph:

The City shall maintain railroad liability insurance with a limit of not less than \$50,000,000 each occurrence and an aggregate limit of not less than \$50,000,000. Insurance must be written on occurrence reported form XL 004 or equivalent and railroad claims-made form or, with the prior written consent of Sound Transit, substitute forms providing equivalent coverage. If the City utilizes a claims-made form to meet this requirement, the City warrants that any retroactive date applicable to coverage under the policy precedes January 27, 2021. The City also agrees to purchase an extended reporting period of three (3) years if the policy is canceled or not renewed and not replaced by another claims-made policy with the same (or an earlier) retroactive date during the term of the Agreement. Such insurance shall include coverage for: (i) injury to or death of persons whomsoever, personal Injury, property damage liability including but not limited to, damage or destruction of any and all property including public liability, bill of lading and foreign line rolling stock; (ii) seepage and pollution coverage, including without limitation, coverage applicable in the event of railroad accident, derailment or overturn; (iii) contractual liability; (iv) evacuation expense coverage; and (v) coverage under the Federal Employer's Liability Act ("FELA") for employee injuries. The coverage must include a reinstatement of limits provision and if limits are diminished in any manner, then Sound Transit can determine the City is without proper insurance. The foregoing policy shall (y) include a waiver of subrogation with respect to PTC-220, LLC ("PTC-220") and (z) not include any other endorsements limiting coverage as respects to obligations under this Agreement, including obligations assumed arising under the Federal Employers' Liability Act, or work being performed under this Agreement. If the City utilizes umbrella or excess policies to comply with limits of coverage required, these policies must "follow form" and afford no less coverage than the primary policy. The City may elect to self-fund the first \$10,000,000 of the coverage required above. All policies required above must include Sound Transit and PTC-220 as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to PTC-220 shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48, provide coverage for PTC-220's negligence whether sole or partial, active or passive, and shall not be limited by the City's liability under the indemnity provisions of this Agreement. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by the states in which service is being provided. Lessee waives all rights against PTC-220 and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by FELA or commercial umbrella or excess liability insurance obtained by the City (which must be stated on the certificate of insurance). All insurance policies must be written by a reputable insurance company acceptable to Sound Transit or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which service is to be provided. These insurers may be admitted, non-admitted or alien insurers. For the purposes of this Section, "PTC-220" includes all of PTC-220's members, subsidiaries, successors, assigns and affiliates.

4. All of the other terms and conditions of the Original Agreement shall remain in full force and effect. Capitalized terms not otherwise defined herein shall have the meanings provided in the Original Agreement.

5. This Amendment shall be governed by, and construed in accordance with, the same laws and be subject to the same dispute resolution provisions as applicable to or set forth in the Original Agreement.

6. This Amendment, along with the Original Agreement, contains the entire agreement between Sound Transit and the City with respect to the matters contemplated herein, and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein and therein. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or electronic transmission of this Amendment bearing a signature on behalf of a party will be legal and binding on such party.

7. This Amendment and its contents shall be kept confidential to the same extent as the Original Agreement and provisions thereof.

*[Signature page to follow.]*

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first set forth above.

**CITY OF TACOMA**

By: \_\_\_\_\_  
Name: Jackie Flowers  
Title: Director, Tacoma Public Utilities

By: \_\_\_\_\_  
Name: Elizabeth Pauli  
Title: City Manager

By: \_\_\_\_\_  
Name: Dale W. King  
Title: Superintendent, Tacoma Rail

By: \_\_\_\_\_  
Name: Kurtis Kingsolver, P.E.  
Title: Public Works Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: M. Joseph Sloan  
Title: Deputy City Attorney

**CENTRAL PUGET SOUND  
REGIONAL TRANSIT AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*{Amendment to Joint Use Agreement (Tacoma Dome Segment)}*



## USER AGREEMENT FOR NON-MEMBERS OPERATING UNDER TRACKAGE RIGHTS

This User Agreement for Non-Members Operating Under Trackage Rights (this “**Agreement**”) is entered into as of this \_\_\_\_\_, 2021 (the “**Effective Date**”), between the Central Puget Sound Regional Transit Authority (sometimes referred to as “Sound Transit”), a regional transit authority under the laws of the state of Washington and the owner of certain track described below (“**Owner**”), and City of Tacoma, Department of Public Utilities, Beltline Division dba Tacoma Rail, a user of such track (“**User**”). PTC-220, LLC, a Delaware limited liability company (“**FCC Licensee**”) is also a party to this Agreement solely for the purposes of Sections 2, 3 and 4 hereto.

**WHEREAS**, FCC Licensee is the Federal Communications Commission (“**FCC**”) licensee for certain spectrum licenses (the “**Licenses**”) held principally for purposes of establishing a nationwide interoperable Positive Train Control (“**PTC**”) system;

**WHEREAS**, through a Spectrum Manager Lease Agreement between Owner and FCC Licensee, dated June 9, 2014, as amended to date and as it may be further amended from time to time (the “**Lease**”), Owner is a spectrum lessee of certain radio frequencies covered by the Licenses and set forth in the Lease (the “**Spectrum**”), such lease being on a non-exclusive, shared use basis together with many other lessees holding leases with FCC Licensee (“**Other Lessees**”);

**WHEREAS**, use of the Spectrum by Owner and Other Lessees is subject to the terms of a Fourth Amended and Restated Shared Use Agreement, dated as of April 1, 2019 (as amended to date and further amended from time to time in accordance with its terms, the “**SUA**”), a copy of the current version of which has been provided to and reviewed by User, contemplating among other things the use of the Spectrum on a non-exclusive, shared use basis for PTC, and setting forth various terms and conditions for such use, including usage priorities, congestion management and other operational matters;

**WHEREAS**, Owner desires to make the Spectrum available to User on a non-exclusive, shared use basis, for the purpose of implementing PTC as required by Federal law, under and subject to the provisions of a Joint Use Agreement, dated January 22, 2015, in place between Owner and User (as amended, the “**Trackage Rights Agreement**”), which among other things covers certain communications uses applicable to User’s operations on the tracks or other facilities of Owner, and (ii) subject to User’s agreement to comply with certain rules of use as more fully described below, including FCC rules and the terms and conditions set forth in the SUA; and

**WHEREAS**, to facilitate User’s use of the Spectrum pursuant to this Agreement and consistent with Owner’s obligations pursuant to the Lease, Owner and User have entered an amendment to the Trackage Rights Agreement on or prior to the date hereof to ensure the sufficiency of the Flow Down Terms (as defined herein).

**NOW THEREFORE**, in consideration of the mutual promises herein and other good, valuable and sufficient consideration, the parties agree as follows:



## 1. USE OF SPECTRUM UNDER TRACKAGE RIGHTS AGREEMENT.

This Agreement relates to track owned by Owner and described in more detail on Exhibit 1 (the “**Subject Trackage**”), including shared base stations of Other Lessees that the Owner has the right to use through (or that “Spectrum Users” are permitted to use under) the SUA. The parties acknowledge that User will be using Spectrum pursuant to the provisions of the Trackage Rights Agreement, which among other things permits User to use communications spectrum and/or a communications network deployed by Owner with respect to the Subject Trackage. The relevant provisions of the Trackage Rights Agreement governing such usage and flowing down to User relevant terms of the Lease, plus provisions which require User to maintain a minimum level of insurance, are attached to this Agreement as Exhibit 2 (the “**Flow Down Terms**”). Such Spectrum is being made available to User on a non-exclusive, shared use basis, for the purpose of implementing PTC. Owner and User acknowledge that the Trackage Rights Agreement may contain commercial terms, including payments, that may be applicable to the use of the spectrum contemplated by this Agreement.

This Agreement authorizes User, with the permission of FCC Licensee, to use all of the Spectrum as is leased to Owner pursuant to the Lease from time to time, but only within the geography of the Subject Trackage and such shared base stations. A description of the Spectrum as of the Effective Date applicable within the geography of the Subject Trackage is set forth on Exhibit 3. Owner may, and upon reasonable request of the User Owner shall, update the description of the Spectrum to reflect any changes to the Spectrum applicable within the geography of the Subject Trackage.

Owner hereby requires User to comply with the rules in Section 2 regarding User’s radio operations on the Spectrum when User’s trains are traveling over the Subject Trackage. Owner may take all means available to it under the Trackage Rights Agreement to enforce User’s compliance with these rules.

## 2. USE SUBJECT TO USAGE RULES AND COMPLIANCE WITH SUA.

All usage of the Spectrum by User shall be in compliance with the following rules:

(a) Only radio equipment compliant with PTC system requirements, as determined by the Owner, may be used to access the Spectrum.

(b) User’s use of the Spectrum, and User’s operation of its radio equipment, shall be in compliance with (i) the rules of the FCC, (ii) the terms and conditions set forth in the SUA, including the provisions regarding shared base stations, (iii) the same restrictions as set forth in the Lease and (iv) the Trackage Rights Agreement, including the Flow Down Terms. If so requested by FCC Licensee, User shall become a party to the SUA. The parties acknowledge that, to the extent inconsistent with the SUA, the provisions of this Agreement and the Lease are superseded by the SUA.

(c) User shall comply immediately with instructions from Owner or FCC Licensee regarding User's operations on the Spectrum, which may include limiting or restricting User's use of the Spectrum.

(d) User's use of the Spectrum shall be limited to PTC communications. No other communications are permitted.

(e) User agrees that in the event User shall use the Spectrum while operating on the tracks of entities other than Owner (each such entity, an "**Other Track Owner**"), User shall notify FCC Licensee, and User shall enter into a lease with FCC Licensee on FCC Licensee's standard commercial terms and conditions covering use of the Spectrum on a non-exclusive, shared use basis, for the purpose of implementing PTC (or, if agreed or requested by FCC Licensee, one or more user agreements substantially similar to this Agreement with such Other Track Owners and FCC Licensee).

Owner agrees to enforce the agreements of User to ensure that User's use of the Spectrum, and User's operation of its radio equipment, shall be in compliance with (i) the rules of the FCC, (ii) the terms and conditions set forth in the SUA, including the provisions regarding shared base stations, (iii) the same restrictions as set forth in the Lease and (iv) the Trackage Rights Agreement including the Flow Down Terms. Such agreement to enforce is subject to the right of FCC Licensee to enforce under Section 3(a) hereof.

### **3. PROVISIONS RELATING TO FCC LICENSEE.**

(a) Enforcement Rights of FCC Licensee. Although FCC Licensee is not a party for any other purpose, and FCC Licensee shall have no obligations and no liability hereunder, FCC Licensee shall have the right in its capacity as the licensee under the Licenses to enforce all provisions of this Agreement under Sections 2, 3 and 4 hereto or otherwise relating to (i) the Lease, (ii) the SUA (including the rights, obligations and provisions thereof), or (iii) FCC rules and their requirements.

(b) No Assumption of Risk or Liability. Owner acknowledges and agrees that as between Owner and FCC Licensee, Owner shall bear all responsibility for the acts and omissions of User, and Owner's indemnification obligations under Exhibit C of the Lease include the acts and omissions of any subtenant under the Lease (including User), notwithstanding any assumption of risk and liability by User pursuant to this Agreement or the Trackage Rights Agreement. FCC Licensee shall not be under any obligation to try to obtain redress from User before proceeding against Owner, and FCC Licensee's consent to this Agreement shall not be deemed to modify in any respect the obligations or liabilities of Owner under the Lease. FCC Licensee also may proceed against Owner for any failures to enforce against User as required by the final paragraph of Section 2.

### **4. MISCELLANEOUS.**

This Agreement, along with the Trackage Rights Agreement and the SUA, contains the entire agreement among the parties with respect to the matters contemplated herein, and supersedes

all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein and therein. This Agreement may be amended only in a writing signed by the parties hereto. The failure of any party to demand strict performance of any or all of the terms of this Agreement, or to exercise any or all rights conferred by this Agreement, shall not be construed as a waiver or relinquishment of that party's right to assert or rely upon any such right in the future. Each provision of this Agreement shall be considered severable, and if for any reason any provision hereof is determined to be invalid and contrary to existing or future law, such invalidity shall not impair the operation or affect those portions of this Agreement which are valid, any such invalid provision shall be reformed to the minimum extent required to be enforceable and to give effect to the original written intent of the parties, and this Agreement shall remain in full force and effect and shall be construed and enforced in all respects. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or electronic transmission of this Agreement bearing a signature on behalf of a party will be legal and binding on such party.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first set forth above.

**CITY OF TACOMA dba Tacoma Rail**

**SOUND TRANSIT**

By: \_\_\_\_\_  
Name: Dale W. King  
Title: Superintendent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Jackie Flowers  
Title: Director, Tacoma Public Utilities

By: \_\_\_\_\_  
Name: Andy Cherullo  
Title: Finance Director, City of Tacoma

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
M. Joseph Sloan  
Deputy City Attorney

*Solely for purposes of Sections 2, 3 and 5  
hereto:*

**PTC-220, LLC**

By: \_\_\_\_\_  
Name: Kevin Waldern  
Title: President  
Address: 120 South 6<sup>th</sup> Street  
Minneapolis, MN 55402

*[Signature page to Agreement for Non-Members Operating Under Trackage Rights]*

**Subject Trackage**

On Sound Transit's Lakewood Subdivision between Tacoma, Washington (at approximately Sound Transit mile post 1) and Nisqually, Washington (Sound Transit mile post 20.73), a distance of approximately 19.73 miles.

**Flow Down Terms**

Under the Trackage Rights Agreement:

Article 2, section 2.1.A(6)

Article 2, section 2.3 Operating Rules and Standards

Article 2, section 2.6 Safety

Article 3, section 3.1 Reimbursement and section 3.2 Other Reimbursement

Article 6, section 6.2 Insurance



**Exhibit 3**

**Spectrum as of the Effective Date (Informational Purposes Only)**

<b>Call Sign</b>	<b>License Area</b>	<b>License Termination Date</b>
WFPF444	Phase I Nationwide License	9/19/2029
WPFR284		9/23/2029
WPWY753		7/29/2023
WPOI701	Phase II Nationwide License	3/22/2029
WPOJ271		3/22/2029
WPOI708	Pacific	3/22/2029
WRHX600	Pacific	3/22/2029

## FOURTH AMENDED AND RESTATED SHARED USE AGREEMENT

THIS FOURTH AMENDED AND RESTATED SHARED USE AGREEMENT (this “**Agreement**”) is made as of April 1, 2019, by and among PTC-220, LLC (“**PTC-220**”); each of Ekanet, Inc. (“**UP Ekanet**”), NS Spectrum Corporation (“**NS**”), BNSF Spectrum, Inc. (“**BNSF**”), CSXT Intellectual Properties Corporation (“**CSX**”), GTC Spectrum Corporation (“**CN**”), KCS Spectrum, Inc. (“**KCS**”), and Canadian Pacific PTC LLC (“**CP**”) (UP Ekanet, NS, BNSF, CSX, CN, CKS and CP, any of their Licensee Affiliates (as defined below) and any other entity that becomes a member of PTC-220 and a party hereto are referred to collectively as the “**Member Railroads**” and individually as a “**Member Railroad**”).

### RECITALS

WHEREAS, PTC-220 (a joint venture of UP Ekanet, NS, BNSF, CSX, CN, KCS and CP) is the Federal Communications Commission (“**FCC**”) licensee for the radio frequency spectrum licenses in the 220 MHz band shown in Exhibit 1 (such licenses, together with any other spectrum licenses acquired after the execution and delivery of this Agreement, including additional Spectrum acquired after the date hereof, being referred to herein as the “**Licenses**,” and frequencies covered by the Licenses being referred to herein as the “**Spectrum**”);

WHEREAS, PTC-220 and the Member Railroads bear the benefits and burdens of the Licenses for the Spectrum, and have entered into leases for use of Spectrum on a shared use basis that will implement the terms of this Agreement; and

WHEREAS, railroads that are neither Member Railroads nor parties to this Agreement but that seek to become Spectrum users (“**Non-Member Users**” and together with Member Railroads, collectively, the “**Spectrum Users**”) have entered into leases (or other contracts for use) of the Spectrum with PTC-220, and have agreed to be bound by this Agreement, and it is envisioned by the parties that additional Non-Member Users will similarly agree to be bound by this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants, agreements and conditions herein contained, and intending to be legally bound, the parties hereto agree that PTC-220 shall coordinate use of the Spectrum as described below:

### ARTICLE 1 USE OF THE SPECTRUM

1.1 Definitions; Prioritization and Class of Service; Spectral Channels. All use of the Spectrum by Spectrum Users shall be pursuant to this Article 1.

1.1.1 Definitions.

Subject to determinations and/or changes by the PTC-220 Spectrum Management Committee (as defined below) as provided herein, the Spectrum is to be used for Positive Train Control (as defined below).

Subject to further definition by the PTC-220 Spectrum Management Committee as provided herein, for purposes of this Agreement **“Positive Train Control”** or **“PTC”** means the use of integrated command, control, communications, and information systems for controlling locomotive and aligning track to accommodate train movement with safety, security, precision, and efficiencies, as part of an interoperable system or as more fully defined or described in applicable statutes and regulations requiring the implementation of positive train control.

The implemented Positive Train Control (PTC) system in this case will be an industry wide, national interoperable train control program communications system employing a standard, industry-wide channel access protocol. From a technical perspective, it will be a safety-critical, "overlay system" (as defined in 49 CFR Part 236, Subpart I, Section 236.1015(e)(2)), used in conjunction with existing methods of operations (e.g., Centralized traffic control, INT, Track Warrant Control and Automatic Block Signaling, Track Warrant Control-Non-Signaled), that interfaces to existing signal systems, wayside devices, and office train dispatching systems (CAD) via multiple communications links. The PTC system provides the means to enforce compliance of movement authorities, speed restrictions, work zones, and switch positioning while retaining existing field signal system and CAD system functions as the primary means of maintaining train separation and protection.

Use of the Spectrum will be for research, development and deployment of Positive Train Control or PTC technologies, including systems that enforce compliance of movement authorities, speed restrictions, work zones and switch positioning, and technologies that provide the underlying functions of the PTC system. Such use is sometimes referred to herein as **“Primary Use”** of the Spectrum, and any other use of the Spectrum, including business applications, such as work order reporting systems and locomotive health reporting systems, shall be **“Secondary Use”**.

**“Licensee Affiliate”** means, with respect to a Member Railroad, any other Person in which such Member Railroad either (x) owns one hundred percent (100%) of the voting securities, directly or indirectly, or (y) owns less than one hundred percent (100%) of the voting securities, directly or indirectly, where (i) the level of such ownership is at or above a threshold adopted by the Spectrum Management Committee by a two-thirds supermajority of the membership interests in PTC-220, or (ii) the specific entity is approved by the Spectrum Management Committee by a two-thirds supermajority of the membership interests in PTC-220 as constituting a **“Licensee Affiliate.”**

1.1.2 Prioritization and Class of Service. All applications using the available PTC 220 Spectrum shall be controlled by “priority” and “class of service” settings in which uses with higher priorities will have messages delivered first, and for uses of equivalent priorities those with lower class of service settings will have messages

delivered first. Train movement will have the highest priority and shall be routed prior to all other applications. PTC-220 through its Spectrum Management Committee has designated initial priority and class of service settings, as set forth in Exhibit 2, the Application Prioritization Matrix, to be used for all communications using the Spectrum, unless and until a new or revised Application Prioritization Matrix or other designation of priorities is adopted by the Spectrum Management Committee. The Application Prioritization Matrix also sets forth Primary Use and Secondary Use.

The Spectrum Management Committee shall require the review and approval of all new uses of Spectrum that would result in an addition to the Application Prioritization Matrix then in effect. Prior to approval the Spectrum Management Committee will perform a preliminary load study and following completion of the load study determine the priority and class of service to be assigned to the proposed new use. All Spectrum Users proposing to engage in the proposed new use will provide such information and documentation regarding such use as reasonably requested by the Spectrum Management Committee.

The Spectrum Management Committee shall endeavor to give Spectrum Users negatively impacted by a new or revised Application Prioritization Matrix at least thirty (30) days' notice of such new or revised Application Prioritization Matrix, or such lesser notice as is reasonably practicable, under the circumstances, as reasonably determined by the Spectrum Management Committee.

All radios and other equipment operating on or otherwise using the Spectrum shall be required to use the software implementing these priority and class of service settings in the absence of specific exceptions that may be granted by PTC-220 in a lease or user agreement. All Spectrum Users and other parties hereto acknowledge that one key effect of using these priorities and class of service settings will be the delivery of certain message before others, and that if messages are not delivered within the time allotted for such messages they will expire and likely will not be delivered at all.

1.1.3 Spectral Channels. PTC-220 through its Spectrum Management Committee (as defined below) has designated standard spectral channels to be used for all communications using the Spectrum. They may differ slightly by geography, but the number and frequency definitions for each channel have been set and likely there will be little room to change or expand such spectral channels. All radios and other equipment operating on or otherwise using the Spectrum shall be required to use these spectral channels in the absence of specific exceptions that may be granted by PTC-220 in a lease or user agreement. PTC-220 has designated one, and may designate additional, standard channel access protocols (a wireless over the air protocol specification) to be employed under Primary Use (in the manner provided in the PTC-220 Operating Agreement, as defined below) and shall have the authority to designate and adopt subsequent modifications to each such standard and any new, additional or successor protocols. PTC-220 has currently designated as a standard channel access protocol the ITCNet Common Air Interface protocol and successors (and as such protocol or successors may be renamed from time to time) used in radios designed and developed by or for



Meteorcomm LLC (the separate joint venture owned by certain of the Member Railroads or their affiliates working on software-defined radios for use with the Spectrum for Positive Train Control). Each standard channel access protocol or protocols designated by PTC-220 is and will continue to be open standard, meaning that the protocol specification will be made freely available for unrestricted use without licensing fees or other fees, costs, or charges. All radios and other equipment operating on or otherwise using the Spectrum that do not use a standard channel access protocol shall be considered Secondary Use.

1.1.4 Implementation through Common Software Tools. PTC-220 has obtained, and may make available to Spectrum Users, certain software-based shared planning or similar tools obtained by PTC-220 or its affiliates, including software which relates to (i) use of permitted channels or channel protocols, (ii) signaling on the PTC-220 network or (iii) prioritization and class of service. To the extent PTC-220 makes such software tools available, they will be used by all Spectrum Users, and all Spectrum Users will maintain and deploy the most current versions of such Software Tools..

1.2 Spectrum Use Determinations. PTC-220 shall be the party entitled to make final and binding determinations on all uses of and other matters relating to the Spectrum, including updates to the definitions of Primary or Secondary and Positive Train Control to reflect developments over time, whether a Spectrum User's use of the Spectrum is Primary or Secondary, the contours of all geographic areas and how they are determined, whether there is unused capacity, evaluation of usage projections and assessment of actual usage, whether there are unacceptable levels of congestion and how to resolve the same, whether there is sufficient Spectrum capacity in a geographic area for business applications or other Secondary Uses in addition to Positive Train Control use, and all other determinations to be made under this Agreement regarding Spectrum. In making such determinations, PTC-220 shall refer to common industry understandings, but may also consider other factors which PTC-220 determines to be appropriate. In the case of a dispute, the procedures set forth in Article 2 of this Agreement shall apply.

1.2.1 Spectrum Management Committee. All spectrum use determinations under this Agreement, including those referenced under Section 1.2, shall be made by the Spectrum Use Committee of PTC-220 (the "**Spectrum Management Committee**") unless otherwise specified herein. Membership on the Spectrum Management Committee is set by the Operating Agreement of PTC-220 (the "**PTC-220 Operating Agreement**") as in effect from time to time, but it is anticipated that the Spectrum Management Committee will normally contain representatives of each Member Railroad. Additional Spectrum Users may (in the discretion of the Spectrum Management Committee) be invited to attend Spectrum Management Committee meetings, but without being members of or having any voting rights on such committee.

1.2.2 Data Transport Traffic Utilization and Loading Analyses. The Spectrum Management Committee will perform or cause to be performed (through external consultants or otherwise) a data transport traffic utilization analysis periodically for any area that has been identified as an area where multiple Spectrum Users will

operate, including, for example, where they will have adjacent track or track that would be covered by the same base station(s) and, therefore, would add to the total loading of the Spectrum for that specific base station(s). Such analysis may be done by spectral channel, and may utilize and rely upon external consultants and automatic load accounting software tools, if made available by PTC-220 or transparent to Spectrum Users. PTC-220, through the Spectrum Management Committee, shall be entitled to make final and binding determinations regarding the load on the data transport capacity of the Spectrum in any area or areas, and what the maximum permitted load will be for such area.

A similar data transport capacity analysis shall be performed at the direction of the Spectrum Management Committee whenever it receives an application to use Spectrum from a prospective user so that the Spectrum Management Committee can determine the predicted load the applicant will have on the proposed or existing infrastructure, and whether after giving effect to the added load from the applicant, the Spectrum is within the maximum permitted load and/or other design criteria, as defined by the Spectrum Management Committee. The Spectrum Management Committee shall use its reasonable efforts in performing data transport traffic utilization and loading analyses, but all parties acknowledge that the analyses are based on assumptions which may not be realized and on limited data.

1.2.3 Records. The Spectrum Management Committee shall maintain records of the loading and data transport traffic utilization analyses, and of the spectral channel allocations, by geographic location and frequency. Maps, charts and summaries of such utilization may be made available to Spectrum Users on a periodic basis as determined in the discretion of the Spectrum Management Committee.

### 1.3 Granting Usage Rights.

1.3.1 Member Railroad Usage Rights. Member Railroads, which have provided the funds to obtain the Spectrum, will have Spectrum Use rights, including the right to permit the use of spectrum by other railroads with respect to trains operating over the systems of Member Railroads, when such other railroads have entered into appropriate user agreements permitting such usage, if such agreements are required by FCC rules and regulations, as determined by PTC-220 based on advice of counsel. So long as a Member Railroad's request is for Primary Use and data transport capacity is available for such Primary Use (meaning that the use of Spectrum in relevant areas is not at or approaching the Congestion Limit despite all Secondary Use having been discontinued), the Spectrum Management Committee shall grant the Member Railroad access for such Spectrum use. The Spectrum Management Committee shall exercise best efforts to make data transport capacity available to the Member Railroads, and to qualifying Non-Member Users with respect to trains operating over the systems of Member Railroads.

The grant of the right of use of Spectrum to Member Railroads has been or shall be reflected in a lease or other contract with PTC-220 in the form approved by the



Spectrum Management Committee (acting consistently among Member Railroads, and in each case dealing in good faith) providing the terms and conditions for use of the Spectrum as set forth in this Agreement or in applicable laws, rules and regulations, and not containing any terms inconsistent with the terms of this Agreement (each a “**Member Lease**”). In the event that any Member Railroad assigns its respective Member Lease to an affiliate of such Member Railroad, then the term “Member Railroad” as defined herein, with respect to such assignor, shall be deemed also to include (collectively) such assignor’s affiliate assignee.

1.3.2 Non-Member Railroad Usage Rights. Other proposed Spectrum Users will be granted Spectrum Use rights by PTC-220 provided there is sufficient data transport capacity for their anticipated Positive Train Control needs (considering the needs of then-existing users), and provided that the proposed Spectrum User enters into a lease or other contract with PTC-220 in a form approved by the Spectrum Management Committee (acting consistently among other Spectrum Users, and in each case dealing in good faith). In the event that the Spectrum Management Committee believes PTC-220 does not have sufficient data transport capacity to grant usage rights to a proposed Spectrum User, that proposed user’s application shall be deferred until sufficient data transport capacity is available. However, PTC-220 shall exercise best efforts to make available to all applicants, whether or not they are proposing to become Spectrum Users, access to any common channel (or equivalent functionality) needed for Positive Train Control interoperability (which access would be pursuant to a lease with PTC-220 in a form approved by the Spectrum Management Committee providing for a channel access charge based on a cost-recovery model). Further, PTC-220 will undertake to purchase additional Spectrum as and to the extent contemplated by Section 1.5 in the event it does not have sufficient data transport capacity, and PTC-220 contemplates accepting (on a barter or other basis) additional capacity from railroads that have procured spectrum capacity that has the desired characteristics to be used as part of the Positive Train Control network.

All Spectrum Use rights will be granted on a shared basis (within any geographic area specified in the grant), and once a Spectrum User is granted Spectrum Use rights it will not be subject to any usage priorities based on the chronological order in which the Spectrum User was granted usage rights relative to those of other Spectrum Users, or whether or not it is a Member Railroad. For the avoidance of doubt, the Spectrum Management Committee may adopt usage priorities that apply equally to all Spectrum Users, and Primary Use shall always have priority over Secondary Use.

For proposed Spectrum use by an entity other than a Member Railroad, the Spectrum Management Committee shall determine (acting consistently among Non-Member Users and in good faith) whether (i) the proposed use of Spectrum meets the criteria for use established by the Spectrum Management Committee, (ii) the proposed use of Spectrum in a particular geographic area of use is not committed to other users or prospective users, and (iii) the use of Spectrum is not at or approaching the Congestion Limit in a particular geographic area. In managing Spectrum capacity, PTC-220 may use

traditional frequency coordination techniques, including frequency division (*i.e.*, channel allocations), time division (*i.e.*, time slots), and geographic frequency reuse.

If PTC-220 proposes to grant usage rights to an applicant other than a Member Railroad to become a Spectrum User, PTC-220 may enter into a lease or other contract with the Spectrum User that contains (without limitation): (i) Usage and Maintenance Fees, based on a cost-recovery model; and (ii) specific Spectrum usage and network deployment requirements, as determined by the Spectrum Management Committee.

Since capacity usage and the appropriate Usage and Maintenance Fees for cost recovery are difficult to project, the Spectrum Management Committee may limit the period for which Usage and Maintenance Fees or other cost recovery items are set, and may require an adjustment of these items over time.

1.3.3 User Arrangements. It is intended that the lease agreements with Spectrum Users will permit use of the Spectrum by other railroads with respect to trains operating over the systems of such Spectrum Users, when such other railroads have entered into appropriate user agreements permitting such usage, if such agreements are required by FCC rules and regulations, as determined by PTC-220 based on advice of counsel. PTC-220 may, acting through the Spectrum Management Committee, adopt procedures under which, to the extent permitted by FCC rules and regulations, such qualifying other railroads may use Spectrum leased to Spectrum Users without applying directly to PTC-220 for a grant of rights to use Spectrum. In connection therewith, to the extent PTC-220 determines that trackage rights agreements (as existing or as amended) relating to such qualifying other railroads operating trains over the systems of Spectrum Users leasing Spectrum from PTC-220 ("Trackage Rights Agreements") would meet the requirements of FCC rules and regulations (as determined by PTC-220 based on advice of counsel) to serve as user agreements, PTC-220 may determine such Trackage Rights Agreements to be "user agreements" hereunder rather than requiring separate user agreements.

1.3.4 Binding Nature of Usage Provisions. The provisions of this Agreement regarding grant of Spectrum usage rights are binding on Member Railroads and will be applicable to other Spectrum Users through their leases (or other contracts for use) of the Spectrum, as provided more fully in Section 1.11. The parties do not intend to create third party beneficiary rights to use of the Spectrum.

#### 1.4 Standards for Use.

1.4.1 Establishment of Standards for Use. The Spectrum Management Committee may from time to time adopt standards or other requirements for use of the Spectrum and procedures to be followed by Spectrum Users. Such standards may include specific requirements for shared use, avoidance of unacceptable levels of congestion, actions to be taken to avoid or manage congestion, technologies to be deployed for spectrum use efficiency which the Spectrum Management Committee determines to be necessary or appropriate, standards or protocols for communications, requirements or

technologies for prioritization and any standards or requirements the Spectrum Management Committee determines to be necessary or appropriate for compliance with law or FCC or other rules or regulations. Adoption of such standards or other requirements may include phase-in periods or other time periods for compliance. Before final adoption of any such standards or other requirements, the Spectrum Management Committee shall endeavor to give the Spectrum Users who would be negatively impacted by particular standards or other requirements at least thirty (30) days' notice of the proposed adoption of such standards or other requirements and the expected terms thereof, all as reasonably determined by the Spectrum Management Committee. The Spectrum Management Committee shall consider in good faith any objections to the adoption or terms of such standards or other requirements which are received by the Spectrum Management Committee prior to adoption. Once any such standards or other requirements are adopted by the Spectrum Management Committee, notice of final adoption of such standards or other requirements and the terms thereof shall be provided to all affected Spectrum Users. All Spectrum Users shall use commercially reasonable efforts to comply with all such standards or other requirements. The Spectrum Management Committee may adopt one or more sets of cost recovery provisions associated with any such standards or other requirements. In adopting such standards or other requirements, the Spectrum Management Committee may rely upon the advice of one or more committees, external consultants or other entities which the Spectrum Management Committee believes have the relevant expertise or will provide the appropriate advice.

1.4.2 Information Regarding Usage. All Member Railroads and other proposed Spectrum Users shall submit to PTC-220, in each case on terms and using procedures specified by the Spectrum Management Committee, such information as the Spectrum Management Committee reasonably requests, in connection with planning or actions to be taken by the Spectrum Management Committee hereunder. Such information may include usage information such as descriptions of proposed uses of the Spectrum, geographic areas or use or requested use, actual or projected usage (in such reasonable detail as may be requested by PTC-220), and proposed duration of use, including the date on which such Spectrum User commenced or anticipates commencing service. Each Spectrum User commencing service on the Spectrum after the date of this Agreement shall submit notice to PTC-220 at least thirty (30) days prior to commencing service on the Spectrum. PTC-220 shall maintain all such Spectrum User information in confidence, and to the extent one or more of its members has access to such information, PTC-220 shall direct such members to use such information solely in connection with the use and management of Spectrum, and not for any purposes related to its freight railroad business. Further, PTC-220 shall use reasonable efforts to utilize outside vendors under strict confidentiality agreements for review and analysis of information that is of a competitively sensitive nature, such as train schedules and related data, or cause such information to be aggregated or otherwise masked.

1.5 Additional Spectrum. When the Spectrum Management Committee determines that PTC-220 no longer has sufficient Spectrum capacity for all of the Primary Use needs in a particular area even after eliminating all Secondary Use,



including in the case of excess demand or where the Spectrum Management Committee determines that additional spectrum should be sought and acquired because use of the Spectrum has reached the then-applicable Congestion Limit in a geographic area, PTC-220 shall seek to procure additional Spectrum or rights to use additional Spectrum. The Spectrum Management Committee shall investigate the cost and availability of additional Spectrum in such area, and whether Spectrum can be acquired in the amount needed and expected to be needed to address these issues. The fact that a Member Railroad does not require additional Spectrum in a particular area shall not be a valid basis for voting against or otherwise opposing a determination that there is not sufficient Spectrum capacity for all of the Primary Use needs in that area.

PTC-220 shall use commercially reasonable efforts to acquire additional Spectrum at reasonable cost (as determined by the Spectrum Management Committee and approved by the Management Committee), with such capacity and geographic coverage as reasonably necessary to alleviate the excess demand or Spectrum congestion in the area.

For the avoidance of doubt, once PTC-220 has the obligation to seek additional Spectrum or rights to use additional Spectrum, the decision whether or not to acquire additional Spectrum or rights to use additional Spectrum is not subject to further approval, and only the implementation of that obligation, including the specific terms, would be subject to further approval. For example, PTC-220 could conclude that a particular opportunity to acquire additional Spectrum should not be pursued because it is significantly more than PTC-220 needs or because the terms of another opportunity are reasonably expected to be superior, and decline the particular opportunity. However, PTC-220 would continue to be obligated to diligently pursue the acquisition of additional Spectrum. For the further avoidance of doubt, PTC-220's obligation hereunder to acquire additional Spectrum or rights to use additional Spectrum shall not be enforceable by Non-Member Users, either then-existing or proposed Non-Member Users.

All costs to acquire additional Spectrum pursuant to this Section shall be borne by PTC-220, using capital contributions from members of PTC-220. However, PTC-220 reserves the right in its reasonable discretion to require each Non-Member User using Spectrum in the affected geographic areas to make a reasonable monetary contribution to help in the acquisition of the Spectrum, including through a one-time payment, a series of annual or other recurring payments or increases in Usage Fees, provided that such payment is based on a cost-recovery model. When determining which Non-Member Users should be responsible for the costs of acquiring additional Spectrum and what percentage of the costs should be allocated to each Non-Member User, PTC-220, through the Spectrum Management Committee, shall consider the number of Spectrum Users using the additional Spectrum, the amount of use by each user and its use profile (including the times, duration and level of use), the expected changes in the capacity requirements of each user, the users covered by the geographic area of the additional Spectrum (whether or not such users are expected to use the additional Spectrum), and other factors that the Spectrum Management Committee may find relevant to such decision.

## 1.6. Managing Congestion.

1.6.1 Congestion Limit. The Spectrum Management Committee shall be empowered to set data transport traffic utilization benchmarks (each such benchmark being referred to as a “**Congestion Limit**”) in the geographic areas covered by PTC-220’s FCC licenses. If the load in any geographic area (taking into account projected usage by lessees and other users which have been granted usage rights by PTC-220, Primary and Secondary Use and application of prioritization and class of service) approaches or exceeds a Congestion Limit, the Spectrum Management Committee may determine that (a) an applicable maximum permitted load has been reached, and/or (b) the load may jeopardize Positive Train Control operations for the existing Spectrum Users due to congestion. In such a case, the Spectrum Management Committee may determine that no new Spectrum Users are to be added in such area until a decision to acquire additional Spectrum has been made and additional Spectrum has been acquired by PTC-220 as provided in Section 1.5.

1.6.2 Initial Congestion Limit and Modifications. The Congestion Limit in an applicable geographic area shall be initially designated as 80% of the Spectrum capacity in an area as determined by using units of measure selected by the Spectrum Management Committee from time to time. The Spectrum Management Committee has the sole discretion to modify any Congestion Limit for a particular geographic area at any time, as well as to employ any and all methodologies to determine the applicable Congestion Limits. The Spectrum Management Committee shall endeavor to give Spectrum Users negatively impacted by a particular Congestion Limit at least thirty (30) days’ notice, or such longer notice as is reasonably practicable, under the circumstances, when the system is approaching the Congestion Limit, as reasonably determined by the Spectrum Management Committee. For purposes of illustration, the Spectrum Management Committee may determine that such notice shall be given when a percentage of utilized Spectrum capacity in a geographic area exceeds 60%.

1.6.3 Congestion Limit and Modifications. The Congestion Limit Spectrum Users may deploy systems in their approved geographic areas subject to the Primary and Secondary Use determinations made by PTC-220 through the Spectrum Management Committee pursuant to Section 1.1 and subject to the terms of their individual leases or other contracts with PTC-220. All Spectrum Users have a duty to cooperate in good faith to avoid unacceptable levels of congestion to Spectrum Users. If the same is detected, it will be handled by the Spectrum Management Committee as provided below.

If the Spectrum Management Committee confirms that the level of congestion is over the Congestion Limit or otherwise unacceptable, it shall first make the Primary and Secondary Use determination contemplated by Section 1.1. If the transmissions or one or more Secondary Users are causing the unacceptable level of congestion, the Spectrum Management Committee shall issue a notice to all Secondary Users specifying the extent to which its right to transmit for Secondary Use has been modified or revoked to eliminate any unacceptable levels of congestion. The Secondary User shall cease

transmissions to the extent specified in the notice from the Spectrum Management Committee immediately upon receipt of notice from the Spectrum Management Committee to do so.

If the Spectrum Management Committee confirms that the source of unacceptable levels of congestion is Primary Users, it shall issue a notice relevant Primary Users specifying the extent to which its or their right to transmit has been reduced or revoked to eliminate any unacceptable levels of congestion. Those Primary Users shall reduce or cease transmissions to the extent specified in the notice from the Spectrum Management Committee immediately upon receipt of notice from the Spectrum Management Committee to do so.

1.7. Secondary Use. Each Member Railroad shall, upon notice to the Spectrum Management Committee, have the right to use the Spectrum for Secondary Use, subject to preemption for Primary Use as provided herein and the other restrictions on Secondary Use set forth in this Agreement.

In geographic areas in which there is unused Spectrum because the Spectrum Users collectively have not applied for (or have not been granted) the right to use, and are not expected to use, all of the capacity for Primary Use up to the Congestion Limit, the Spectrum Users using capacity in that geographic area shall notify PTC-220 of their desire to use the unused Spectrum in that geographic area for Secondary Use on a long-term basis. The Spectrum Management Committee shall consult with other Spectrum Users in the geographic area and solicit comments on the proposed Secondary Use by each of the Spectrum Users in the geographic area. The Spectrum Management Committee shall adopt rules for the long-term Secondary Use of unused Spectrum in that geographic area, which rules may include (i) a priority scheme for Secondary Use, which may give a preference to certain types of Secondary Use (such as locomotive management) over others, (ii) pro-ration of Spectrum determined by the Spectrum Management Committee to be available for Secondary Use among the Spectrum Users using a mechanism adopted by the Spectrum Management Committee (which may be on numbers of base stations, track miles or other basis), (iii) Spectrum determined by the Spectrum Management Committee to be available for Secondary Use to be allocated in fixed shares to Spectrum Users, either for stated Secondary Uses or for any Secondary Use, (iv) commercialization (subject to power limitations) of available Spectrum by PTC-220 to defray costs that otherwise would need to be funded by Member Users or others, or (v) such other approach that the Spectrum Management Committee determines to be appropriate.

All Secondary Use of the Spectrum is subject to capacity reductions or eliminations, and all rules for the use of Spectrum for Secondary Use are subject to change, at the sole discretion of the Spectrum Management Committee and without any minimum notice period, although the Spectrum Management Committee shall endeavor to give affected Spectrum Users at least thirty (30) days' notice, or such longer notice as is reasonably practicable, under the circumstances, of any such capacity reduction or elimination. The Spectrum Management Committee is expressly authorized to require a



Spectrum User to reduce or eliminate its Secondary Use to accommodate use of the Spectrum for Primary Use. For the avoidance of doubt, the provisions of Section 1.5 regarding acquisition of additional spectrum are not applicable to acquisition of Spectrum capacity for Secondary Use.

1.8 Usage and Maintenance Fees. PTC-220 may charge each Non-Member User a Spectrum usage or capacity lease fee and a Spectrum maintenance fee recommended by the Spectrum Management Committee (a “Usage Fee” and a “Maintenance Fee,” respectively) based on its analysis of the fees needed to enable the Member Railroads to recover over time a pro rata share of the PTC-220 investment and other costs incurred in the acquisition, maintenance, and management of the Spectrum Licenses, based upon a reasonable estimate of the percentage of the Spectrum Use by Non-Member Users. Because Member Railroads contributed the capital needed to acquire the Spectrum, Member Railroads will not be charged Usage or Maintenance Fees, other lease or rental payments or other amounts for their use of Spectrum, absent unusual and compelling circumstances, as determined by the Management Committee by a two-thirds supermajority of the membership interests in PTC-220.

1.9 Spectrum-Related Expenses. All expenses with respect to the management, use or allocation of Spectrum, including all expenses associated with meeting build-out requirements not assumed by the Spectrum Users, all filings with and reports to the FCC, actions taken with respect to planning and coordination, and all other actions taken under this Agreement by PTC-220 or the Spectrum Management Committee shall be borne by PTC-220. For the avoidance of doubt, in the event that in the future the Spectrum includes spectrum of which PTC-220 is not the licensee but a lessee or other user, the expenses to be borne by PTC-220 with regard to the spectrum it is leasing or using shall consist of the expenses associated with the actions it is required to take in such capacity, and are not intended to include the expenses to be paid by the licensee.

1.10 Spectrum-Related Obligations. PTC-220, as the FCC licensee, shall comply in all material respects with all rules and regulations to which the Licenses are subject, including, but not limited to: regulatory filing and notification requirements, Construction Requirements (as defined below), ensuring timely payment of regulatory fees, and the filing of Spectrum lease agreements as necessary. Spectrum Users will cooperate with PTC-220 as needed to fulfill such requirements.

Notwithstanding any language in this Agreement to the contrary, use of the Licenses by Spectrum Users is subject to the limitations and requirements set forth in the FCC’s rules and regulations as amended from time to time and the rights and obligations of PTC-220 as the FCC licensee.

1.11 Spectrum Lease Agreements or Other Contracts. All Spectrum Users shall enter into lease or user agreements for use of Spectrum to the extent required by the provisions in the FCC’s rules (47 C.F.R. §§ 1.9001 *et seq.*) governing leasing agreements or to the extent requested by the Spectrum Management Committee. All such leases, user

agreements and other contracts shall be on terms reasonably satisfactory to the Spectrum Management Committee. All such leases, user agreements and other contracts shall be, and shall specifically provide that they are, subject to (and to the extent inconsistent shall be superseded by) the terms and conditions of this Agreement, as it may be amended from time to time, unless specifically determined otherwise by the Spectrum Management Committee based upon a finding that it would be in the best interests of PTC-220, Positive Train Control, interoperability and/or other principles set forth herein to permit a lease, use agreement or other contract with a Non-Member User to be inconsistent with this Agreement and future amendments hereto.

1.12 Construction Requirements. The Spectrum Users acknowledge that, consistent with PTC-220's obligations as FCC licensee, PTC-220 must comply with the FCC's construction and renewal requirements for the Licenses (*see* 47 C.F.R. §§ 90.743, 90.767, 90.769) (the "**Construction and Renewal Requirements**"), and that the Licenses may be cancelled by the FCC for non-compliance with the Construction and Renewal Requirements. The Spectrum Users also acknowledge that it will be more efficient for Spectrum Users to use a coordinated approach in construction of communications networks for Positive Train Control, led by the Spectrum Management Committee, particularly to avoid duplication in congested areas which could overtax the available capacity.

(a) Construction Plans. The Spectrum Management Committee may from time to time develop, amend and implement one or more plans for meeting the Construction and Renewal Requirements for the Licenses and for coordination of Spectrum Users (each, a "**Construction Plan**"), giving a reasonable opportunity for input (in the form of non-binding suggestions to be considered by the Spectrum Management Committee in good faith) to each Non-Member User with projected use of more than 10% of the Spectrum capacity in any geographic area and that is designated by the Spectrum Management Committee as a major user (a "**Major User**"). Once a Construction Plan and any material amendment thereto has been approved by the Spectrum Management Committee (either in full or sufficiently-detailed outline form), then the Member Railroads, each Major User, each Spectrum User (including Member Railroads and Major Users) with projected use of the Spectrum capacity in any geographic area that is designated by the Spectrum Management Committee as likely to be congested (a "**Congested Area User**"), and each other Spectrum User when so requested by the Spectrum Management Committee (a "**Requested User**") shall be required to comply with such Construction Plan and provide reasonable access to its Positive Train Control network elements as an ongoing condition of its right to use the Spectrum. For the avoidance of doubt, it is understood that where Spectrum will be shared among more than one Member Railroad or Major User (or lessee railroads in the case of Congested Areas) PTC-220 may seek to have two or more base stations covering any segment of railroad track or tracks.

(b) Meeting Construction and Renewal Requirements. Each Construction Plan shall provide for Member Railroads and Major Users to construct a sufficient number of base stations to provide service and meet the Construction and Renewal

Requirements by the designated deadlines in such Construction Plan. To satisfy the Construction and Renewal Requirements, the Construction Plan shall be based upon providing "substantial service" (as defined in the FCC's rules and regulations at 47 C.F.R. § 90.743(a)(1)) to the licensed areas for each of the Licenses (so long as substantial service is sufficient to satisfy the Construction and Renewal Requirements to which PTC-220 is subject as the FCC Licensee, after giving effect to any FCC waivers or extensions of the Construction and Renewal Requirements for the benefit of PTC-220). Each Member Railroad and Major User shall assume the build-out obligations set forth in each applicable Construction Plan, their respective lease agreements or other contracts entered into pursuant to Section 1.11 and/or as otherwise agreed to by the Member Railroad or Major User.

(c) Coordination of Construction in Congested Areas. The Spectrum Management Committee may from time to time designate geographic areas as likely to be congested (each, a "**Congested Area**"), and therefore requiring special coordination among Congested Area Users. Following designation of one or more geographic areas as Congested Areas, the Spectrum Management Committee shall take reasonable steps to inform all Spectrum Users expected to be Congested Area Users with respect to such area. Each Congested Area User agrees to submit each of its network construction plans or amended plans regarding use of Leased Spectrum in a Congested Area (each, a "**Congested Area Plan**") to the Spectrum Management Committee for approval prior to commencing construction, such approval not to be unreasonably withheld or delayed (and plans may be approved in part rather than in whole), and to conduct network construction in such Congested Area for purposes of use of Leased Spectrum only in accordance with its Congested Area Plan most recently approved by the Spectrum Management Committee. Such Congested Area Plans shall also list and provide such reasonable details as may be requested by the Spectrum Management Committee regarding such Congested Area User's Existing Sites in the Congested Area. To the extent the Spectrum Management Committee determines that the submitted or expected Congested Area Plans are reasonably likely to cause duplication in the Congested Areas which could overtax the available Spectrum, the Spectrum Management Committee may direct any one or more of the following, and the directed Congested Area Users shall comply with such direction: (i) direct one or more Congested Area Users to refrain from constructing one or more towers or base stations in such Congested Areas as specified by the Spectrum Management Committee; (ii) direct one or more Congested Area Users to construct one or more towers or base stations on specified Existing Sites in such Congested Areas; or (iii) direct one or more Congested Area Users to make Designated Shared Base Stations constructed by it in the Congested Area available for Appropriate Use by other Congested Area Users on a shared basis, subject to agreement on cost recovery as provided below.

Any then-existing tower and base stations sites of any Spectrum User may be referred to herein as an "**Existing Site.**" Any tower or base station that the Spectrum Management Committee directs in accordance with this Section 1.12 to be constructed is referred to herein as a "**Designated Construction Base Station.**" Any tower or base station that the Spectrum Management Committee directs in accordance with this Section



1.12 to be shared is referred to herein as a “**Designated Shared Base Station.**” Any Spectrum User which the Spectrum Management Committee directs to construct a Designated Construction Base Station in accordance with this Section 1.12 is referred to herein as a “**Designated Constructor.**” In each case “**Appropriate Use**” of a Designated Shared Base Station shall mean solely for support of permitted use of the Spectrum, consistent with the other uses of such Designated Shared Base Station, and which does not interfere in any material respect with the purposes for which such Designated Shared Base Station was constructed. For the avoidance of doubt, it is understood that where Spectrum will be shared among more than one Member Railroad or Major User (or lessee railroads in the case of Congested Areas) PTC-220 may seek to have two or more base stations covering each segment of railroad track or tracks, and accordingly that (i) PTC-220 may direct that Designated Shared Base Stations be made available for Appropriate Use by other Spectrum Area Users even if such Designated Shared Base Stations are not the only ones in a particular area, and (ii) signals transmitted by a radio of a Spectrum User using such segment of railroad track or tracks may be routed by the system to one of the base stations covering such segment of railroad track or tracks rather than another base station, and so long as a Spectrum User owns or shares or has other rights to use at least one of the base stations covering such segment of railroad track or tracks, it shall not be charged for its signals being routed to another of the base stations covering such segment of railroad track or tracks.

(d) Coordination of Requested Users. Although for the avoidance of doubt it is understood that in most cases PTC-220 does not intend to require Non-Member Users, Major Users, or Congested Area Users to comply with all Construction Plans, the Spectrum Management Committee may from time to time determine that coordination of construction in one or more areas will be beneficial for Spectrum Users generally. Following any such determination, the Spectrum Management Committee shall take reasonable steps to inform all Spectrum Users expected to be Requested Users of such determination and the applicable geographic areas (“**Requested User Areas**”). In such cases, each Requested User agrees to submit each of its network construction plans or amended plans regarding use of Leased Spectrum in such Requested User Area (each, a “**Requested User Plan**”) to the Spectrum Management Committee for approval prior to commencing construction, such approval not to be unreasonably withheld or delayed (and plans may be approved in part rather than in whole). Such Requested User Plans shall also list and provide such reasonable details as may be requested by the Spectrum Management Committee regarding such Requested User’s Existing Sites. Each Requested User shall conduct network construction in such Requested User Area for purposes of use of Leased Spectrum only in accordance with its Requested User Plan most recently approved by the Spectrum Management Committee. The Spectrum Management Committee may direct one or more Requested Users to construct one or more Designated Construction Base Stations in such Requested User Areas on specified Existing Sites of such Requested Users and/or direct one or more Requested Users to make Designated Shared Base Station constructed by it in such Requested User Areas available for Appropriate Use by other Spectrum Users, subject to agreement on cost recovery as provided below.

### 1.12.1 Cost Incurrence and Cost Recovery.

(a) Cost Incurrence by Member Railroads and Major Users. Each Member Railroad and Major User will bear the costs and expenses it incurs to meet the Construction and Renewal Requirements (its “**Network and Equipment Costs**”) and to operate and maintain the network so constructed and equipment so installed, including (i) construction expenses associated with construction of the portions of the network constructed by it, including replacement or upgraded portions of the network; (ii) costs of obtaining, paying for, and operating, maintaining, replacing when needed and upgrading as necessary all equipment necessary to comply with the Construction Plan (“**Equipment**”); (iii) costs of engineering services, legal services, tower or site leases, permits, licenses, authorizations, or consents, insurance and taxes; and (iv) all of the other costs and expenses incident thereto.

(b) Cost Recovery by Member Railroads and Major Users. Each of the Member Railroads and Major Users may elect to recover over time a Pro Rata Share of its Network and Equipment Costs of such network and equipment used by other Spectrum Users. A Pro Rata Share shall equal a reasonable estimate of the percentage of the use by entities other than such Member Railroad or Major User (including other Member Railroads and Major Users and Non-Member Users) of the portions of the network infrastructure or Equipment constructed or installed by such Member Railroad or Major User. Such Pro Rata Share may be recovered through charging a reasonable fee to (x) all Non-Member Users (including Major Users) seeking to use the network infrastructure or Equipment constructed or installed by such Member Railroad or Major User and (y) Member Railroads. Notwithstanding clause (y) of the prior sentence Member Railroads may charge such a fee to other Member Railroads for such costs and expenses only where (i) such charges relate solely to the costs of installation of a portion of the network that provides coverage to geographic areas owned by another Member Railroad and such railroad actually uses such coverage; or (ii) the Member Railroad to be charged agrees in writing to accept such charges. The fees charged by each of the Member Railroads or Major Users shall be designed solely to recover such costs incurred by it. To the extent reasonably practicable, such fees owed by any Member Railroad to any other Member Railroad shall be offset by fees owed by the other Member Railroad to the first Member Railroad, and Member Railroads may enter into arrangements to confirm or clarify such offset obligations. Recovery of a Pro Rata Share of Network and Equipment Costs shall be over such period (the “**Applicable Recovery Period**”) as may be specified by applicable law or regulation, governed by industry agreement or as is customary practice in the industry and shall be allocated fairly and reasonably over all Non-Member Users of such infrastructure or Equipment (including Major Users) and, to the extent provided above, Member Railroads. The amount of such fees (together with back-up data demonstrating compliance with this paragraph) is subject to the reasonable review of or audit by PTC-220 or on behalf of PTC-220 by independent accountants or similar consultants (with the costs of such accountants or consultants initially being payable by the party receiving the cost recovery payment). Any cost information so obtained is not to be shared with PTC-220 or Member Railroads except to the extent reasonably necessary to permit enforcement of the limitation on fees. Any dispute



regarding the appropriateness of the amount or period of cost recovery, its allocation among users or other related matters may be settled by PTC-220 if it elects to do so, or if it does not so elect shall be settled by any applicable dispute resolution procedures. In determining Pro Rata Share and making a fair and reasonable allocation thereof, PTC-220 may in its discretion (after considering in good faith whether more accurate ways of determining Pro Rata Share are available, readily implementable and cost-justified) impose an assumption that all relevant users make equal use of the applicable portions of the network infrastructure or Equipment.

(c) Cost Incurrence by Designated Constructors. Each Designated Constructor will bear the Network and Equipment Costs it incurs to construct Designated Construction Base Stations.

(d) Cost Recovery by Designated Constructors. Each Designated Constructor may elect to recover over time a Pro Rata Share of the Network and Equipment Costs it incurs to construct Designated Construction Base Stations, and each other Spectrum User may elect to recover over time a Pro Rata Share of the Network and Equipment Costs it incurs to construct any Designated Shared Base Stations. In this context, Pro Rata Share refers to a reasonable estimate of the percentage of the use of the Designated Construction Base Stations or Designated Shared Base Stations by other Spectrum Users in the Congested Area or Requested User Area where the towers or base stations are located. Such Pro Rata Share may be recovered through charging a reasonable fee to all such other Spectrum Users. Recovery of a Pro Rata Share of Network and Equipment Costs shall be over the Applicable Recovery Period and shall be allocated fairly and reasonably over all other Spectrum Users in the Congested Area or Requested User Area where the applicable towers or base stations are located. The amount of such fees (together with back-up data demonstrating compliance with this paragraph) is subject to the reasonable review of or audit by PTC-220 or on behalf of PTC-220 by independent accountants or similar consultants (with the costs of such accountants or consultants initially being payable by the party receiving the sharing payment). Any cost information so obtained is not to be shared with PTC-220 or Member Railroads except to the extent reasonably necessary to permit enforcement of the limitation on fees. Any dispute regarding the appropriateness of the amount or period of cost recovery, its allocation among users or other related matters may be settled by PTC-220 in the manner provided above, if it elects to do so, or if it does not so elect shall be settled by any applicable dispute resolution procedures. In determining Pro Rata Share and making a fair and reasonable allocation thereof, PTC-220 may in its discretion (after considering in good faith whether more accurate ways of determining Pro Rata Share are available, readily implementable and cost-justified) impose an assumption that all relevant users make equal use of Designated Construction Base Stations or Designated Shared Base Stations.

### 1.12.2 Construction Timetable.

(a) Meeting Construction Plan Requirements. Member Railroads and Major Users shall use commercially reasonable efforts to meet the Construction and Renewal Requirements by the designated deadlines in such Construction Plan, and in all events to meet the schedule requirements for “substantial service” to the licensed areas for each of the Licenses.

(b) Construction in Congested Areas and Requested User Areas. Each Designated Constructor shall use commercially reasonable efforts to construct the Designated Construction Base Stations it has been directed to construct in accordance with a schedule reasonably specified by the Spectrum Management Committee.

1.12.3 Network and Equipment Maintenance. Each Member Railroad and Major User shall maintain the portions of the network and the Equipment constructed and installed by it at its expense so that the network and Equipment remains in good working order, and each Member Railroad and Major User shall operate the same in compliance with all applicable rules, regulations, laws and orders of all governmental authorities. Any and all notifications, permits, licenses, authorizations, or consents required for the connection, operation and/or servicing of the network and Equipment or for the construction or use of any site shall be procured and maintained by the constructing Member Railroad and Major User at its expense and risk and shall be obtained and exhibited to PTC-220 upon request. The foregoing provisions of this paragraph shall also apply to Designated Constructors with respect to the Designated Construction Base Stations they have constructed, and each other Spectrum User with respect to Designated Shared Base Stations that are made available for Appropriate Use by other Spectrum Users at the direction of PTC-220.

The Spectrum Management Committee may from time to time adopt standards or service level agreements (“SLAs”) relating to Designated Construction Base Stations and/or Designated Shared Base Stations, either in general (applicable to all such base stations) or with regard to such base stations that meet specific criteria (such as being located in certain types of congested areas or shared by a certain number of users or receiving a certain level of use). Such standards or SLAs may include specific requirements for construction, maintenance and/or service levels that the base stations must meet while in operation, and may include phase-in periods or other time periods for compliance. Before final adoption of any such standards or SLAs, the Spectrum Management Committee shall endeavor to give the Designated Constructors with respect to their Designated Construction Base Stations, the owners and operators of such Designated Shared Base Stations and the Spectrum Users who would be negatively impacted by particular standards or SLAs at least thirty (30) days’ notice of the proposed adoption of such standards or SLAs and the expected terms thereof, all as reasonably determined by the Spectrum Management Committee. The Spectrum Management Committee shall consider in good faith any objections to the adoption or terms of such standards or SLAs which are received by the Spectrum Management Committee prior to adoption. Once any such standards or SLAs are adopted by the Spectrum Management

Committee, notice of final adoption of such standards or SLAs and the terms thereof shall be provided to all affected Spectrum Users. The Designated Constructors with respect to their Designated Construction Base Stations and the constructors, owners and operators of such Designated Shared Base Stations each shall use commercially reasonable efforts to comply with all such standards or SLAs. The Spectrum Management Committee may adopt standards for inadequate maintenance or performance with regard to such base stations, and require corrective action or re-allocate responsibility for establishing or maintaining such base stations. The Spectrum Management Committee may also adopt one or more sets of cost recovery provisions associated with any such standards or SLAs, and each of the Designated Constructors with respect to their Designated Construction Base Stations and the constructors, owners and operators of such Designated Shared Base Stations may elect to recover the costs and over the time periods and in the manner specified in the set of cost recovery provisions applicable to it.

1.12.4 Construction Defaults and Remedies. Each Member Railroad and Major User agrees that if at any time during this Agreement it reasonably believes that it will default on its obligations under the Construction Plan, it shall notify PTC-220 immediately. PTC-220 or another Member Railroad or Major User then may perform the defaulting Member Railroad's or Major User's obligations at the defaulting Member Railroad's or Major User's expense, and the defaulting Member Railroad or Major User agrees to reimburse the performing party within ten (10) days after demand. If PTC-220 has knowledge or a reasonable belief that a Member Railroad or Major User has failed to comply with the Construction Plan, that Member Railroad or Major User shall cooperate with PTC-220 to meet the applicable Construction and Renewal Requirements. In the event a Designated Constructor materially fails to use commercially reasonable efforts to construct the Designated Construction Base Stations it has been designated to construct in a Congested Area or Required User Area, or in the event another Spectrum User materially fails to use commercially reasonable efforts to make available any Designated Shared Base Stations for Appropriate Use by other Spectrum Users in a Congested Area or Required User Area at the direction of PTC-220, in addition to any other remedies available to the Spectrum Management Committee, in the discretion of the Spectrum Management Committee exercised in good faith, (i) PTC-220 may take any action permitted under the lease with such Designated Constructor or other Spectrum User, including charging a full annual fee for the base station not so maintained rather than a Pro Rata Share of the applicable fee, (ii) PTC-220 may direct another Designated Constructor to construct new or replacement Designated Construction Base Stations and the defaulting Designated Constructor shall be liable for all costs reasonably incurred for the same under the provisions of this Agreement, and/or (iii) the Designated Constructor or other Spectrum User may be denied access to towers or base stations constructed by others in the Congested Area or Required User Area, except to the extent that such denial of access would be unlawful.

1.12.5 Records, Reports, and Audits. The Member Railroads and Major Users shall maintain true and correct records in connection with this Agreement and all transactions related hereto, including those relating to equipment acquisition and network construction, deployment, and coverage. Each Member Railroad and Major User shall



provide PTC-220 with a report regarding network construction and compliance with each Construction Plan and any other construction plan approved by or submitted to PTC-220 under which they have construction obligations within ten (10) days after the end of each calendar quarter, as well as thirty (30) days in advance of any FCC construction requirement deadline related to a License being used by the Member Railroad or Major User. In addition to the disclosures listed herein, the reports shall include a description of all material events and facts that may negatively impact a Member Railroad's or Major User's ability to meet the Construction and Renewal Requirements. Upon PTC-220's reasonable request, PTC-220 may audit any and all records of a Member Railroad or Major User for the sole purpose of determining whether there has been compliance with this Section. The foregoing provisions of this paragraph shall also apply to Designated Constructors with respect to the Designated Construction Base Stations each has been designated to construct and to other Spectrum Users with respect to the Designated Shared Base Stations they have been directed by PTC-220 to make available for Appropriate Use by other Spectrum Users in a Congested Area or Required User Area.

1.12.6 Regulatory Filings and Authorizations. The Member Railroads and Major Users shall make, file, obtain and maintain all notifications, permits, licenses, authorizations, or consents required for the construction or use of any network site and for connection, operation and/or servicing of equipment at that site, excluding for the avoidance of doubt the filings required to be made with the FCC by PTC-220 relating to the use of Spectrum. The reports regarding network construction to be prepared by each Member Railroad and Major User for PTC-220 shall include a description of such notifications, permits, licenses, authorizations, or consents so obtained and maintained. PTC-220 and each Member Railroad and Major User shall cooperate with regard to applications and filings with the FCC and other governmental agencies with regard to matters such as environmental assessments and FAA notifications, where multiple users of the Spectrum are likely to encounter the same regulatory issues and the parties feel it would be appropriate for PTC-220 to address issues with the governmental agencies on behalf of multiple entities engaging in network construction.

## ARTICLE 2 DISPUTE RESOLUTION

2.1 Disputes. Any dispute between or among PTC-220 and the Spectrum Users concerning Spectrum use under the terms of this Agreement (a "Dispute") shall be resolved pursuant to this Article.

(a) Any party to a Dispute may send written notice ("Notice") of such Dispute to the other party or parties to such Dispute, and all parties to this Agreement involved in such Dispute agree that they shall negotiate in good faith to amicably resolve all such Disputes.

(b) In the event that a Dispute cannot be so resolved within ten (10) days of the date of the Notice, the parties to a Dispute shall submit the Dispute in writing

to PTC-220's Spectrum Management Committee and provide a copy of the submission to the other parties to the Dispute and to all Member Railroads.

(c) The parties shall follow the procedures reasonably adopted by PTC-220's Spectrum Management Committee for resolution of Disputes; provided, however, that in the absence of any other procedures each party to the Dispute shall have ten (10) days to file a written response to the other party's submission with PTC-220's Spectrum Management Committee, and PTC-220's Spectrum Management Committee will use best efforts to complete its deliberation and reach a decision within ten (10) days after filing of such response.

(d) Although PTC-220 generally reserves the right to use the foregoing approach for the resolution of all Disputes, to the extent a different dispute resolution procedure is specified in the lease agreement between PTC-220 and a Non-Member User, PTC-220 shall follow such different dispute resolution procedure for a Dispute with a Non-Member User which is not primarily regarding Spectrum use or other operating matters.

2.2 Committee Procedures. The Spectrum Management Committee shall establish procedures for the resolution of Disputes (consistent, in the case of Member Railroads, with the PTC-220 Operating Agreement). Such procedures shall, among other things, include a mechanism to resolve disputes or disagreements between members of the Spectrum Management Committee or in the case of deadlock (*e.g.*, requiring the participation of a third-party representative or a private arbitrator on the Spectrum Management Committee).

2.3 Additional Dispute Resolution. To the extent a Dispute is not resolved by the other provisions of this Article 2, Disputes that involve only Member Railroads shall be resolved pursuant to the dispute resolution procedures set forth in the PTC-220 Operating Agreement, while Disputes that involve one or more Non-Member Users shall be resolved pursuant to the dispute resolution procedures set forth in the leases or other agreements entered into by such entities with PTC-220.

### ARTICLE 3 MISCELLANEOUS PROVISIONS

3.1 Scope of Agreement. This Agreement governs the use of the Spectrum only. Nothing herein shall be deemed to establish or otherwise govern the specific arrangements for sharing of physical infrastructure (*e.g.*, ground networks) between or among the Spectrum Users, and any arrangements for sharing of physical infrastructure shall be negotiated separately by the applicable Spectrum Users (except as the parties hereto have agreed in Section 1.12.1).

3.2 Non-Waiver. The failure of any party to demand strict performance of any or all of the terms of this Agreement, or to exercise any or all rights conferred by this



Agreement, shall not be construed as a waiver or relinquishment of that party's right to assert or rely upon any such right in the future.

3.3 Entire Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and may not be modified or changed except by written amendment signed by an authorized representative of each of the parties.

3.4 Severability. Each provision of this Agreement shall be considered severable, and if for any reason any provision hereof is determined to be invalid and contrary to existing or future law, such invalidity shall not impair the operation or affect those portions of this Agreement which are valid, any such invalid provision shall be reformed to the minimum extent required to be enforceable and to give effect to the original written intent of the parties, and this Agreement shall remain in full force and effect and shall be construed and enforced in all respects.

3.5 Counterparts; Facsimile or Electronic Transmissions of Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or electronic transmission of this Agreement bearing a signature on behalf of a party will be legal and binding on such party.

3.6 Resignation by Member Railroads; Lease Expiration.

Except as the Member Railroads shall otherwise determine (pursuant to the PTC-220 Operating Agreement), if a Member Railroad ceases to be a member of PTC-220, it shall automatically cease to be a Member Railroad and shall cease to be a party to this Agreement, except to the extent agreed to in writing by the remaining Member Railroads and PTC-220, provided, however, that no such cessation shall affect any such Member Railroad's rights under its lease or use agreements or other contracts for Spectrum, except that such Member Railroad shall, after ceasing to be a member of PTC-220, thereafter be treated as a Non-Member User.

Upon termination without replacement of a lease or use agreement or other contract for Spectrum of any Non-Member User (including without limitation a former Member Railroad), to the extent that such Non-Member User owns or operates network or base stations that were being shared by other users hereunder, such Non-Member User agrees to keep such sharing arrangements in effect for such reasonable period of time as may be requested by PTC-220 to allow replacement of the shared base stations or other facilities, but not in excess of one year.

3.7 Governing Law; Form; Attorneys' Fees; Waiver of Jury Trial. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Delaware without reference to its choice of law rules. Any action, suit or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with this Agreement shall be brought in a court located in the State of

Delaware (“**Delaware Courts**”). The parties consent to the exclusive jurisdiction and venue of the Delaware Courts in any action, suit or proceeding arising out of or in connection with this Agreement, other than with respect to claims that may not be heard in such courts. The parties irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of exclusive jurisdiction and venue in the Delaware Courts and that any such action, suit or proceeding brought in the Delaware Courts has been brought in an inconvenient forum. The prevailing party in a lawsuit brought to enforce the performance of or compliance with any provision of this Agreement may recover reasonable attorneys’ fees and costs from the non-prevailing party. Each party hereby expressly waives any right to trial by jury of any claim or cause of action arising under this agreement or in any way connected with or related or incidental to the dealings of the parties with respect to this agreement or the transactions related hereto.

3.8 Amendment. This Agreement may be amended only in a writing signed by the requisite number of Member Railroads and PTC-220. A writing signed by Member Railroads by a two-thirds supermajority of the membership interests in PTC-220 shall constitute a valid amendment, binding on all parties hereto, so long as the amendment meets the following requirements: (1) the amendment does not require a material increase in the commitments of any Member Railroad beyond those (including obligations with respect to Additional Capital Contributions) included in this Agreement and the PTC-220 Operating Agreement prior to the amendment and does not otherwise materially and adversely affect a Member Railroad, (2) the amendment is generally consistent with the mission of PTC-220, as reflected in the Agreement and the PTC-220 Operating Agreement, to make Spectrum available for Positive Train Control, and (3) with respect to amendment of sections where all Member Railroads are treated substantially identically, the amendment also treats all Member Railroads substantially identically. Any amendment not meeting such requirements shall only be valid and binding on the parties hereto if signed by all the Member Railroads and PTC-220. Further, leases with Spectrum Users are subject to (and to the extent inconsistent with, are intended to be superseded by) the terms and conditions of this Agreement as it may be amended from time to time (including under Section 1.11 hereof). It is intended that any amendment to this Agreement approved by Member Railroads as provided above in this Section (so that it already reflects the agreement of Spectrum Users using or expected to use a large majority of the Spectrum capacity) would have the effect of modifying such leases, provided that such amendment (i) does not require a material increase in the commitments of Spectrum Users based upon a model other than a cost-recovery model, (ii) does not deviate materially from the mission of PTC-220 to make Spectrum available to Spectrum Users for Positive Train Control as reflected in the Agreement, and (iii) with respect to amendment of sections where all Spectrum Users are treated similarly, the amendment generally treats Non-Member Users similarly and any new material distinctions between Member Railroads and other Spectrum Users are based upon the general financial principles reflected in the Agreement of allowing Member Railroads to recover a pro rata portion of their PTC-220 investments and other related costs.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

**PTC-220, LLC**

By: *Kim Simmonds*  
Name: KIM SIMMONDS  
Title: PRESIDENT, PTC-220

**NS SPECTRUM CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EKANET, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BNSF SPECTRUM, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CSXT INTELLECTUAL  
PROPERTIES CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GTC SPECTRUM CORPORATION**

By: *[Signature]*  
Name: MICHAEL FOSTER  
Title: ACTING AS AGENT OF GTC SPECTRUM CORPORATION

**CANADIAN PACIFIC PTC LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**KCS SPECTRUM, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURE PAGE TO THE FOURTH  
AMENDED AND RESTATED SHARED USE AGREEMENT]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

**PTC-220, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NS SPECTRUM CORPORATION**

By: James W. Howell  
Name: James W. Howell  
Title: Chief Engineer C+S

**EKANET, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BNSF SPECTRUM, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CSXT INTELLECTUAL  
PROPERTIES CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GTC SPECTRUM CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CANADIAN PACIFIC PTC LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**KCS SPECTRUM, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURE PAGE TO THE FOURTH  
AMENDED AND RESTATED SHARED USE AGREEMENT]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

**PTC-220, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NS SPECTRUM CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EKANET, INC.**

By: *Mark Foster*  
Name: MARK FOSTER  
Title: AVP-Telecom

**BNSF SPECTRUM, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CSXT INTELLECTUAL  
PROPERTIES CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GTC SPECTRUM CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CANADIAN PACIFIC PTC LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**KCS SPECTRUM, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURE PAGE TO THE FOURTH  
AMENDED AND RESTATED SHARED USE AGREEMENT]



IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

**PTC-220, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NS SPECTRUM CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EKANET, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BNSF SPECTRUM, INC.**

By: Sunny B. J. J.  
Name: \_\_\_\_\_  
Title: Avl - Telecom

**CSXT INTELLECTUAL  
PROPERTIES CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GTC SPECTRUM CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CANADIAN PACIFIC PTC LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**KCS SPECTRUM, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURE PAGE TO THE FOURTH  
AMENDED AND RESTATED SHARED USE AGREEMENT]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

**PTC-220, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NS SPECTRUM CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


**EKANET, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BNSF SPECTRUM, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CSXT INTELLECTUAL  
PROPERTIES CORPORATION**

By:  \_\_\_\_\_  
Name: Thomas Anderson  
Title: Asst. Corporate Secretary

**GTC SPECTRUM CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CANADIAN PACIFIC PTC LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**KCS SPECTRUM, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURE PAGE TO THE FOURTH  
AMENDED AND RESTATED SHARED USE AGREEMENT]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

**PTC-220, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NS SPECTRUM CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EKANET, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BNSF SPECTRUM, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CSXT INTELLECTUAL  
PROPERTIES CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GTC SPECTRUM CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CANADIAN PACIFIC PTC LLC**

By: F. E. Chambers  
Name: FRED E. Chambers  
Title: Managing Director

**KCS SPECTRUM, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURE PAGE TO THE FOURTH  
AMENDED AND RESTATED SHARED USE AGREEMENT]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

**PTC-220, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NS SPECTRUM CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EKANET, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BNSF SPECTRUM, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CSXT INTELLECTUAL  
PROPERTIES CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


**GTC SPECTRUM CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CANADIAN PACIFIC PTC LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**KCS SPECTRUM, INC.**

By:   
Name: Danny Hall  
Title: AVP IT INFRASTRUCTURE & TELCO

[SIGNATURE PAGE TO THE FOURTH  
AMENDED AND RESTATED SHARED USE AGREEMENT]

**Exhibit 1**  
Licenses

CALL SIGN	DESCRIPTION	SERVICE AREA	BLOCK	EXPIRATION
WPFR284	Phase I Nationwide License	US	1A	9/23/2019
WFPF444	Phase I Nationwide License	US	1B	9/19/2019
WPOI701	Phase II Nationwide License	NWA255	L Block	3/22/2019
WPOJ271	Phase II Nationwide License	NWA255	M Block	3/22/2019
WPWY753	Phase I Nationwide License			7/29/2023
WPOI774	Memphis, TN-AR-MS-KY	BEA073	E Block	3/22/2019
WPOI800	St. Louis, MO-IL	BEA096	E Block	3/22/2019
WPOJ279	Rochester, MN-IA-WI	BEA106	E Block	3/22/2019
WPOJ280	Minneapolis-St. Paul, MN-WI-IA	BEA107	E Block	3/22/2019
WPVL860	Los Angeles- Riverside- Orange County, CA	BEA160	E Block	7/11/2022
WPOJ281	San Francisco-Oakland-San Jose, CA	BEA163	E Block	3/22/2019
WQSL326	Chicago Area (Cook, DuPage, Lake & Will counties)			3/22/2019
WQSK949				7/13/2024
WQSL327				3/22/2019
WPOI924	Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD			3/22/2019
WQXK673	Essex (partial), Hudson (partial), Hunterdon, Mercer, Middlesex, Monmouth, Morris (partial), Somerset, Sussex (partial), Union and Warren counties, New Jersey  New York (partial) and Richmond counties, New York			3/22/2019
WQXK674				3/22/2019
WQXL586				7/13/2024
WQSJ980	Hartford, Middlesex, New Haven and New London counties, Connecticut  Bristol, Hampden, Norfolk and Suffolk counties, Massachusetts  Kent, Providence and Washington counties, Rhode Island			3/22/2019
WQSJ981	Hartford and New Haven counties, Connecticut			3/22/2019
WPOI710	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH-RI-VT			3/22/2019
WPOI702	Northeast			3/22/2019
WPOI703	Mid-Atlantic			3/22/2019



WPOI704	Southeast			3/22/2019
WPOI705	Great Lakes			3/22/2019
WPOI706	Central/Mountain			3/22/2019
WPOI708	Pacific			3/22/2019
WRRCR206	New Orleans LA-MS, Baton Rouge, LA-MS, Lafayette LA, Spokane WA-ID, Eugene-Springfield OR-CA, Portland-Salem OR-WA, Pendleton OR-WA, Richland-Kennewick-Pasco WA			7/13/2024
WRCS459	New Orleans LA-MS, Baton Rouge, LA-MS, Lafayette LA, Spokane WA-ID, Eugene-Springfield OR-CA, Portland-Salem OR-WA, Pendleton OR-WA, Richland-Kennewick-Pasco WA			3/22/2019
WRCS460	New Orleans LA-MS, Baton Rouge, LA-MS, Lafayette LA			3/22/2019
WRCS461	Spokane WA-ID, Eugene-Springfield OR-CA, Portland-Salem OR-WA, Pendleton OR-WA, Richland-Kennewick-Pasco WA			3/22/2019

**Exhibit 2**  
Application Prioritization Matrix

ITCM Application	Priority	Primary Use (P), Secondary Use (S)	Class
PTC	7	P (Train Movement)	0
CTC	6	P (Train Movement)	0
HLCS	6	P (Train Movement)	1
Precision Navigation	6	P (Train Movement)	1
Crossing Activation	6	P (Train Movement)	0
EOT	4	P (Train Movement)	0
DP	4	P (Train Movement)	0
Trackside (FED,HBD, et..)	2	P (Train Movement)	1
RCL 2.0	2	P (Train Movement)	1
Crossing Detector Mon	5	S (Business Use)	0
SMS	4	S (Business Use)	0/1
File Transfer Configs	4	S (Business Use)	0/1
AEI/Motes	3	S (Business Use)	5
Business Applications	3	S (Business Use)	5
Environmental	3	S (Business Use)	5
Diagnostics	2	S (Business Use)	2

Priority 0-7 with 7 being the highest.

Class 0-7 with 0-1 being reserved for train movement. Classes 0 and 1 can be routed over any communications path available including 220 MHz path. Classes 2 -7 can be routed over any path excluding the 220MHz path.

\* 220 MHz Path may require expanded channels

This allows for future use of 160MHz, 900MHz and other bands that may become available in the future for Primary train movement use.

FORM OF NON-MEMBER LEASE AGREEMENT  
Updated 5/31/2019

SPECTRUM MANAGER LEASE AGREEMENT

**THIS SPECTRUM MANAGER LEASE AGREEMENT** (this “**Agreement**”) is entered into as of this \_\_\_\_\_, 2019 (the “**Effective Date**”) between PTC-220, LLC, a Delaware limited liability company (the “**Lessor**”), and [Non-Member Railroad], a \_\_\_\_\_ corporation (the “**Lessee**”).

**WHEREAS**, Lessor is the Federal Communications Commission (“**FCC**”) licensee for certain spectrum licenses held principally for purposes of establishing a nationwide interoperable Positive Train Control system, and may add, exchange, withdraw or change such licenses to be part of Lessor’s nationwide interoperable Positive Train Control system from time to time as provided herein (such licenses, as held by Lessor and made available for its nationwide interoperable Positive Train Control system from time to time, the “**Licenses**”);

**WHEREAS**, Lessor is a joint venture owned by member railroads who are also existing lessees of the spectrum on a non-exclusive basis, and Lessor and its railroad members are parties to a Third Amended and Restated Shared Use Agreement dated as of August 17, 2011 (as amended to date and further amended from time to time in accordance with its terms, the “**SUA**”), a copy of the current version of which has been provided to and reviewed by Lessee, contemplating among other things the lease of spectrum on a non-exclusive basis to non-member user railroads and setting forth various terms and conditions for the use of such spectrum by member and non-member railroad users on a shared use basis for Positive Train Control;

**WHEREAS**, Lessee meets the qualifications to be an FCC spectrum lessee and Lessee desires to lease the spectrum identified on **Exhibit A**, as it may be amended from time to time in accordance with the terms hereof (“**Leased Spectrum**”) from Lessor on a non-exclusive, shared use basis pursuant to the terms of the SUA and as more fully described below.

**NOW THEREFORE**, in consideration of the mutual promises herein and other good, valuable and sufficient consideration, the parties agree as follows:

**1. USE OF LEASED SPECTRUM.**

(a) Grant. Subject to termination pursuant to Section 5 hereof, Lessor hereby grants to Lessee the right, commencing, for each License listed on Exhibit A, on the date the spectrum manager lease notification for such License is accepted by the FCC, or twenty-one (21) days after the lease notification is filed with the FCC (ten (10) days if the term of the lease is one year or less), or the date Lessee receives any other FCC authorization to use the Leased Spectrum, as applicable (the “**Commencement Date**” for such License), to use the Leased Spectrum subject to the terms and conditions set forth herein and in the SUA. Lessor will notify Lessee in writing as soon as possible as to the specific commencement date of the lease.

(b) Shared Use of Leased Spectrum, Limitations on Maximum Capacity.

(i) Shared Use. Lessee shall have a non-exclusive right to use the Leased Spectrum on a shared use basis consistent with the SUA in its approved geographic area as set forth on **Exhibit A**, as it may be amended from time to time in accordance with the terms hereof (“**Approved Geographic Area**”), and subject to Spectrum use determinations made by Lessor through the Spectrum Management Committee of Lessor (the “**Spectrum Management Committee**”) pursuant to the SUA. Lessee acknowledges that Lessor has been leasing or granting rights to use, and may continue to lease or otherwise grant the right to use, the Leased Spectrum to other parties (including its members and their railroad affiliates) on a non-exclusive, shared use basis consistent with the SUA.

(ii) Setting of Permitted Loads. This shared use necessitates all users agreeing to a process by which maximum permitted loads and permitted channels are to be established and modified over time, and for the permitted loads and permitted channels to be revised from time to time as deployment of Positive Train Control progresses, base stations and other network elements are placed into service and business traffic increases over time. Lessee acknowledges and agrees that the setting of permitted loads and permitted channels may be effected by the Spectrum Management Committee under the SUA, including the provisions thereof regarding the setting of permitted loads, the setting of congestion limits, and reasonable or best efforts to make capacity available within such limits. The Spectrum Management Committee, consistent with Section 1.2.2 of the SUA, may from time to time specify how permitted load is determined, including without limitation as a permitted number of wayside devices and locomotives configured for Positive Train Control that reflect a load per device determined based on standards adopted by the Spectrum Management Committee.

(iii) Compliance with Limits set by Spectrum Management Committee. Lessee’s use of the Leased Spectrum in any given geographic area, together with use by all other users of Spectrum in that area, shall be limited to maximum permitted loads and permitted channels established by the Spectrum Management Committee from time to time as provided in the SUA, and shall be limited by the other provisions regarding congestion, permitted loads and maximum usage of capacity as provided in the SUA. To the extent that there are any specific limits that have been agreed by the parties and set forth on **Exhibit A** hereof, Lessee’s use of the Leased Spectrum shall be in accordance with all limits set forth on **Exhibit A** hereof as it may be amended from time to time in accordance with the terms hereof.

(iv) Requests for Increases in Limits on Usage. As indicated in Section 5(b), Lessor will be conducting from time to time reviews of Leased Spectrum Usage, and may adjust limits on capacity usage for Primary Users requiring more capacity. In addition, Lessee may, based upon increased projected usage due to projected increases in wayside devices and train counts, seek approval of the Spectrum Management Committee to amend the permitted load to which Lessee is subject, whether set forth on **Exhibit A** hereof or determined through the SUA. Any such change needs the approval of the Spectrum Management Committee.

(v) Reductions in Permitted Usage. Lessor intends through the Spectrum Management Committee setting permitted loads and permitted channels under the SUA and establishing limits under leases (such as specific limits that have been agreed by the parties and set forth on **Exhibit A** hereof) to manage expectations regarding the amounts of capacity likely to be



available over time as systems needs change, and to avoid having to reduce permitted loads and/or permitted channels (other than to eliminate Secondary Use as need for Primary Use increases). Lessor also believes that in most geographic areas the existing Licensed Spectrum should be adequate to address all needs for Primary Use. The SUA permits the Spectrum Management Committee to reduce permitted loads and/or permitted channels, such as in the case of congestion in certain geographic areas beyond what was projected, and Lessee acknowledges that all users subject to the SUA (including Lessee) have agreed to comply with all such reductions. Under the SUA there is an obligation of Lessor to seek additional spectrum if the spectrum then available for Positive Train Control is not sufficient to accommodate all Primary Use, so although it is not guaranteed that sufficient spectrum will be available, it is hoped and intended that any mandated reduction in permitted loads and/or permitted channels, such as in the case of unanticipated congestion, would be temporary, pending identification and acquisition of additional spectrum. Lessor does agree that prior to any material reductions in permitted loads and/or permitted channels in any of the geographic areas covered by this Lease, Lessor shall (to the extent it can reasonably do so consistent with available timing and the proposed decision-making process) notify Lessee (either individually or as part of a wider notification of lessees), and Lessee may submit comments or technical input provided by Lessee. Lessor shall provide at least thirty (30) days' advanced notice (or such lesser number of days as is reasonably practicable under the circumstances) of any material reductions of permitted load or changes to permitted channels in a particular geographic area covered by this Lease.

(c) Use Subject to SUA, Licenses and FCC Rules. Lessee's use of the Leased Spectrum shall be subject to the terms and conditions of the SUA, as in effect from time to time, to the same extent as if such terms and conditions were fully set forth herein, including without limitation terms relating to interference, congestion and excess demand and the authority of the Spectrum Management Committee (except that references in the SUA to the PTC-220 Operating Agreement and rights and obligations arising thereunder shall not be applicable to Lessee, which is not a member of Lessor). All capitalized terms used but not defined herein shall have the meanings set forth in the SUA. Any breach or violation of the terms and conditions of the SUA shall be deemed a breach of this Agreement. In the event of a conflict between this Agreement and the terms of the SUA, the terms of the SUA shall govern, except to the extent this Agreement is more restrictive with respect to the rights of the Lessee (including as set forth in Section 1(d) with regard to Secondary Use).

Lessee's use of the Leased Spectrum shall be subject to the terms and conditions of the Licenses, as modified or amended from time to time, and in compliance with all applicable laws, including all of the rules, regulations, policies, and decisions of the FCC (collectively, the "FCC Rules"), as provided more fully in **Exhibit B**. The parties acknowledge that under FCC Rules, this Agreement may be revoked, cancelled, or terminated by the FCC (or by Lessor as the licensee, if Lessor reasonably concludes it is reasonably required to do so based on its obligations as licensee under FCC Rules), and in such case, Lessee has no continuing authority or right to use the Leased Spectrum unless otherwise authorized by the FCC.

(d) Limitations on Use. Use of the Leased Spectrum will be limited to Primary Uses, including those described on **Exhibit A**, as it may be amended from time to time in

accordance with the terms hereof. Secondary Uses are not permitted unless specifically authorized in an amendment hereto setting forth descriptions of the permitted uses, terms relating thereto agreed by the parties for such use and the additional charges applicable to such use. Use of the Leased Spectrum hereunder will be limited to use by:

(i) Lessee relating to railroad specific operations and on its own railroad system (including operations over leased track or through the use of trackage rights, within the Approved Geographic Area, as it may be amended from time to time in accordance with the terms hereof) and

(ii) Non-Member Users operating trains over Lessee's track, where Lessee owns or operates the applicable base station and/or wayside units, which Non-Member Users have entered into user agreements permitting such use in a manner consistent with FCC Rules, as provided more fully in **Exhibit B** (which user agreements will be in a form or manner reasonably determined by Lessor to be necessary to comply with FCC Rules) and the terms and conditions of this Agreement ("**Permitted Non-Member Users with Trackage Rights**"); provided, however, that any such Non-Member User owning or operating base stations or wayside units that are communicating over the Leased Spectrum will need to enter into a lease agreement with Lessor to the extent Lessor reasonably determines the same to be required by FCC Rules.

Lessor may issue from time to time formal guidelines as to user agreements that (if entered into by Permitted Non-Member Users with Trackage Rights) Lessor has reasonably determined would be adequate to ensure compliance with FCC Rules, including both as to compliant forms of user agreement and the minimum content needed to be included in such user agreements, assuming enforcement by Lessee of such user agreements in a manner that would implement all requirements on users provided for herein. To the extent Lessor issues such formal guidelines, Lessee shall not need prior approval from Lessor for implementation of user agreements with Permitted Non-Member Users with Trackage Rights to the extent that such user agreements comply fully with all such guidelines and Lessee so certifies to Lessor in writing. Alternatively, Lessee may submit a proposed approach to satisfying the user agreement requirement which Lessor shall consider in good faith with advice of its FCC regulatory counsel.

Whether or not Lessor is a party to the user agreements with Permitted Non-Member Users with Trackage Rights, Lessee shall remain responsible for compliance by Permitted Non-Member Users with Trackage Rights with such user agreements and the provisions of this Agreement applicable to them.

(e) Required Information. Lessee will provide Lessor with such information as Lessor or its Spectrum Management Committee may reasonably request from time to time, including without limitation (x) the number of base stations and wayside units owned or operated by Lessee and by Permitted Non-Member Users with Trackage Rights that have, are or will be communicating over the Leased Spectrum during a specified period, (y) confirmation that such a user agreement has been entered into with each Permitted Non-Member Users with Trackage Rights and (if reasonably requested by Lessor) a copy of such user agreement, and

(z) the expected usage of Lessee and each Permitted Non-Member Users with Trackage Rights in such form as may reasonably be specified by Lessor (for example, expressed as the number of wayside devices and locomotives configured for and/or trains operated under Positive Train Control). Lessor shall request such information only to the extent it reasonably determines that it needs such information for management of the Leased Spectrum and design and implementation of a network relating to Positive Train Control, design and production of radios and network equipment, development and modifications to protocols and communications policies and similar matters, and to use such information itself in connection with its role in such network and such other matters. Lessor shall maintain such information in confidence, and to the extent one or more of its members has access to such information, Lessor shall direct such members to use such information solely in connection with the use and management of Leased Spectrum, and not for any purposes related to their freight railroad businesses. Further, Lessor shall use reasonable efforts to utilize outside vendors under strict confidentiality agreements for review and analysis of information that is of a competitively sensitive nature, such as train schedules and related data, or cause such information to be aggregated or otherwise masked.

(f) Network Equipment; Regulatory Filings. Lessee shall be solely responsible for: (a) obtaining, paying for, and operating all network and other Equipment necessary for Lessee to comply with this Agreement and the SUA and its use of the Leased Spectrum generally, and (b) paying all of the other costs and expenses incident to or necessary for Lessee's such use of the Leased Spectrum. Lessee shall operate the Equipment in compliance with all applicable rules, regulations, laws and orders of all governmental authorities. All notifications, permits, licenses, authorizations, or consents required for the connection, operation and/or servicing of the Equipment or for the construction or use of any site shall be procured and maintained by Lessee at its expense and risk, except that certain filings required to be made with the FCC shall be made by Lessor with the cooperation of the Lessee, consistent with **Exhibit B**, "Compliance with FCC Rules." In addition, Lessor and Lessee shall cooperate with regard to applications and filings with the FCC and other governmental agencies with regard to matters such as environmental assessments and FAA notifications, where multiple users of the Leased Spectrum are likely to encounter the same regulatory issues and the parties feel it would be appropriate for Lessor to address issues with the governmental agencies on behalf of multiple lessees of Leased Spectrum engaging in network construction.

Except as provided in Sections 1(g) below, this Agreement governs the use of the Leased Spectrum only, and nothing herein shall be deemed to govern the specific arrangements for construction and sharing of physical infrastructure such as ground networks, which is governed by those Sections and by the SUA, particularly Section 1.12 thereof.

(g) Build-out Coordination, Sharing. Lessee agrees that all network construction (including base stations and towers) by Lessee needs to be coordinated with Lessor to avoid interference, given the non-exclusive use of the Spectrum, and agrees that decisions by Lessor concerning required and permissible network construction (including decisions relating to the acceptability of Equipment to be deployed) by various users of the Leased Spectrum will be binding on Lessee. In the case of facilities that will use the Leased



Spectrum, Lessee agrees to submit each of its network construction plans or amended plans for approval by Lessor, including with regard to frequency propagation, prior to commencing construction, such approval not to be unreasonably withheld or delayed, and to conduct network construction only in accordance with the network construction plan most recently approved by Lessor. Lessee agrees to comply with all of the coordination construction requirements in the SUA, and specifically to comply with the base station and other sharing requirements in the SUA both in congested areas and otherwise, including the obligation to construct base stations for shared use to the extent required by the SUA. Lessee acknowledges and agrees to the cost recovery provisions in the SUA, with regard to network and equipment provided by member railroads and Major Users, with regard to shared base stations and otherwise as described in the SUA.

(h) No Assignment. The spectrum leasing arrangement hereunder is not an assignment, sale, or transfer of the Licenses themselves.

(i) Certain Software Tools. Lessor may make available to Lessee rights to use certain software-based shared planning or similar tools obtained by Lessor or its affiliates, including software which relates to use of permitted channels or channel protocols, or provide access to computer and other resources. Lessor anticipates that in many cases where software-based shared planning tools or other resources are obtained from third parties, Lessee would be covered by a general license obtained by Lessor and there would be no additional charge for this (for the avoidance of doubt, it would be one of the items covered by the Annual Fixed Spectrum Maintenance/Access Fee). Lessor reserves the right to charge a fee or have a cost sharing formula in the case of specific planning tools or other resources, subject to agreement by Lessee in writing. Lessee agrees to comply with all terms and conditions applicable to use of such software tools, as adopted by the Spectrum Management Committee from time to time, and of which written notice with a copy of such terms and conditions is provided to Lessee. If Lessor (including through the Spectrum Management Committee under the SUA or otherwise) designates use of such software tools as necessary for interoperability or to coordinate shared use of spectrum using such resources, Lessee will employ such tools when using the Leased Spectrum.

(j) Use of Third Party Spectrum; Termination of Rights to Third Party Spectrum.

(I) Lessee understands and acknowledges that a portion of the Licenses and Leased Spectrum within Lessor's spectrum inventory may be owned by third parties (such portion, the "**Third Party Spectrum**"), and that Lessor may only have rights to use such Third Party Spectrum (or make it available to Lessee and others for use) pursuant to one or more leases or other grants of authority from such third party(ies) (each a "**Third Party Spectrum Lease**"). At any time after entering into a Third Party Spectrum Lease within Lessee's approved geography, Lessor may propose to Lessee that Lessor would revise Exhibit A of this Agreement to make the Third Party Spectrum available, provided that Lessee agrees to comply with the terms and conditions of such Third Party Spectrum Lease and agrees to indemnify Lessor and the third party lessor to the extent specified in the written offer and/or in Exhibit C hereto with respect to such Third Party Spectrum Lease. For avoidance of doubt, under FCC Rules, the making available of any Third Party Spectrum to



Lessee is categorized as a sublease arrangement, and all references in this Agreement to “Lessee,” “Lessor” and “lease” shall therefore be interpreted with respect to the Third Party Spectrum to include “Sublessee,” “Sublessor” or “sublease,” where appropriate. Lessor may provide Lessee with a copy of such Third Party Spectrum Lease or, if such Third Party Spectrum Lease is subject to confidentiality restrictions, Lessor may provide a summary of relevant material terms. Upon agreement in writing of Lessee to comply with the terms and conditions of such Third Party Spectrum Lease and to indemnify Lessor and the third party lessor to the extent specified in the written offer and/or in Exhibit C hereto with respect to such Third Party Spectrum Lease, Lessor shall have the right, acting in good faith but without approval of Lessee, to amend this Agreement to revise the list of Leased Spectrum set forth in Exhibit A of this Agreement under the applicable caption to incorporate the Third Party Spectrum to the extent permitted by such Third Party Spectrum Lease, and to add other relevant terms, including any limitations on the use of such Third Party Spectrum and the term for which such Third Party Spectrum may be used. Such amendment(s) shall be effective and binding upon the parties immediately upon delivery of written notice of the same to Lessee; provided, Lessee’s rights to use any such Third Party Spectrum shall commence on the earlier of the date the spectrum manager sublease notification for the relevant Third Party Spectrum is accepted by the FCC, or twenty-one (21) days after such sublease notification is filed with the FCC (the “**Third Party Spectrum Commencement Date**,” applicable to each case to an individual FCC notification). In addition to any termination provisions set forth under the applicable caption in Exhibit A, as amended by Lessor, Lessee’s rights to use any such Third Party Spectrum shall terminate with immediate effect upon the occurrence of any of the following: (i) written notice to Lessor that Lessee no longer agrees to comply with the terms of the applicable Third Party Spectrum Lease; (ii) breach of Lessee’s agreement to comply with the terms of the applicable Third Party Spectrum Lease, after written notice by Lessor to Lessee (and, if Lessor reasonably determines and sets forth in such written notice that such breach does not create liability risk to Lessor or risk of termination of the Third Party Spectrum Lease, Lessee shall have a period of thirty (30) days to cure such breach prior such termination); or (iii) written notice to Lessee that such Third Party Spectrum Lease or Lessor’s rights to make Third Party Spectrum available under such Third Party Spectrum Lease have terminated. Following the termination of Lessee’s rights to access any portion of the Third Party Spectrum pursuant to the terms of this Section 1(j)(I), Lessor shall have the right, acting in good faith but without approval of Lessee, to amend this Agreement to revise the list of Leased Spectrum set forth under the applicable caption in Exhibit A of this Agreement to delete the Third Party Spectrum.

(II) Exhibit A sets forth under the applicable caption a complete list of all Third Party Spectrum Leases subject to this Section 1(j) and the indemnification set forth in Exhibit C. Following confirmation by Lessee of any offer as described in Section 1(j)(I) above, Lessor shall have the right, acting in good faith but without approval of Lessee, to amend this Agreement to revise Exhibit A of this Agreement under the applicable caption to include any Third Party Spectrum Lease as confirmed by Lessee. Such amendment(s) shall be effective and binding upon the parties immediately upon delivery of written notice to Lessee, subject to applicable limitations on Lessee’s use of any Third Party Spectrum prior to the corresponding Third Party Spectrum Commencement Date. Lessor shall also have the

right to remove from Exhibit A under the applicable caption any Third Party Spectrum Lease following its termination, acting in good faith but without approval of Lessee, regardless of whether such Third Party Spectrum Lease is terminated in its entirety or solely with respect to Lessee pursuant to Section 1(j)(I) above.

## 2. USAGE AND MAINTENANCE FEES

(a) Base fees. In consideration of the shared right to use the Leased Spectrum, Lessee agrees to pay the following Usage and Maintenance Fees (which may be adjusted as contemplated by Section 2(b)(iv) and/or by amendment in accordance with Section 5):

- Annual Fixed Spectrum Maintenance/Access Fee: \$10,000
- Annual Per Base Station Spectrum Usage and Maintenance Fee: \$ 1,244

For the purposes of this Agreement, "base station" shall include fixed communications sites that provide connectivity between back office and remote transmitters, including both mobile (locomotives) and fixed (WIU) remote transmitters. The per base station fee will be payable for the number of base stations owned or operated by Lessee that are or were communicating over the Leased Spectrum at any time during the year. Lessor may determine the number of base stations and annual per base station fee using the data provided by Lessee under Section 1(e), or may make its own determination using data generated by the communications system. All such determinations by Lessor shall be final and binding, absent manifest error. Lessor shall have the right to conduct audits, not more frequently than once per year, and to enter onto the property of Lessee for such purpose, in order to confirm the number of base stations. Lessor shall conduct any such audit on a non-interference basis and with at least ten (10) business days advance notice to Lessee. In the event the audit demonstrates under-reporting of the number of base stations, Lessee shall pay for the full cost of such audit as well as correcting any underpayment. In the event the audit demonstrates over-reporting of the number of base stations, Lessor shall rebate the amount of any overpayment.

The annual periods for purposes of determining such fee shall be each year of the term of this Agreement, provided that if data is not available for such exact period Lessor may use a period of not less than eleven (11) months occurring within such year and extrapolate from such data for the full year. The annual spectrum access fee shall be payable in advance, within thirty (30) days following the commencement of each year of the term of this Agreement. The per-base station fee for the first year shall be payable in arrears, within thirty (30) days of when Lessor advises Lessee of such fee for such year. For each subsequent year the per base station fees shall be payable in advance based upon the data for the immediately preceding period (payable within thirty (30) days of when Lessor advises Lessee of its determination of the amount of such fee), with an adjustment after the end of each year within thirty (30) days of when Lessor advises Lessee of its determination of the amount of such fee. Payments by Lessee hereunder shall not be reduced or off-set as a result of Lessee's other obligations under this Lease (including compliance with the SUA and any build-out requirements applicable to Lessee), or any other amount which may be owed to

Lessor or Lessee under other agreements or arrangements (including without limitation any trackage rights agreements).

(b) Adjustments to fees. The base Usage and Maintenance Fees including the fee per base station payable by Lessee may be adjusted as follows:

(i) Base station adjustment. The Annual Per Base Station Spectrum Usage and Maintenance Fee is based on Lessor's current assumptions (derived from network planning done to date) regarding the number of base stations to be used in the network per mile of track. In the event that either (1) when the Construction Plan is prepared or (2) when base stations are placed into service, Lessor determines that the number of base stations proposed or placed into service for the network per mile of track in the Approved Geographic Area, as it may be amended from time to time in accordance with the terms hereof, is significantly different than the number derived from network planning done to date, Lessor reserves the right in its reasonable discretion to adjust the Annual Per Base Station Spectrum Usage and Maintenance Fee, either by increase (in the event fewer base stations are then contemplated per mile of track) or decrease (in the event additional base stations are then contemplated per mile of track). Lessor intends that increases or decreases in the Annual Per Base Station Spectrum Usage and Maintenance Fee would also apply to other Non-Member Users using Spectrum in the relevant geographic areas that are paying a similar Annual Per Base Station Spectrum Usage and Maintenance Fee.

(ii) Adjustment based on need to acquire additional capacity. As indicated in the SUA, in the event that Spectrum becomes overly congested, as determined by the Spectrum Management Committee, Lessor may need to acquire additional Spectrum. To the extent that Lessor does acquire additional Spectrum, if the Approved Geographic Area, as it may be amended from time to time in accordance with the terms hereof, includes any areas covered by the acquired additional Spectrum, Lessor reserves the right in its reasonable discretion to require Lessee to make a reasonable monetary contribution to help in the acquisition of the additional Spectrum to the extent and in the manner provided in the SUA.

(iii) Adjustment for Shared Base Stations. Lessee's Annual Per Base Station Spectrum Usage and Maintenance Fee (as determined by Lessor in good faith) shall include a Pro Rata Share of the Annual Per Base Station Spectrum Usage and Maintenance Fee for all Designated Construction Base Stations or Designated Shared Base Stations in Congested Areas or Required User Areas for which the Lessee (A) is the Designated Constructor or otherwise constructs such base stations and maintains them in good working condition and makes such base stations available for Appropriate Use by other Congested Area Users or other Spectrum Users in accordance with the requirements of the SUA or as directed by Lessor (for the avoidance of doubt, such Pro Rata Share being in lieu of the full Annual Per Base Station Spectrum Usage and Maintenance Fee Lessee would be required to pay if the base station was not constructed and shared as provided in this clause (A)) or (B) is a Congested Area User or other Spectrum User entitled to make Appropriate Use of Designated Shared Base Stations. In determining Pro Rata Share and making a fair and reasonable allocation thereof, Lessor may in its discretion (after considering in good faith whether more accurate ways of determining Pro Rata Share are available, readily



implementable and cost-justified) impose an assumption that all Congested Area Users make equal use of the shared base stations. Notwithstanding the foregoing, in the event Lessor determines in good faith that the accounting and calculation required to implement the foregoing sentences of this paragraph would require too much time or expense, and would not cause material disadvantage to Lessee and other Spectrum Users, Lessor may waive the application of the foregoing sentences of this paragraph with respect to one or more Congested Areas. In addition, notwithstanding the foregoing, in the event Lessee is the Designated Constructor or otherwise constructs such base stations but fails to maintain them in good working condition or fails to make such base stations available for Appropriate Use by other Congested Area Users or other Spectrum Users in accordance with the requirements of the SUA or as directed by Lessor, Lessor may in its discretion include in Lessee's Usage and Maintenance Fees (as determined by Lessor in good faith) the full Annual Per Base Station Spectrum Usage and Maintenance Fee for such base stations rather than a Pro Rata Share.

(iv) Adjustment on Annual or other Basis. Using the cost-recovery principles reflected in this Agreement or the SUA, or used to generate the fees set forth herein or in the SUA (including Sections 1.3 and 1.5 thereof), Lessor may from time to time adjust the fees set forth in this Section 2 by amendment as provided in Section 5(b), and Lessor shall give written notice to Lessee of such amendment at least ninety (90) days prior to the effective date of such adjustment.

(c) Taxes and Fees. In addition to the Base Usage and Maintenance Fees (including any adjustments thereto under paragraph (b) of this Section), Lessee shall, on an after-tax basis, indemnify, defend, and hold Lessor harmless from any taxes, fees, assessments or similar charges (including interest, penalties, and additions to tax thereon) (“**Taxes**”) imposed on Lessor, Lessee, or the Licenses in connection with Lessee’s use or lease of the Leased Spectrum. In the event Lessor is required to make payment of any such Taxes, Lessor shall invoice Lessee for such amounts, and Lessee agrees to pay Lessor the invoiced amount within thirty (30) days of receiving such invoice.

### **3. NO GUARANTEES BY LESSOR; INDEMNITY; INSURANCE.**

Lessee recognizes that Lessor has not guaranteed any results or quality of service respecting Lessee’s use of the Leased Spectrum and that such use may be adversely affected by weather conditions, the types of Equipment used, FCC requirements, and other unforeseen factors. Lessee agrees to indemnify and hold Lessor harmless from all loss, cost, liability, damage and/or expense including, but not limited to, reasonable attorneys’ fees incurred in connection with or by reason of Lessee’s failure to perform any of Lessee’s obligations under this Agreement and other factors, as more fully set forth on **Exhibit C-1**. Lessee agrees to maintain the insurance described on **Exhibit C-2**.

### **4. ASSIGNMENT AND SUBLEASING; LINE SALES.**

Except in connection with any transfer to a successor in interest as a result of a merger, acquisition, reorganization or sale of all or substantially all of its assets or business or similar transaction (a “**Successor Transaction**”), or use by (and entering into user agreements with)

Non-Member Users operating trains over Lessee's system as provided in Section 1(d) of this Agreement, or with the prior written consent of Lessor, Lessee shall not sublease, sublicense, use or permit the Leased Spectrum or any part thereof to be used by others, or assign, sell, pledge or otherwise transfer this Agreement or any rights of Lessee herein. In addition, Lessee shall not sublease, sublicense, use or permit the Leased Spectrum or any part thereof to be used by others or assign, sell, pledge or otherwise transfer this Agreement or any rights of Lessee herein (including in the context of a Successor Transaction); without cooperating with Lessor to ensure that any required FCC filings are timely submitted in accordance with applicable FCC Rules, including Sections 1.9020 (i) and (j) of the FCC's rules. Further, in connection with any transfer of control as defined in the FCC Rules, Lessee shall also cooperate with Lessor to ensure that any required FCC filings are timely submitted in accordance with applicable FCC Rules. Lessee shall be responsible for confirming with Lessor that such filings have been made, and Lessor shall not be responsible for any lapse in operating authority resulting from Lessee's failure to comply with the foregoing, including any failure to provide adequate advance notice of the need for any such filings. Lessee shall not assign its rights under this Agreement to any entity that is ineligible or unqualified to enter into a spectrum leasing arrangement under the applicable FCC Rules, and Lessor shall not consent to any assignment unless it complies with applicable FCC Rules. Lessor may assign its rights under this Agreement without Lessee's consent, in whole or in part to any parent, subsidiary or affiliate, and shall assign all of its rights and obligations hereunder (and shall be released from this Agreement upon such assignment) to a successor in interest as a result of a Successor Transaction, or to any new owner or licensee of the Leased Spectrum.

In the event that Lessee sells or is proposing to sell to a Non-Member User one or more railroad lines then being used by Lessee (and using base station and/or wayside units owned or operated by Lessee prior to such sale), Lessor agrees to negotiate in good faith and enter into a lease with such Non-Member User, under the current commercial terms then being made available by Lessor to Non-Member Users generally (including as to pricing and terms and conditions), relating to the Spectrum that prior to such sale was then being used by Lessee with respect to such lines, provided that the proposed use by such Non-Member User is consistent with then-current Spectrum capacity consumption relating to such lines and/or meets the requirements of the SUA for other or increased Spectrum usage.

## 5. TERM, TERMINATION AND AMENDMENT.

(a) Term of Right to Use. Subject to the provisions below regarding termination and amendment, the right to use the Leased Spectrum covered by each License listed on **Exhibit A** shall run from the Commencement Date for such License through the date of expiration of such License. However, to the extent any License terminates or is cancelled prior to such date, the right to use the portion of the Leased Spectrum associated with such License shall terminate. In the event that a License is renewed or extended, the right to use the Leased Spectrum covered by that License shall also be extended by an equivalent period, subject to advance notification to the FCC of such lease extension (and again subject to the provisions below regarding termination and amendment).

(b) Amendments.



(i) Usage Limits. The parties hereto acknowledge that the usage rights hereunder are based on a shared usage concept that contemplates Lessee's capacity usage remaining within the specific limits set forth on **Exhibit A**, as they may be adjusted from time to time in accordance with this Section 5(b). As indicated in Section 1(b), the permitted loads and permitted channels may be revised from time to time as deployment of Positive Train Control progresses, base stations and other network elements are placed into service and business traffic increases over time. Lessor intends to conduct reviews of Leased Spectrum Usage from time to time, and may adjust limits on capacity usage for Primary Users requiring more capacity. At any time and from time to time, Lessor shall have the right, acting in good faith but without approval by the Lessee, to adjust the limits on Lessee's capacity usage set forth on **Exhibit A**, provided that (i) such changes are approved by the Spectrum Management Committee and (ii) changes approved by the Spectrum Management Committee are made for other users of Leased Spectrum, as specifically determined to be appropriate by the Spectrum Management Committee. Notice of any changes or amendments to the limits on Lessee's capacity usage set forth on **Exhibit A** shall be provided promptly in writing to Lessee, attaching a copy of the change or amendment, which shall become effective upon being provided to Lessee.

(ii) Base Usage and Maintenance Fees Changes. As described in more detail in Sections 2(a) and 2(b), the Base Usage and Maintenance Fees were derived using the cost-recovery principles reflected in this Agreement and the SUA (including Sections 1.3 and 1.5 thereof). At any time and from time to time, Lessor shall have the right, acting in good faith but without approval by the Lessee, to adjust the fees set forth in Section 2 hereof by giving written notice to Lessee at least ninety (90) days prior to the effective date of such adjustment, provided that (i) such changes are approved by the Spectrum Management Committee and (ii) similar changes are made for other users of Leased Spectrum, except as specifically determined by the Spectrum Management Committee. Notice of any changes or amendments to the Base Usage and Maintenance Fees shall be provided promptly in writing to Lessee, attaching a copy of the change or amendment, which shall become effective upon being provided to Lessee.

(iii) License and Leased Spectrum Changes. The chart on **Exhibit A** sets forth the Licenses comprising the Leased Spectrum. Lessor shall have the right, acting in good faith but without approval by the Lessee, to add or remove one or more Licenses from **Exhibit A** at any time and from time to time as the Licenses covering the spectrum that are part of Lessor's nationwide interoperable Positive Train Control system change over time, provided that (i) such changes are approved by the Spectrum Management Committee and (ii) similar changes are made for other users of Leased Spectrum whose operations are affected by such License changes, except as specifically determined by the Spectrum Management Committee for operational or technical reasons. In particular, the parties acknowledge that Lessor likely will be acquiring additional spectrum for Lessor's nationwide interoperable Positive Train Control system from time to time, and therefore may add such spectrum to the Leased Spectrum, whether acquired by purchase or exchange. Notice of any changes or amendments to the Licenses and Leased Spectrum covered thereby shall be provided promptly in writing to Lessee, attaching a copy of the change or amendment, which shall become effective upon

being provided to Lessee.

(iv) Protocol and Primary Use Changes. As of the date of this Agreement, the Spectrum Management Committee has only designated one standard channel access protocol (the ITCNet Common Air Interface protocol and successors, as such protocol or successors may be amended or renamed from time to time) to be employed under Primary Use. Lessor shall have the right, acting in good faith but without approval by the Lessee, to add new, additional or successor protocols to be employed under Primary Use, or to modify protocols that have been designated as acceptable for Primary Use, at any time and from time to time, provided that (i) such changes are approved by the Spectrum Management Committee under its authority granted in the SUA to designate and adopt subsequent modifications to the standard channel access protocol and any new, additional or successor protocols and (ii) such designation as acceptable for Primary Use is made for other users of Leased Spectrum generally, except as specifically determined by the Spectrum Management Committee for operational or technical reasons.

(v) Amendments required by the FCC or FCC Rules. At any time and from time to time, Lessor shall have the right, acting in good faith but without approval by the Lessee, to amend this Agreement as required by the FCC or to conform to FCC Rules, based on Lessor's reasonable interpretation of the requirements of the FCC or FCC Rules, provided that (i) such changes are approved by the Spectrum Management Committee and (ii) similar changes are made for other users of Leased Spectrum, except as specifically determined by the Spectrum Management Committee. Notice of any changes or amendments to comply by the FCC or to conform to FCC Rules shall be provided promptly in writing to Lessee, attaching a copy of the change or amendment, which shall become effective upon being provided to Lessee.

(vi) Other Amendments. Other amendments to this Agreement may be made in a writing signed by the parties hereto.

(vii) Effect of Amendments. Although all amendments to this Agreement made in accordance with this Section 5(b) shall be effective and binding upon the parties upon notice in writing to Lessee (or, in the case of amendments contemplated by Section 5(b)(vi), upon execution and delivery of the writing signed by the parties hereto), such amendments shall be without prejudice to the Lessee's rights of termination under Section 5(c)(ii).

(c) Termination. This Agreement shall automatically terminate with respect to the Leased Spectrum covered by each License listed on **Exhibit A**, as it may be amended from time to time in accordance with the terms hereof, upon the occurrence of any of the following:

- (i) the termination or expiration of such License without renewal of such License, including without limitation a final, non-appealable decision by the FCC revoking, cancelling or terminating such License or the authority for Lessee to operate under such License, or the lawful reclamation or taking by the FCC or other governmental authority of the Leased Spectrum under such License. In

such case, per FCC Rules Lessee has no continuing authority or right to use the Leased Spectrum unless otherwise authorized by the FCC;

- (ii) Lessee's receipt of written notice from Lessor that Lessee has failed to cure any and all violations of the terms of this Agreement and/or FCC Rules;
- (iii) Lessor's receipt of written notice from Lessee that Lessee is terminating this Agreement and expiration of a reasonable period specified by Lessor to effect transitions in usage of shared base stations or other such arrangements under the SUA; or
- (iv) Lessee ceases to be entitled under the SUA to use the Spectrum.

This Agreement shall terminate in its entirety when it has terminated with respect to Leased Spectrum covered by each License set forth on **Exhibit A**, as it may be amended from time to time in accordance with the terms hereof. When this Agreement terminates, Lessee's rights with respect to the Leased Spectrum automatically terminate and Lessee shall immediately cease (and shall cause all Non-Member Users operating trains over Lessee's track, whether under user agreements as contemplated by Section 1(d) or otherwise, immediately to cease) using the Leased Spectrum unless otherwise authorized by the FCC. For the avoidance of doubt, if fewer than all of the Licenses set forth on **Exhibit A** terminate or expire without renewal, the Spectrum subject to those Licenses shall cease to be Leased Spectrum, but this Agreement shall continue in effect with respect to the remaining Leased Spectrum until this Agreement itself terminates as provided above.

## 6. RESOLUTION OF DISPUTES.

The parties shall exclusively and finally resolve any dispute between them and/or or among them and other users of the Leased Spectrum (including without limitation any dispute involving Non-Member Users operating trains over Lessee's system) using the dispute resolution process set forth below.

Any dispute, deadlock, controversy or claim arising out of or between Lessor and Lessee and/or or among them and other users of the Leased Spectrum under the terms of this Agreement and/or the SUA or the breach, termination or validity thereof (a "**Dispute**") shall be resolved pursuant to this Section 6.

(a) Any party to a Dispute may send written notice of such Dispute to the other party or parties to such Dispute, and all parties to this Agreement involved in such Dispute agree that they shall negotiate in good faith to amicably resolve all such Disputes.

(b) In the event that any Dispute which involves Lessee and other users of the Leased Spectrum, or which relates primarily to Lessee's use of spectrum or other operating matters or interpretations of the SUA (such as what constitutes a Primary Use) cannot be so resolved within ten (10) days of the date of the dispute notice, the parties shall submit the Dispute in writing to the Spectrum Management Committee and provide a copy of the submission to the other parties to the Dispute. The parties shall follow the procedures reasonably adopted by



the Spectrum Management Committee for resolution of Disputes; provided, however, that in the absence of any other procedures each party to the Dispute shall have ten (10) days to file a written response to the other party's submission with the Spectrum Management Committee, and the Spectrum Management Committee will use best efforts to complete its deliberation and reach a decision within ten (10) days after filing of such response. The Spectrum Management Committee shall resolve such Dispute by following procedures for the resolution of Disputes adopted by the Spectrum Management Committee.

(c) In the event any Dispute which involves just Lessee and Lessor and is not reasonably expected to have broad application to other users of the Leased Spectrum or interpretations of the SUA (such as calculation of Lessee's Annual Per Base Station Spectrum Usage and Maintenance Fee or issues regarding the term of this Agreement) cannot be so resolved within ten (10) days of the date of the dispute notice, the parties shall submit the Dispute in writing to a mutually-agreed industry expert (railroad, technology or other, as applicable) with at least fifteen (15) years of experience in the relevant area, and which has not worked primarily for one of the parties over the past five (5) years, to propose a resolution of the Dispute. (If the parties do not agree on an industry expert within thirty (30) days of the dispute notice, the Spectrum Management Committee may have such an expert appointed by an independent party.) The resolution of the industry expert shall be binding upon the parties if the amount at issue is less than \$2,500,000. If the amount at issue is \$2,500,000 or more and any party is not willing to accept the resolution of the industry expert, the Dispute shall be submitted to mandatory and binding arbitration, in Washington, D.C., by three arbitrators, under the Commercial Arbitration Rules and the Large Complex Case Procedures of the AAA then in effect (the "**AAA Rules**") (or such other rules or procedures as the parties to the dispute may agree upon), under the following terms and conditions (or such other terms and conditions as the parties to the dispute may agree upon). A panel of three independent arbitrators shall be appointed by the AAA (or such organization as the parties to the dispute may agree upon) using the listing, ranking and striking procedure in the AAA Rules. Any arbitrator appointed by the AAA shall be a retired judge or a practicing or retired attorney with no less than fifteen (15) years of experience with large commercial cases and an experienced arbitrator. The arbitration shall be held and the award shall be issued in Washington, D.C. In addition to damages, the arbitral tribunal may award any remedy provided for under applicable law and the terms of this Agreement, including, without limitation, specific performance or other forms of injunctive relief. The arbitrators shall apply the law of the State of Delaware to the substance of the Dispute and will have no power or authority, under the AAA Rules or otherwise, to award special, consequential or punitive damages or to amend or disregard any provision of this Agreement. The arbitrators will, after reaching judgment and award, prepare and distribute to the parties a written award including the findings of fact and conclusions of law relevant to such award and containing an opinion setting forth the reasons for the giving or denial of any award. Expenses of such arbitration shall be borne as the arbitrators determine, or if they do not so determine shall be borne by the parties incurring such expenses.

## 7. MISCELLANEOUS.

This Agreement, along with the SUA, contains the entire agreement between the Lessor and

Lessee with respect to the matters contemplated herein, and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein and therein. The failure of any party to demand strict performance of any or all of the terms of this Agreement, or to exercise any or all rights conferred by this Agreement, shall not be construed as a waiver or relinquishment of that party's right to assert or rely upon any such right in the future. Each provision of this Agreement shall be considered severable, and if for any reason any provision hereof is determined to be invalid and contrary to existing or future law, such invalidity shall not impair the operation or affect those portions of this Agreement which are valid, any such invalid provision shall be reformed to the minimum extent required to be enforceable and to give effect to the original written intent of the parties, and this Agreement shall remain in full force and effect and shall be construed and enforced in all respects. Any notice desired or required to be given hereunder shall be in writing and shall be given by personal delivery, confirmed facsimile transmission or overnight courier service, in each case to the respective addresses set forth on the signature page or to such other address as any party shall have previously designated by such a notice. In the case of any notice required under this Agreement to be delivered to Lessor (including without limitation any notice, binder, certificate, insurance policy or other document required to be delivered pursuant to **Exhibit C-2**) a copy of such notice or other document(s) shall be delivered (by either Lessee or Lessee's insurance agent, as appropriate) to Steven M. Kaufman, Hogan Lovells US LLP, 555 Thirteenth Street NW, Washington, DC 20004, or to such other address(es) as may be provided by Lessor by written notice to Lessee. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or electronic transmission of this Agreement bearing a signature on behalf of a party will be legal and binding on such party.

This Agreement and its contents are strictly confidential and neither it nor its substance nor the fact that discussions are or have been taking place shall be disclosed publicly or privately except with the prior written consent of the parties hereto. Such restriction shall not apply to information which is required to be disclosed by either party by applicable law, regulation or court order.

In the event that either party (i) receives a subpoena, interrogatory, Freedom of Information Act (FOIA), public records request or other request for disclosure of this Agreement or its contents or (ii) reasonably believes that such party (the "**Producing Party**") is legally required to disclose this Agreement or its contents to a governmental or other regulatory body to whose jurisdiction the Producing Party is subject, the Producing Party shall immediately provide the other party (the "**Non-Producing Party**") with written notice of any such request or requirement so that the Non-Producing Party may seek, at its expense, a protective order or other appropriate remedy, and the Producing Party agrees to cooperate, at the Non-Producing Party's sole expense, with the Non-Producing Party's efforts.

[SIGNATURE PAGE FOLLOWS]



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the  
day and year first set forth above.

**PTC-220, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

**[LESSEE RAILROAD]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

**[SIGNATURE PAGE TO SPECTRUM MANAGER LEASE AGREEMENT]**

## Leased Spectrum and Licenses

The following chart sets forth the Licenses comprising the Leased Spectrum, unless and until amended from time to time in accordance with the terms hereof.

Call Sign	License Area	License Termination Date
WFP444	Phase I Nationwide License	9/19/2019
WFR284		9/23/2019
WPWY753		7/29/2023
WPOI701	Phase II Nationwide License	3/22/2029
WPOJ271		3/22/2029
WPOI774*	Memphis, TN-AR-MS-KY	3/22/2029
WPOI800*	St. Louis, MO-IL	3/22/2029
WPOJ279*	Rochester, MN-IA-WI	3/22/2029
WPOJ280*	Minneapolis-St. Paul, MN-WI-IA	3/22/2029
WPVL860*	Los Angeles-Riverside-Orange County, CA	7/11/2022
WPOJ281*	San Francisco-Oakland-San Jose, CA	3/22/2029
WQSL326*	Chicago Area (Cook, DuPage, Lake & Will counties)	3/22/2029
WQSK949*		7/13/2024
WQSL327*		3/22/2029
WPOI924	Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	3/22/2029
WQXK673* +	Essex (partial), Hudson (partial), Hunterdon, Mercer, Middlesex, Monmouth, Morris (partial), Somerset, Sussex (partial), Union and Warren counties, New Jersey	3/22/2029
WQXK674* +		3/22/2029
WQXL586* +		7/13/2024
	New York (partial) and Richmond counties, New York	
WQSJ980	Hartford, Middlesex, New Haven and New London counties, Connecticut	3/22/2029
	Bristol, Hampden, Norfolk and Suffolk counties, Massachusetts	
	Kent, Providence and Washington counties, Rhode Island	
WQSJ981	Hartford and New Haven counties, Connecticut	3/22/2029
WPOI710	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH-RI-VT	3/22/2029
WPOI702°	Northeast	3/22/2029
WPOI703°	Mid-Atlantic	3/22/2029
WPOI704°	Southeast	3/22/2029
WPOI705°	Great Lakes	3/22/2029
WPOI706°	Central/Mountain	3/22/2029

Call Sign	License Area	License Termination Date
WPOI708°	Pacific	3/22/2029
WRRCR206	New Orleans LA-MS, Baton Rouge, LA-MS, Lafayette LA, Spokane WA-ID, Eugene-Springfield OR-CA, Portland-Salem OR-WA, Pendleton OR-WA, Richland-Kennewick-Pasco WA	7/13/2024
WRCS459	New Orleans LA-MS, Baton Rouge, LA-MS, Lafayette LA, Spokane WA-ID, Eugene-Springfield OR-CA, Portland-Salem OR-WA, Pendleton OR-WA, Richland-Kennewick-Pasco WA	3/22/2029
WRCS460	New Orleans LA-MS, Baton Rouge, LA-MS, Lafayette LA	3/22/2029
WRCS461	Spokane WA-ID, Eugene-Springfield OR-CA, Portland-Salem OR-WA, Pendleton OR-WA, Richland-Kennewick-Pasco WA	3/22/2029
WRDH825	Mississippi River	12/29/2026
WRDH826	Great Lakes	12/29/2026
WRDH972	Southern Pacific	12/29/2026
WRDI936	Mid-Atlantic	12/29/2026

\* Lessee must coordinate with Lessor to determine if any co-channel 220 MHz band licensees in adjacent markets will need to be notified at least 30 days prior to commencing operations.

+ [For those lessees who are being granted rights to use Leased Spectrum in the geographic areas designated as partial counties, the actual coordinates should be attached.]

° License is currently subject to power restrictions that may limit PTC operations. Lessee must coordinate with Lessor prior to operations to ensure compliance with FCC Rules.

List of Coordinates / Geographic Boundary for Partial Counties Licenses WQXK673, WQXK674 and WQXL586		
41-08-04N, 74-55-27W	40-43-13N, 74-23-28W	40-44-35N, 74-48-04W
40-41-57N, 74-01-43W	40-43-10N, 74-24-10W	40-44-35N, 74-48-53W
40-39-12N, 74-03-27W	40-42-23N, 74-24-53W	40-44-36N, 74-49-29W
40-39-03N, 74-05-03W	40-42-03N, 74-25-44W	40-47-17N, 74-53-26W
40-38-53N, 74-05-37W	40-41-40N, 74-25-52W	40-48-13N, 74-51-50W
40-38-55N, 74-06-28W	40-41-20N, 74-26-39W	40-48-14N, 74-51-01W
40-38-39N, 74-07-52W	40-41-06N, 74-27-10W	40-48-45N, 74-50-39W
40-38-33N, 74-08-33W	40-40-34N, 74-27-14W	40-49-30N, 74-49-50W
40-38-32N, 74-08-57W	40-40-12N, 74-28-13W	40-49-45N, 74-50-00W
40-38-41N, 74-09-38W	40-39-32N, 74-30-15W	40-50-15N, 74-49-09W
40-40-31N, 74-08-14W	40-39-01N, 74-30-50W	40-50-58N, 74-49-25W
40-41-28N, 74-09-48W	40-38-59N, 74-31-25W	40-51-21N, 74-48-40W
40-41-21N, 74-10-19W	40-39-58N, 74-31-57W	40-51-52N, 74-48-10W
40-41-17N, 74-11-28W	40-40-21N, 74-31-33W	40-52-12N, 74-48-28W
40-41-11N, 74-12-05W	40-41-22N, 74-31-27W	40-53-06N, 74-48-22W

List of Coordinates / Geographic Boundary for Partial Counties Licenses WQXK673, WQXK674 and WQXL586		
40-41-23N, 74-12-33W	40-41-23N, 74-31-02W	40-52-07N, 74-48-33W
40-42-25N, 74-13-18W	40-41-57N, 74-30-52W	40-53-05N, 74-48-22W
40-43-22N, 74-17-08W	40-42-50N, 74-31-29W	40-53-28N, 74-47-29W
40-43-16N, 74-17-33W	40-43-10N, 74-31-55W	40-53-49N, 74-47-29W
40-42-54N, 74-17-43W	40-43-39N, 74-31-51W	40-54-26N, 74-46-46W
40-42-51N, 74-18-22W	40-44-01N, 74-32-28W	40-54-22N, 74-46-34W
40-43-13N, 74-19-07W	40-44-07N, 74-32-58W	40-54-48N, 74-46-01W
40-43-02N, 74-19-45W	40-45-04N, 74-33-00W	41-05-49N, 74-58-14W
40-44-24N, 74-22-14W	40-45-30N, 74-33-23W	41-05-25N, 74-59-07W
40-44-07N, 74-22-16W	40-43-14N, 74-43-33W	41-06-22N, 74-59-05W
40-44-08N, 74-22-45W	40-43-24N, 74-44-28W	41-06-53N, 74-58-20W
40-43-48N, 74-22-41W	40-43-45N, 74-44-54W	

### Third Party Spectrum Leases

For the purposes of this Agreement, including Section 1(j)(I), 1(j)(II) and Exhibit C, the following leases shall be considered Third Party Spectrum Leases, effective as of the respective dates set forth below:

[To be updated to reflect relevant Third Party Spectrum Leases.]

### Approved Geographic Area

[This should address geography and any limitations on the permitted load of the capacity in particular areas, or where appropriate indicate that nationwide use is permitted.]

### Specific Limits on Use

[This should include specific limitations on the permitted load of the capacity in particular areas, or where appropriate indicate nationwide limits on use.] These limits on use are subject to amendment as provided in Section 5(b).

### Approved Uses of Leased Spectrum

Use is restricted to Primary Use as defined in the SUA.

[Add any other specific clarifications on what constitutes Primary Use]



### Compliance with FCC Rules

(a) Compliance; Filings. The parties acknowledge that Lessor, as the FCC licensee, is required to comply with all rules and regulations to which the Licenses are subject, including, but not limited to: regulatory filing and notification requirements, Construction and Renewal Requirements (as defined in the SUA) of the FCC Rules, ensuring timely payment of regulatory fees, and the filing of Spectrum lease agreements as necessary. Lessor shall be responsible for the submission of all applications and other filings to the FCC and other government agencies related to Lessee's use of the Spectrum to the extent such filings or applications by Lessor and/or Lessee are required. Lessor shall make such applications and other filings related to Lessee's use of the Spectrum available to Lessee for review and comment for a reasonable period (under the circumstances) prior to Lessor submitting them to the FCC or any other governmental agency, and Lessor shall consider all comments from Lessee on such filings in good faith. Lessee shall cooperate with Lessor regarding the preparation and execution of any such applications and filings and shall cooperate with Lessor as needed to fulfill such requirements. For the avoidance of doubt, applications and other filings to the FCC and other government agencies related to Lessee's network construction are the responsibility of the Lessee, as provided in Section 1(f), with cooperation of the Lessor to the extent provided therein. Lessee also is separately accountable for complying with the provisions of the Communications Act and the FCC Rules that apply directly to spectrum lessees as a service provider.

(b) Spectrum Manager Lease. This Agreement shall be considered a "spectrum manager lease" under 47 C.F.R. § 1.9020 of the FCC Rules, and Lessor and Lessee agree that the FCC has oversight responsibility respecting this Agreement and the use of the Leased Spectrum. To the extent required by the FCC Rules, Lessor shall be responsible for managing the Leased Spectrum and ensuring that Lessee complies with the FCC Rules (including the Communications Act of 1934, as amended). Lessor shall notify the FCC of this Agreement within fifteen (15) business days of the Effective Date, in a manner consistent with the FCC's spectrum leasing requirements under 47 C.F.R. § 1.9020. Lessee shall cooperate with Lessor regarding notification to the FCC and will not unreasonably withhold, delay, or condition its cooperation thereto.

(c) Investigation; Violations. Lessor shall have the right to examine Lessee's use of the Leased Spectrum, including conducting an on-site examination of Lessee's Equipment and transmission facilities, and Lessee shall provide such access to Lessor. Ordinary or regular examinations shall be conducted during normal business hours upon at least five (5) business days' advance notice. In the case of examinations which Lessor reasonably determines must be conducted on an urgent basis, Lessor shall provide Lessee such notice as is reasonably practicable under the circumstances. Lessee agrees: (a) to cooperate fully and in good faith with any investigation or inquiry conducted by Lessor or the FCC that relates to the Licenses and to cooperate fully and in good faith in resolving any interference problems that may occur that relate to the Licenses; and (b) to designate a point of contact for Lessor/FCC who will be available during the system operating hours for coordination purposes.

In the event that, for the purpose of conducting examinations or otherwise, personnel of Lessor must access Lessee's property, Lessor shall comply with the Lessee's requirements for contractors performing work on Lessee's property as maintained by Lessee and meet other similar standards customarily required by Lessee for work done on its property, provided that such standards do not conflict with the terms hereof and of the "Special Provisions For On-Site Work" as maintained by Lessee. For the avoidance of doubt, Lessee may require Lessor or Lessor's employees working on Lessee's property to sign Lessee's customary waiver or release of liability in the form Lessee typically requests from other railroads (as distinguished from contractors), provided that Lessee may not require Lessor or its employees to indemnify or share liability with Lessee or its agents. Any and all Lessor personnel or Lessor's Agents (as defined below) conducting such examinations shall be escorted by personnel of Lessee.

If Lessor determines that there is an ongoing material violation, by Lessee or by a party to any agreement with Lessee which allows use of Spectrum, of this Agreement, the SUA or the FCC Rules or that Lessee's Equipment is causing any harmful interference under the FCC Rules, Lessor shall notify Lessee in writing of same, and Lessee shall take appropriate corrective action promptly (and in any event within the period reasonably specified in such notice). If Lessee fails to correct the problem within five (5) days of receiving written notice, Lessor shall have the right to direct Lessee to suspend operations on the affected Leased Spectrum until such time as the violation has been corrected. For the avoidance of doubt, when Lessor suspends Lessee's use of the affected portion of the Leased Spectrum until harmful interference or a rule violation has been corrected, upon confirmation of such correction by Lessor, Lessee's right to use the affected Leased Spectrum shall be automatically reinstated, provided that Lessor may impose reasonable conditions for continuing use of the Leased Spectrum if Lessor reasonably concludes it is reasonably required to do so based on its obligations as licensee under FCC Rules to take reasonable measures to prevent harmful interference.

For the avoidance of doubt, actions permitted or required to be taken by Lessor may also be taken by Lessor's agents or representatives acting at Lessor's direction, to the extent consistent with the FCC Rules.

## Indemnity and Insurance

### C-1 Indemnity

(a) Lessee recognizes that Lessor has not guaranteed any results or quality of service respecting Lessee's use of the Leased Spectrum and that such use may be adversely affected by weather conditions and other unforeseen factors and by the types of Equipment used. Lessee hereby releases and agrees to indemnify and hold harmless the Indemnified Parties (as defined below) from all Damages (as defined below) arising or alleged to arise in any manner from this Agreement, including, but not limited to, any one or more of the following: injury or death to all persons, including, without limitation, employees, agents and customers of Lessee and the Indemnified Parties; loss and damage to property belonging to any person (including, without limitation, environmental damage); Lessee's operations on and use of the Leased Spectrum; Lessee's or Lessor's acts or omissions in the performance of this Agreement; the failure of Lessee, Lessor or their Agents to perform any obligation under this Agreement, regardless of Lessor's negligence, as further provided in subsections (b) and (e) below; and/or any violations of, or non-compliances with, any Third Party Spectrum Lease caused by or arising from actions or omissions of Lessee.

Lessor and its Affiliates (as defined below) and each of their respective Agents (as defined below) are herein referred to collectively as the "Indemnified Parties" and each individually as an "Indemnified Party." The respective directors, officers, employees, subcontractors, agents, licensees, and invitees of any entity are referred to herein collectively as "Agents." "Damages" include judgments, awards, claims, demands, damages, losses, liabilities, actions or causes of action, assessments, fines, taxes, penalties, costs and expenses (including attorneys' fees). Affiliate means, with respect to Lessor: (i) any other person or entity who, directly or indirectly, controls, is under common control with, or is controlled by, Lessor; (ii) any other person or entity who is a director, officer, manager, member, partner or trustee of Lessor; or (iii) any entity of which Lessor and/or any one or more of the persons or entities specified in clause (i) or (ii) of this definition, individually or in the aggregate, beneficially own fifty percent (50%) or more of any class of voting securities; provided, however, that the railroads which are members of Lessor are only considered Affiliates of Lessor in their capacities as owners and members of Lessor and not in their separate capacities as operating railroads.

(b) THE LIABILITY ASSUMED BY LESSEE SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF THE INDEMNIFIED PARTIES.

(c) THE INDEMNIFICATION OBLIGATION ASSUMED BY LESSEE SHALL INCLUDE ANY CLAIMS, SUITS OR ACTIONS BROUGHT AGAINST THE INDEMNIFIED PARTIES, OR ANY DAMAGES OR JUDGMENTS RESULTING THEREFROM, UNDER THE FEDERAL EMPLOYER'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, OR UNDER THE OCCUPATIONAL HEALTH AND



SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE, WHENEVER SO CLAIMED.

(d) Lessee further hereby agrees, at its expense, in the name and on behalf of Indemnified Parties and at Indemnified Parties' discretion to appear and defend any suits or actions, whether at law or in equity brought against any Indemnified Party on any claim or cause of action arising out of or in any manner connected with any liability assumed by Lessee under this Agreement. The Indemnified Parties shall give notice to Lessee, in writing, of the receipt or pendency of suits or claims and thereupon Lessee shall proceed to defend and handle to a conclusion such claims, and in the event of a suit being brought against any of the Indemnified Parties, the Indemnified Parties may forward summons and complaint or other process in connection therewith to Lessee, and Lessee, at the Indemnified Parties' discretion, agrees to defend or settle such suits (provided that, if any settlement requires an affirmative obligation of, results in any ongoing liability to or prejudices or detrimentally impacts an Indemnified Party in any way and such obligation, liability, prejudice or impact can reasonably be expected to be material, then such settlement shall require the Indemnified Party's written consent (not to be unreasonably withheld or delayed) and the Indemnified Party may have its own counsel in attendance at all proceedings and substantive negotiations relating to such claim) and protect, indemnify, and save harmless the Indemnified Parties from and against all damages, verdicts, judgments, orders, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

(e) In addition to any other provision of this Agreement, in the event that all or any portion of this **Exhibit C-1** shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this **Exhibit C-1** shall be interpreted as requiring Lessee to indemnify the Indemnified Parties to the fullest extent permitted by applicable law. THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR LESSEE TO INDEMNIFY THE INDEMNIFIED PARTIES FOR THE INDEMNIFIED PARTIES' ACTS OF NEGLIGENCE.

(f) It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement shall survive any termination of this Agreement.

(g) LESSOR MAKES NO WARRANTIES REGARDING ANY SERVICES PROVIDED OR TO BE PROVIDED UNDER THIS AGREEMENT, AND HEREBY DISCLAIMS ANY AND ALL SUCH WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE ALL HEREBY EXCLUDED. Lessor does not warrant that Lessee's use of the Leased Spectrum will be uninterrupted, free from interference (harmful or otherwise), free from defects or free of security vulnerabilities, or that the Leased Spectrum will be free from degradation in any geographic location or locations or meet Lessee's particular requirements. NO ASSURANCES OR GUARANTEES ARE MADE BY LESSOR REGARDING USE IN ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING WITHOUT LIMITATION IN THE OPERATION OF TRANSPORTATION NAVIGATION OR COMMUNICATION SYSTEMS, TRAFFIC CONTROL AND ELECTRICAL FACILITIES IN WHICH FAILURE COULD



LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). LESSEE HEREBY EXPRESSLY ASSUMES THE RISKS ASSOCIATED WITH ALL HIGH RISK ACTIVITIES APPLICABLE TO ITS USE OF THE LEASED SPECTRUM, AND LESSOR SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.

(h) Notwithstanding anything to the contrary herein, it is expressly agreed that Lessor's sole liability for compensation or damages and the Lessee's exclusive remedy for any cause whatsoever arising out of or in relation to this Agreement shall be limited to the amount paid by Lessee hereunder in the prior twelve (12) months (or if no amounts have been paid, the amount of \$10,000), and the Lessee irrevocably waives any other right or remedy available to it at law, tort or otherwise to the maximum extent permitted under applicable law. Without prejudice to the generality of the foregoing sentence, IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY LOST PROFITS, FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR FOR ANY CLAIM FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES, EVEN IF LESSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE ENTIRE LIABILITY OF LESSOR AND ITS AFFILIATES AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS AND AGENTS FOR ANY DAMAGES SUFFERED BY LESSEE OR ANY OTHER ENTITY ARISING OUT OF THIS AGREEMENT, WHETHER IN AN ACTION FOR OR ARISING OUT OF BREACH OF CONTRACT, TORT, INCLUDING NEGLIGENCE, INDEMNITY, OR STRICT LIABILITY, SHALL NOT EXCEED THE AMOUNTS PAID HEREUNDER.

(i) Lessee acknowledges and agrees that any prices or other charges contemplated under this Agreement are based upon the limitations on warranty, limitations of liability, disclaimers and indemnification agreements contained in this **Exhibit C-1**. Lessee also acknowledges and agrees that the insurance requirements set forth below in **Exhibit C-2** are a critical element of this.

## C-2 Insurance

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following commercial insurance coverage:

A. Railroad Liability insurance. A limit of not less than \$294,278,983 each occurrence and an aggregate limit of not less than \$294,278,983. Insurance must be written on occurrence reported form XL 004 or equivalent and Railroad claims-made form or, with the prior written consent of Lessor, substitute forms providing equivalent coverage. If Lessee utilizes a claims-made form to meet this requirement, Lessee warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement. Lessee also agrees to purchase an extended reporting period of six (6) years if the policy is canceled or not renewed and not replaced by another claims-made policy with the same (or an earlier) retroactive date during the term of the Agreement. Such insurance shall include coverage for:

- (i) injury to or death of persons whomsoever, personal Injury, property damage liability including but not limited to, damage or destruction of any and all property including public liability, bill of lading and foreign line rolling stock;
- (ii) seepage and pollution coverage, including without limitation, coverage applicable in the event of railroad accident, derailment or overturn;
- (iii) contractual liability;
- (iv) evacuation expense coverage; and
- (v) coverage under the Federal Employer's Liability Act ("FELA") for employee injuries.

Whenever the passenger rail liability cap in 49 U.S.C. 28103 is adjusted, including inflation-related adjustments made by the Secretary of Transportation every five years in accordance with Section 11415 of the *Fixing America's Surface Transportation Act*, the per occurrence limit set forth in this **Exhibit C-2** shall be adjusted to match the statutory cap and the aggregate limit shall be adjusted to not less than the per occurrence limit; provided that neither limit shall be less than \$294,278,983. The coverage must include a reinstatement of limits provision and if limits are diminished in any manner, in the opinion of the Lessor, then Lessor can determine Lessee is without proper insurance.

The foregoing policy shall (i) include a waiver of subrogation that is in a form acceptable to Lessor and (ii) not include any other endorsements limiting coverage as respects to obligations under this Agreement, including obligations assumed arising under the Federal Employers' Liability Act, or work being performed under this Agreement.

B. Automobile Insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent coverage) with a limit not less \$2,000,000 for each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). The policy must contain the following endorsement (which must be shown on the certificate of insurance): Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "PTC-220 Property" as the Designated Job Site.

C. FELA Coverage. Coverage for injuries to Lessee's employees, in compliance with the FELA, without any right of subrogation against Lessor.

D. Umbrella or Excess insurance. If Lessee utilizes umbrella or excess policies to comply with limits of coverage required, these policies must "follow form" and afford no less coverage than the primary policy.

E. Self-Funding (SIR). Lessee may elect to self-fund the first \$10,000,000 of the coverage limits required under Sections A, B, C and D. If Lessee elects to self-fund in excess of \$10,000,000, Lessor, in its sole discretion, may require Lessee to provide one of the following:

(i) A surety bond or an unconditional and irrevocable standby Letter of Credit addressed to Lessor equal to the then-current self-funded portion of the requirement. The issuer of the Letter of Credit shall be a bank with a long term senior debt rating of not less than "A(2)" by Moody's Investment Service or "A" by Standard & Poor's. In the event Lessee fails to meet its obligation with respect to claims within the self-funded retention under any insurance policy provided above, Lessor shall have the right, upon ten (10) days' notice to Lessee, to draw upon the Letter of Credit to satisfy such claims and seek interest from Lessee in the amount of ten percent (10%) per annum retroactive to the date of any payment made by Lessor; or

(ii) A letter of comfort or documentation, in any form acceptable to Lessor in its sole discretion, demonstrating that Lessee possesses the financial capacity to self-fund a portion of coverage limits.

F. All policies required above must include Lessor as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage, subject to the prior written consent of Lessor). The coverage provided to Lessor as Additional Insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48, provide coverage for Lessor's negligence whether sole or partial, active or passive, and shall not be limited by Lessee's liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by the states in which service is being provided.

H. Lessee waives all rights against Lessor and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by FELA or commercial umbrella or excess liability insurance obtained by Lessee required by this agreement (which must be stated on the certificate of insurance).

I. All insurance policies must be written by a reputable insurance company acceptable to Lessor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which service is to be provided. These insurers may be admitted, non-admitted or alien insurers.

J. Lessee shall ensure that Lessor is notified in writing at least thirty (30) days prior to any cancellation or non-renewal of any policy required by this Agreement.

K. Lessee represents that this Agreement has been thoroughly reviewed by Lessee's insurance agent(s)/broker(s), who have been instructed by Lessee to procure the insurance coverage required by this Agreement. Lessee Insurance agent will provide Lessor binders of coverage ten (10) days prior to the effective date of coverage for each policy.

L. Failure to provide evidence of insurance as required by this Section shall entitle, but not require, Lessor to terminate this Agreement immediately, including the right to use Leased Spectrum. Acceptance of a binder that does not comply with this Section shall not operate as a waiver of Lessee's obligations hereunder.

M. The fact that insurance (including, without limitation, self-insurance) is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Lessor shall not be limited by the amount of the required insurance coverage.

N. Lessee shall, prior to utilizing the Leased Spectrum in its Positive Train Control system, provide copies of Lessee's relevant certificate(s) and binder(s) of insurance to Lessor in order for Lessor to verify insurance coverage is within the terms and conditions of this Agreement. In the event of any claim or lawsuit involving Lessor arising out of this Agreement, at Lessor's request Lessee will make available any policy required by this Agreement and covering such claim or lawsuit. Each time Lessee's policy is renewed, a certificate of insurance evidencing such renewal and meeting the requirements of this Section shall be delivered to Lessor at least forty-eight (48) hours prior to the effective date of the renewal (with a copy of the policy if so requested by Lessor).

O. For purposes of this Section, Lessor shall include Lessor's members, subsidiaries, successors, assigns and Affiliates.



**JOINT USE AGREEMENT  
(TACOMA DOME SEGMENT)**

This agreement dated ~~December 2014~~ <sup>January 22, 2015</sup> is between the Central Puget Sound Regional Transit Authority, a regional transit authority under the laws of the State of Washington ("Sound Transit") and the City of Tacoma, a first class city under the laws of the State of Washington ("City").

Sound Transit and the City are concurrently entering into a Purchase and Sale Agreement for the purchase and sale of the City's Department of Public Works, Tacoma Rail Mountain Division railroad right of way approximately between STA 924+ 74.88 (TR) and D Street (Sound Transit MPI.99) including the "L" Street Yard, Tacoma, Washington along with certain land parcels in Tacoma by the City to Sound Transit with the City retaining an exclusive freight easement (the "Tacoma Dome Segment"); and

Sound Transit and the City wish to provide the terms of joint use of the Tacoma Dome Segment by the City and Sound Transit, whether the City's freight operations and common carrier obligations are conducted by the City or a third party freight operator.

The Parties therefore agree as follows:

**ARTICLE 1 - DEFINITIONS**

Each definition in this Joint Use Agreement includes the singular and the plural. As used in this Joint Use Agreement, the following terms, when capitalized as in this Section, have the following meanings:

- 1.1 "Amtrak" means the National Railroad Passenger Corporation
- 1.2 "BNSF" means The BNSF Railway Company.
- 1.3 "Car Miles" means the sum of the number of miles traveled on the Tacoma Dome Segment per car, whether or not revenue-generating, including all locomotives or self-propelled rail units and freight, commuter, or passenger cars, but not locomotive-only moves, and yard moves that incidentally occupy the Tacoma Dome Segment.
- 1.4 "City" means the City of Tacoma a first class city under the laws of the State of Washington.
- 1.5 "Commuter Rail Service" means the operation of commuter Trains by, or for, Sound Transit (including, but not limited to, the service currently provided by BNSF for Sound Transit) and Sound Transit's activities and operations over any portion or all of the Tacoma Dome Segment.
- 1.6 "Hazardous Materials" mean hazardous materials, hazardous substances, or hazardous wastes, as defined under federal or state law.
- 1.7 "Parties" mean Sound Transit and Tacoma.
- 1.8 "Party" means either Sound Transit or the City.

- 1.9 "Purchase and Sale Agreement" means the agreement, each entered into concurrently with this Joint Use Agreement for the sale of certain parcels comprising the Tacoma Dome Segment by the City to Sound Transit.
- 1.10 "Rolling Stock" means the locomotives, cars, and cabooses.
- 1.11 "Sound Transit" means the Central Puget Sound Regional Transit Authority, a regional transit authority under the laws of the State of Washington.
- 1.12 "Tacoma Dome Segment" means the right of way approximately between STA 924+ 74.88 (TR) and D Street (Sound Transit MP1.99) including the "L" Street Yard, Tacoma, Washington along with certain land parcels in Tacoma by the City to Sound Transit with the City retaining an exclusive freight easement.
- 1.13 "TPO" means third party freight operator.
- 1.14 "Train" means one or more locomotive or other self-propelled rail units with or without freight, commuter or passenger cars; however, for purposes of calculating Train Miles, work trains, when they perform work on the Tacoma Dome Segment, and hi-rail vehicles, are not included in the definition of Train.
- 1.15 "Train Miles" means the sum of the number of miles traveled on the Tacoma Dome Segment by a Train, whether or not revenue-generating, including all locomotives or self-propelled rail units and attached freight, commuter, or passenger cars, but not locomotive-only moves, and yard moves that incidentally occupy the Tacoma Dome Segment.

## **ARTICLE 2 - NATURE OF JOINT USE BY SOUND TRANSIT AND THE CITY**

### **2.1 USE OF TACOMA DOME SEGMENT**

#### **A. General Delineation of Use**

- (1) The City has retained an exclusive right and obligation to provide freight service over the Tacoma Dome Segment under its retained freight easement. The City may subcontract, or otherwise assign or sell that right and obligation, to provide freight service to all existing and new customers.
- (2) Sound Transit Trains and Amtrak Trains have priority over freight operations to preserve and protect passenger Train schedules and Sound Transit obligations under any agreements with Amtrak and WSDOT. However, dispatch protocols will be prepared and implemented to allow the City to move its freight Trains through the Tacoma Dome Segment without undue delay when it is safe and does not interfere with passenger Trains.
- (3) Sound Transit, or its contractor (BNSF at the time this agreement was signed), will dispatch the Tacoma Dome Segment.
- (4) The City may use that portion of the Tacoma Dome Segment more commonly known as the "L" Street Yard occasionally for doubling the hill to the Tacoma Rail Mountain Division and for possible future interchange activity

to the extent that such use does not interfere with passenger service on the Tacoma Dome Segment including storage of Sound Transit Trains in the "L" Street Yard. The terms here do not limit the Parties from entering into a separate agreement regarding greater access to the Yard by the City, such as for long term storage or for other more exclusive uses.

- (5) The City may use the Tacoma Dome Segment and the Tacoma Dome Station platform for its occasional excursion passenger Trains while it retains its freight easement so long as such use does not interfere with Sound Transit or Amtrak passenger rail service on the Tacoma Dome Segment. However, the right to use the Tacoma Dome Segment and the Tacoma Dome Station platform is personal to the City and cannot be assigned, leased, or contracted out. If the City sells, transfers, leases, or otherwise conveys its freight easement or rights under the freight easement (such as a trackage rights), then its right to operate an excursion passenger Trains on the Tacoma Dome Segment and the Tacoma Dome Station platform terminates. The City acknowledges that Sound Transit does not own Freighthouse Square and that the City must deal directly with the owners for rights to the use Freighthouse Square and the property adjacent to the platform.

## 2.2 SERVICE PLAN FOR COMMUTER RAIL AND FREIGHT SERVICE

- A. Sound Transit will provide the City with passenger schedules and will advise the City or its third party operator by giving 30 days written notice of any changes to that schedule.
- B. The City will provide Sound Transit with freight schedules for the Tacoma Dome Segment and will advise Sound Transit by giving 30 days written notice of any changes to that schedule.

## 2.3 OPERATING RULES AND STANDARDS

- A. The Parties will operate safely and efficiently, in accordance with applicable federal, state, and local laws, rules, regulations, and requirements, and the operating guidelines and standards embodied in the following:
  - (1) Sound Transit's General Code of Operating Rules, including any future written amendments. Sound Transit will provide written notice of amendments 30 days before the effective date of the amendment or other rules that Sound Transit may adopt; and
  - (2) Emergency Preparedness Plan; and
  - (3) System Safety Program Plan; and
  - (4) Applicable industry rules and standards, such as those of the FRA and Association of American Railroads for Rolling Stock; and
  - (5) Any additional standards, procedures, or protocols that Sound Transit may implement from time to time.

- B. If an employee of the City neglects, refuses, or fails to abide by Sound Transit's rules, instructions, and restrictions governing the operation on or along the Tacoma Dome Segment, the City, upon request by Sound Transit, will prohibit that employee from working on the Tacoma Dome Segment. If either Party believes it is necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of the City employee, then upon written notice to the other Party, Sound Transit and the City will promptly hold a joint investigation with the Parties bearing its own expenses, including the expenses of its officers, counsel, witnesses, and employees. The City will give notice of the investigations to its employees. The investigations must be conducted in accordance with the terms and conditions of the collective bargaining agreements between the City and its employees.

The City will withdraw the City employee from service over the Tacoma Dome Segment, if, in the judgment of Sound Transit, the result of the investigation warrants that employee's withdrawal. The City will release and indemnify Sound Transit from and against any and all claims and expenses resulting from such a withdrawal.

If the disciplinary action is appealed by the City employee to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of the board or tribunal sustains the employee's position, then the employee will not be barred from service on the Tacoma Dome Segment by reason of the alleged neglect refusal, or failure.

#### 2.4 MAINTENANCE OF WAY

Sound Transit is responsible for maintenance of way on the Tacoma Dome Segment. Maintenance encompasses ordinary maintenance, capital, and catastrophic replacement; maintenance also encompasses the full width of the corridor and includes tracks; bridges, and other structures; signals; grade crossing protection devices; and general right-of-way maintenance such as mowing, grubbing, and debris removal.

#### 2.5 CLEARING DISABLED EQUIPMENT AND WRECKS

The Parties will be responsible re-railing or clearing derailed, wrecked, or otherwise disabled Train or Rolling Stock that it owns or permits to operate on the Tacoma Dome Segment. For example, Tacoma will be responsible for all freight Trains, while Sound Transit will be responsible for Amtrak Trains. The Party responsible for re-railing or clearing derailed or wrecked, or otherwise disabled Train or Rolling Stock will immediately notify and coordinate repair activities with the other Party so that work is performed in a timely manner. As part of this coordination process, the Parties may by mutual agreement allow for the non-responsible Party to perform required work under this section. Sound Transit will be responsible for performing the maintenance where the incident occurred. The costs and expenses of clearing such derailments and wrecks, and the repair and restoration of the Tacoma Dome Segment shall be as provided for in the allocation of liability in Article 7 of this Agreement.



## 2.6 SAFETY

The Parties will comply with all applicable federal, state, local, and industry safety laws, standards, codes, rules and regulations and agree to coordinate on the required System Safety Program Plan. The City will provide a written report to Sound Transit within three days of a collision or derailment incident involving any of the City's equipment on the Tacoma Dome Segment.

## 2.7 HAZARDOUS MATERIALS

- A. Each Party is responsible for any report required by federal, state or local authorities in connection with a release of Hazardous Materials, from their respective Trains on any segment of the Tacoma Dome Segment. The City will immediately notify Sound Transit in the event of such a release from a City Train.
- B. Sound Transit will be responsible for the cleaning up such a release, however the costs for the activities described in this Section 2.7 will be borne in accordance with Article 7, Liability and Indemnification.

## ARTICLE 3 - REIMBURSEMENT FOR JOINT USE EXPENSES

### 3.1 REIMBURSEMENT

- A. The City will reimburse Sound Transit at the rate of \$.0248 per car mile (on January 1, 2005) and adjusted annually from 2005 to the year of the invoice in accordance with the Annual Rate Adjustment Formula provided in Appendix A. The purpose of starting the calculation in 2005 is to provide a rate that is identical to the rate paid by Tacoma Rail to Sound Transit under the Joint Use Agreement (Lakeview Line) dated December 17, 2003 between Sound Transit and BNSF, the City's predecessor in interest under that agreement. That rate is intended to cover ordinary and capital maintenance of the line.
- B. The car mile rate in Section 3.1.A. will be adjusted effective annually starting on January 1 following the effective date of this agreement, based on the weighted average of the percentage change in the Labor Component of the Rail Cost Adjusted Factor (80%) and the percentage change in the Consumer Price Index for Seattle-Tacoma-Bremerton WA (20%) in accordance with the methodology in Appendix A.
- C. Catastrophic replacement costs, i.e., replacement cost in excess of \$100,000 for each occurrence, such as but not limited to floods, earthquakes, mudslides or acts of God, will be billed in addition to the car-mile rate and will be apportioned between the Parties on the basis of the Parties' Train Miles operated over that section of the Tacoma Dome Segment for the year ending immediately prior to the first day of the month of the occurrence. Sound Transit will notify the City as soon as possible what its share of the estimated design and construction costs. The City may avoid its share of these costs by (1) notifying Sound Transit that it will no longer operate Trains over the Tacoma Dome Segment, (2) notifying the STB of its intention to abandon the Tacoma Dome Segment, and (3) terminating this agreement (which will extinguish its freight easement).

- D. Notwithstanding, 3.1.A., B., C., and 3.4, Sound Transit agrees to waive all joint use expenses under these sections of Article 3 for a period of ten years following the effective date of this agreement. In the event the City sells or otherwise conveys its rights under this agreement during the ten years following the effective date, Sound Transit will continue to waive the joint use expenses for the remainder of the ten-year period. Following the ten-year period, the City or its successor will pay joint use expenses according to Article 3.

### 3.2 OTHER REIMBURSEMENTS

- A. Sound Transit will pay all direct costs associated with the one-time purchase of equipment and installation of on-board positive train control equipment/devices on four of the City's locomotives. Sound Transit will be responsible for all way side and capital costs associated with positive train control or other legally mandated forms of safety features requiring separation of passenger and freight service on the Tacoma Dome Segment for a period of ten years following the effective date of this agreement.

### 3.3 CAPACITY IMPROVEMENTS

- A. Sound Transit has constructed a number of capacity improvements on the Tacoma Dome Segment in accordance with Sound Move and will construct additional improvements under Sound Move 2 that it determines are necessary to implement Sound Transit Commuter Rail Service and maintain the City's freight operations on the Tacoma Dome Segment. These capacity improvements and any necessary Permits and Approvals are at Sound Transit's expense unless changes are specifically requested by the City to improve freight service and those requested changes increase the cost of the capacity improvements.
- B. The capacity improvements will be designed to provide freight access to existing City freight customers that is no worse than the existing freight access from a safety and operational efficiency standpoint before Sound Transit started construction on capacity improvements as part of its Sound Move project in 2002. The Parties acknowledge that freight access will have some hours of service constraints, based on Sound Transit's and Amtrak's schedules. During design, Sound Transit will give the City the opportunity to review these capacity improvements plans, and prior to the start of construction submit the plans for formal review by the City. The City will have 30 days to respond to Sound Transit's plans. If the City does not respond within 30 days, the plans will be deemed to be satisfactory to the City. If the City believes that the improvements will not allow freight access to existing City customers that is no worse than the existing freight access from a safety and operational efficiency standpoint as provided above, the Parties will discuss and use their best efforts to resolve the issue. If the Parties cannot resolve the issue, the City may invoke the dispute resolution provisions of Article 9 of the agreement.
- C. Except as provided in section 3.4, the Parties will work together to attempt to minimize the impact of construction of a capacity improvement on freight service. To the extent that Sound Transit disrupts freight service, or otherwise increases the costs to the City of providing freight service during construction of the capacity

improvements, Sound Transit will reimburse the City for any incremental increase in actual documented costs or otherwise negotiated rate. If Sound Transit disagrees with the City's mitigation plan or the calculation of costs, Sound Transit may invoke the dispute resolution provisions of Article 9.

- D. The City may request improvements to the rail infrastructure for freight service, including but not limited to sidings, connecting and access tracks and switches for new shipper facilities. The City will be responsible for the entire cost and expense of these improvements, including any necessary Permits and Approvals. The City will submit plans for such improvements to Sound Transit and Sound Transit will have 30 days to review and approve or reject such plans. If Sound Transit does not respond within 30 days, the plans will be deemed to be approved. If the plans are rejected, the Parties will work together to find a mutually agreeable solution. If the Parties cannot arrive at a mutually agreeable solution, the City may invoke the dispute resolution provisions of Article 9, provided however, Sound Transit can prevent the City from making rail infrastructure improvements that materially affect passenger Train operations.

Unless otherwise agreed by the Parties, any construction on the Tacoma Dome Segment will be performed by Sound Transit.

#### 3.4 TRESTLE REPLACEMENT PROJECT

The City acknowledges that Sound Transit, in part because of the City's needs, may replace the trestle, double track, and add platforms in the Tacoma Dome Segment. The City is not entitled to remuneration for the inconvenience or losses caused by capital projects (such as the replacement project discussed above), including demurrage fees and labor costs. The City will indemnify Sound Transit for claims by its customers that are a result of a Sound Transit capital replacement project on the Tacoma Dome Segment.

#### 3.5 REIMBURSEMENT FOR UNFORESEEN EVENTS

In the event of an occurrence not reasonably foreseeable when this agreement was executed that has a material impact on the compensation for joint use of the Tacoma Dome Segment, the Parties will negotiate in good faith and use their best efforts to agree upon an appropriate amendment to the applicable contract provision. The Parties will use the dispute resolution process in Article 9 if they cannot readily agree upon an appropriate amendment. Pending a final decision, both Parties will continue to perform under and be bound by the terms of this agreement as it exists without any proposed amendment.

#### 3.6 METHOD OF INVOICING AND PAYMENT

- A. The City will submit a report detailing the number of trains operated, car carried, and date and time of such operation for each month, no later than 10 days after the end of that month.
- B. Sound Transit will invoice the City within 30 days of receipt of that monthly report.. The City will pay Sound Transit within 30 days after Sound Transit has submitted an invoice in a format mutually agreed upon.

- C. Late payments owed and invoiced by a Party are subject to at a rate equal to 3 percent per annum above the highest prime lending rate published daily in the Wall Street Journal, during the period the payment is due, but not in excess of the highest lawful rate permitted under applicable laws, calculated from the original due date thereof to the date of payment.

### 3.7 INSPECTION AND AUDIT

- A. The City may, at its own cost (i) inspect the Tacoma Dome Segment; provided the inspection does not hinder or delay Sound Transit's commuter operations or Amtrak's passenger rail service, and (ii) audit any aspect of Sound Transit's performance of its duties and obligations under this agreement, both financial and operational, and may include an examination of Sound Transit's controls, practices, and procedures and their effect upon the efficiency and quality of freight service provided by the City. Any audit conducted by the City (or its designee) must be conducted in accordance with Generally Accepted Auditing Standards.
- B. Sound Transit may, at its own cost, (i) audit any aspect of the City's performance of its duties and obligations under this agreement, both financial and operational, and may include an examination of the City's controls, practices, and procedures and their effect upon the efficiency and quality of Sound Transit's or Amtrak's passenger rail service. Any audit conducted by the City (or its designee) must be conducted in accordance with Generally Accepted Auditing Standards.
- C. The Parties have three years from the end of each calendar year to initiate and complete an audit of a given year's books, records, accounts, and documents.
- D. Upon reasonable notice, the Parties will permit the other Party, its auditors, or any other duly authorized agent of the other Party to inspect and examine all books, records, accounts, and documents relating to the first Party's activities under this agreement. The Parties will maintain such books, records, accounts, and documents and keep them accessible to each other for the specified period for retention of official records of the type in question in accordance with each Party's Records Retention Schedule then in effect. All such books, records, accounts, and documents will be made available at the location at which they are maintained. Sound Transit will credit the City for any amounts billed by Sound Transit, and reimburse the City for any amounts paid by the City that are not supported by the records maintained by Sound Transit or by the services actually performed by Sound Transit. Upon completion of the audit, any adjustment required to make any reconciliation required will be made, paid, or credited, as the case may be, in the next monthly billing cycle.

## ARTICLE 4 - EMPLOYEES

### 4.1 SOUND TRANSIT IS AN INDEPENDENT CONTRACTOR

Sound Transit and any subcontractors retained by Sound Transit, when performing maintenance activities under the terms of this agreement are independent contractors. Nothing in this agreement may be construed as inconsistent with that status.



4.2 PERSONNEL TO BE EMPLOYEES OF SOUND TRANSIT OR ITS SUBCONTRACTORS

The personnel performing maintenance activities provided by Sound Transit under this agreement must at all times be employees of Sound Transit, or its contractors as determined by Sound Transit, under Sound Transit's or its contractor's exclusive direction and control. Sound Transit or its subcontractors have sole authority to hire, fire, discipline, promote, demote, direct the work of, and manage the personnel performing the maintenance activities.

4.3 NOTICE OF CLAIMS

- A. In the event that the City or Sound Transit receive a complaint or allegation from any of its employees or subcontractors related to the conduct of the other Party's employee or subcontractor, the Party receiving the complaint or allegation will promptly notify the other Party of such allegation and cooperate with the other Party with respect to any investigation of any such complaint.
- B. In the event that either Party is named in any lawsuit or administrative charge or allegation by any employee who is or has performed services under this agreement, the named Party will provide the other Party with notice and a copy of a lawsuit, action, or charge.

**ARTICLE 5 - CITY RIGHTS AND OBLIGATIONS**

5.1 ROLLING STOCK SAFETY

The City will only use Rolling Stock that comply with all applicable federal (and applicable state and local) laws, regulations, and enactments and will allow Sound Transit inspection of such upon providing reasonable notice. If any failure of the Rolling Stock to comply with such laws, regulations, or enactments results in the imposition of any fine, penalty, cost, or charge against Sound Transit, then the City will reimburse, indemnify, and hold harmless Sound Transit for any such fine, penalty, cost, or charge. The City will promptly notify Sound Transit of any notice it receives seeking to impose any such fine, penalty, cost, or charge. The City will, upon receiving notice of any action seeking to impose any such fine, penalty, cost, or charge against Sound Transit, defend such action at the City's own expense.

5.2 REGULATORY APPROVALS

In the event that the Parties determine that any state, federal, or local regulatory prior approval or exemption is required with respect to the operation of freight service in accordance with this agreement, securing such approval or exemption is the responsibility of the City.

5.3 EFFICIENCY TESTING

Sound Transit and/or its operating contractor, in coordination with the City, may perform efficiency tests of City crewmembers in service on the Tacoma Dome Segment.

## ARTICLE 6 - INSURANCE

### 6.1 DEFINITIONS FOR ARTICLES 6 AND 7

Each definition in Articles 6 and 7 includes the singular and the plural. For purposes of Articles 6 and 7, the following terms, when capitalized as in this Section 6.1, have the following meanings:

- A. "City Indemnitee" means one or more of (1) the City's elected officials, officers, directors, employees, agents, and contractors while on, using or performing dues related to the Tacoma Dome Segment, (2) any passenger of a City passenger train while such passenger is on the Tacoma Dome Segment, (3) any other person at or proximate to a commuter or passenger rail station used by the City who is there for the purpose of (a) boarding or detraining from a City passenger Train, meeting or accompanying a ticketed passenger or a person intending to become a ticketed passenger on a City passenger Train, purchasing a City passenger Train ticket, making a reservation for a City passenger Train, attending a special event sponsored by or held on behalf of the City, or obtaining information about the City passenger Train service or conducting business with the City, or (b) for the purpose of providing local transportation to or accompanying a person described in Subsection 6.1.A.(3)(a), above, (4) persons using the Tacoma Dome Segment under authority of or by agreement with the City, except for Sound Transit Indemnities and those specifically included as a "Third Party" in Subsection 6.1.E., (5) persons (other than a Sound Transit Indemnitee) receiving services of the City involving use of the Tacoma Dome Segment.
- B. "Environmental Loss or Damage" means all fines, penalties, liability, cost, damages, injuries, deaths, losses, expenses, fees, charges, cleanups, removals, remediation, or any other cost, requirement, or liability whatsoever and all expenses and attorneys' fees, arising from, resulting from, related to, or incurred in connection with actions, judgments, suits, claims, (formal or informal), or contentions of any kind or nature whatsoever, raised by any person or entity of any kind at any time with respect to contamination, waste (hazardous and non-hazardous), pollution, garbage, trash, Hazardous Materials, or environmental hazards or conditions of any kind or nature whatsoever, and including without limitation damages or injuries to a person or private or public property (real or personal, and including without limitation natural resources) but does not include damages related to diminution in value of either Parties' interest in the Tacoma Dome Segment.
- C. "Loss or Damage" means all fines, penalties, claims, liability, cost, and expense of every character (including amounts paid under any State or Federal compensation law, and including costs and attorney's fees incurred in the investigation, defense or settlement of any actual or threatened legal proceeding), incident or related to loss or destruction of or damage to property (including real property and improvements and personal property of Parties and third parties) and injury to and death of persons (including officers, directors, agents, employees, contractors, invitees, customers, or patrons of the Parties, and third parties) including Loss or Damage occurring under Section 2.5; provided, however, that it does not include damages related to diminution in value in either Parties' interest in the Tacoma Dome Segment or

Environmental Loss or Damage as defined in Section 6.1(B), except that this definition does include Environmental Loss or Damage for purposes of Subsections 7.1.A., 7.1.B., 7.1.E., 7.1.G., 7.1.H., and Sections 2.5, 7.3 and 7.5.

- D. "Sound Transit Indemnitee" means one or more of (1) Sound Transit's board members, officers, directors, employees, agents or contractors including any operator of Commuter Rail Service while on, using, or performing duties related to the Tacoma Dome Segment, (2) any passenger of a Sound Transit train while such passenger is on the Tacoma Dome Segment, (3) any other person at or proximate to a commuter rail station used by Sound Transit who is there for the purpose of (a) boarding or detraining from a Sound Transit Train, meeting or accompanying a ticketed passenger or a person intending to become a ticketed passenger on a Sound Transit Train, purchasing a Sound Transit commuter rail ticket, making a reservation for a Sound Transit Train, attending a special event sponsored by or held on behalf of Sound Transit, or obtaining information about Sound Transit Commuter Rail Service or conducting business with Sound Transit, or (b) for the purpose of providing local transportation to or accompanying a person described in Subsection 6.1.D.(3)(a), above, and (4) persons using the Tacoma Dome Segment under authority of or by agreement with Sound Transit, except for City Indemnities and those specifically included as a "Third Party" in Subsection 6.1.E.
- E. "Third Party" means a person or entity that is not a City Indemnitee or a Sound Transit Indemnitee. For purposes of Articles 6 and 7, Third Party includes but is not limited to (1) Amtrak, its board members, officers, directors, employees, and agents while on, using or performing duties related to the Tacoma Dome Segment, (2) any passenger of an Amtrak Train while such passenger is on the Tacoma Dome Segment (3) any other person at or proximate to a passenger rail station used by Amtrak who is there for the purpose of (a) boarding or detraining from an Amtrak Train, meeting or accompanying a ticketed passenger or a person intending to become a ticketed passenger on an Amtrak Train, purchasing an Amtrak rail ticket, making a reservation for an Amtrak Train, attending a special event sponsored by or held on behalf of Amtrak, or obtaining information about Amtrak passenger rail service or conducting business with Amtrak, or (b) for the purpose of providing local transportation to or accompanying a person described in Subsection 6.1.E.(3)(a), above.

## 6.2 INSURANCE

City and Sound Transit will each maintain an appropriate program of commercial insurance, self-insurance, or a combination of commercial insurance and self-insurance, in amounts and types sufficient to satisfy its liabilities for personal injury, bodily injury and death (including coverage under the Federal Employers Liability Act), and property damage. Sound Transit will maintain commercial general liability insurance as required in the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. § 28103).

### 6.3 SUBROGATION RIGHTS

The Parties waive subrogation rights against the other Party (including for all purposes of this section, the other Party's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns), and agree to require their respective insurers to waive subrogation rights against the other Party, and the other Party's insurers.

## ARTICLE 7 - LIABILITY, REIMBURSEMENT, AND INDEMNIFICATION

### 7.1 ALLOCATION OF LIABILITIES

- A. Subject to Subsection 7.1.E., Sound Transit will, as between the Parties, bear all Loss or Damage to a Sound Transit Indemnatee including Loss or Damages resulting from or caused by negligence of a City Indemnatee or a Third Party(ies).
- B. Subject to Subsection 7.1.E., the City will, as between the Parties, bear all Loss or Damage to a City Indemnatee including Loss or Damages resulting from or caused by negligence of a Sound Transit Indemnatee or a Third Party(ies).
- C. (1) Subject to Subsection 7.1.E., when Loss or Damage to a Third Party involves a Sound Transit Indemnatee Train, and does not result from and is not contributed to by an accident, collision, or derailment of a City Train on the Tacoma Dome Segment, such Loss or Damage will, as between the Parties, shall be borne exclusively by Sound Transit.  
  
(2) Subject to Subsection 7.1.E., when Loss or Damage to a Third Party involves a City Indemnatee Train, and does not result from and is not contributed to by an accident, collision, or derailment of a Sound Transit Indemnatee Train on the Tacoma Dome Segment, such Loss or Damage will, as between the Parties, shall be borne exclusively by the City.
- D. Subject to Subsection 7.1.E., when Loss or Damage to a Third Party involves both a Sound Transit Indemnatee Train and a City Indemnatee Train on the Tacoma Dome Segment, then such Loss or Damage will be allocated, as between the Parties, in proportion to the Train Miles operated over the Tacoma Dome Segment during the calendar month before the Loss or Damage (or if the exact date of loss cannot be determined then when the loss or damage was first discovered), with Sound Transit bearing the Loss or Damage in the proportion to Sound Transit Indemnatee Train Miles and the City bearing the Loss or Damage in proportion to City Indemnatee Train Miles.
- E. As between the Parties, to the extent Loss or Damage is caused by or arises from the gross negligence or willful or wanton misconduct of a Party to this agreement (including that Party Indemnatee's), such Loss or Damage will be borne exclusively by that Party.
- F. Loss or Damage occurring on the Tacoma Dome Segment and not involving a Train of either Party on the Tacoma Dome Segment will, as between the Parties, shall be borne by Sound Transit.



- G. Except as may be provided by applicable rules of collateral estoppel or res judicata, the allocation of Loss or Damage provided in this Article is not affected by any allocation of Loss or Damage between Sound Transit or the City and a Third Party.
- H. For purposes of this Article, the City and its employees, agents, contractors, licensees, lessees, invitees, customers, and patrons are not considered to be employees, agents, or contractors of Sound Transit.

## 7.2 ENVIRONMENTAL LOSS OR DAMAGE

- A. Subject to Subsections 7.1.E. and 7.2.C., as between the Parties, Sound Transit will bear all Environmental Loss or Damage, other than to a City Indemnitee, caused by or arising or resulting from Sound Transit's Indemnitee's past, present or future use of the Tacoma Dome Segment.
- B. Subject to Subsections 7.1.E. and 7.2.C., as between the Parties, the City will bear all Environmental Loss or Damage, other than to a Sound Transit Indemnitee, caused by or arising or resulting from a City Indemnitee's past, present, or future use of the Tacoma Dome Segment.
- C. Subject to Subsection 7.1.E., if any Environmental Loss or Damage is caused by or arises or results from both the Sound Transit Indemnitee's past, present, or future use of the Tacoma Dome Segment and the City Indemnitee's past, present, or future use of the Tacoma Dome Segment, then, as between the Parties, Sound Transit will bear so much of such Environmental Loss or Damage as was contributed by Sound Transit Indemnitee's use, and the City will bear so much of such Environmental Loss or Damage as was contributed by the City Indemnitee's past, present, or future use of the Tacoma Dome Segment.

## 7.3 RELEASES AND INDEMNIFICATION

- A. Sound Transit will defend, indemnify, release, and hold harmless the City (including for all purposes of this subsection, its employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) from any claims it could otherwise assert against the City for Loss or Damage for which Sound Transit is liable under the provisions of this Article, whether or not such Loss or Damage is the result of the negligence of the City (other than gross negligence or willful or wanton misconduct), including without limitation any Loss or Damage awarded in any court action.
- B. The City will defend, indemnify, release, and hold harmless Sound Transit (including for all purposes of this subsection, its employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) from any claims it could otherwise assert against Sound Transit for Loss or Damage for which the City is liable under the provisions of this Article, whether or not such Loss or Damage is the result of the negligence of the Sound Transit (other than gross negligence or willful or wanton misconduct), including without limitation any Loss or Damage awarded in any court action.

- C. To the extent permitted by law, each Party will pay all Loss or Damage for which it is liable under the provisions of this Article, and will defend, indemnify, release, and hold harmless the other Party (including without limitation the other Party's Indemnitees).
- D. The obligations assumed by the Parties under this section 7.3 include without limitation any liability, suits, claims, damages, judgments, lawsuits, demands, causes of action, losses and expenses under the Federal Employer's Liability Act, the Safety Appliance Act, or the Boiler Inspection Act, including claims for strict liability.
- E. For purposes of this section, the City and Sound Transit, by mutual negotiation, waive, with respect to the other only, any immunity against claims for which they have assumed an indemnification obligation that would otherwise be available under the industrial insurance provisions of Title 51 Revised Code of Washington or other applicable disability benefits or employee benefits acts.
- F. Nothing in this agreement is intended to be construed to require either Party to indemnify the other Party against the other Party's own gross negligence or willful or wanton misconduct.
- G. If any provision of this agreement purports to indemnify a Party against Loss or Damage and such indemnification is prohibited by or unenforceable under the laws of the State of Washington (including a determination that indemnification under the circumstances involved is against public policy of the State of Washington), the indemnity provided by such provision will be deemed to be limited to and operative only to the maximum extent permitted by law.

## **ARTICLE 8 EFFECTIVE DATE, TERM, AND TERMINATION**

### **8.1 EFFECTIVE DATE AND TERM**

This agreement is effective on the date that ownership interest of the Tacoma Dome Segment is transferred to Sound Transit and will remain in effect so long as the City does not abandon its freight rights and responsibilities on the Tacoma Dome Segment.

### **8.2 RIGHTS UPON TERMINATION**

Termination or cancellation of this agreement does not release either Party from any liability or obligation under this agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of such termination or cancellation.

## ARTICLE 9 DISPUTE RESOLUTION

### 9.1 PREVENTING CONFLICTS

Preventing Conflicts. The Parties will use their best efforts to prevent and resolve potential sources of conflict before they escalate into disputes, claims, or legal actions.

### 9.2 RESOLVING DISPUTES THROUGH NEGOTIATION

The Parties will use their best efforts to resolve disputes arising out of or related to this agreement using good faith negotiations by engaging in the following dispute escalation process should any such disputes arise:

- A. Level One – Sound Transit’s Commuter Rail Operations Manager, or equivalent designee at the time of dispute, and the City’s Chief Mechanical Officer (Tacoma Rail) will meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within 15 business days after referral of that dispute to Level One, either Party may refer the dispute to Level Two.
- B. Level Two – Sound Transit’s Executive Director of Operations, or equivalent designee at the time of the dispute, and the City’s Rail Superintendent will meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within 15 business days after referral of that dispute to Level Two, either Party may refer the dispute to Level Three.
- C. Level Three – Sound Transit’s Chief Executive Officer or equivalent designee at the time of the dispute, and the City Manager will meet to discuss and attempt to resolve the dispute, in a timely manner.

### 9.3 FAILURE TO RESOLVE A DISPUTE THROUGH BEST EFFORTS

Except as otherwise specified in this agreement, in the event the dispute is not resolved at Level Three within 15 business days after referral of that dispute to Level Three, either Party may commence a civil action in a federal court of competent jurisdiction. Until the dispute is resolved, the Parties will continue to perform and make any required payments under this agreement in the same manner and under the same terms as existed prior to the dispute.

## ARTICLE 10 MISCELLANEOUS

### 10.1 FORCE MAJEURE

A Party will be excused from performance of any of its obligations under this agreement, where such non-performance is caused by any event beyond the non-performing Party’s reasonable control, which may include, without limitation, an order, rule, or regulation of any federal, state, or local government body, agency, or instrumentality, work stoppage by the Sound Transit employees or contractors or a labor dispute resulting in a strike by the Sound Transit employees or contractors, extraordinary unavailability of essential materials from third-party suppliers, accident, natural disaster, or civil disorder (“Force Majeure Event”); provided that the Party excused under this section will use all reasonable efforts to

minimize its non-performance and to overcome, remedy, or remove such Force Majeure Event in the shortest practical time.

#### 10.2 ENTIRE AGREEMENT

This agreement, the attached Appendices, and the deed in the transfer of certain property interests to Sound Transit embody the entire agreement and understanding between Sound Transit and the City relating to the joint operation of the Tacoma Dome Segment following the sale of rights in the Tacoma Dome Segment under the Purchase and Sale Agreement dated December \_\_\_\_, 2014. There are no restrictions, promises, representations, warranties, covenants or undertakings, oral or otherwise than those expressly set forth or referred to here. This agreement does not become effective until the City deeds the Tacoma Dome Segment to Sound Transit subject to a retained freight easement as contemplated in the Purchase and Sale Agreement.

#### 10.3 AMENDMENTS

Except as otherwise expressly provided in this agreement, no waiver, modification, addition, or amendment to this agreement is enforceable unless reduced to writing executed by the authorized officers of each Party.

#### 10.4 SEVERABILITY

In the event that any term of this agreement, or the application of that term is found to be invalid or unenforceable in any respect, the remainder of this agreement, and the application of such term or provision to other persons or circumstances nevertheless will be binding with the same effect as if the invalid or unenforceable provision were originally deleted. The Parties will bargain in good faith to reform this agreement or replace any invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision.

#### 10.5 NOTICES

Except as otherwise expressly provided in this agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this agreement must be in writing and either be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered via facsimile, with confirmation of receipt by telephone, with an original deposited postage prepaid in the first class mails of the United States, addressed to Sound Transit at:

Sound Transit  
401 S. Jackson Street  
Seattle, WA 98104-2826  
ATTN: Commuter Rail Operations



With a copy to:  
Sound Transit  
401 S. Jackson Street  
Seattle, WA 98104-2826  
**ATTN: General Counsel**

Or to the City at:

Superintendent  
Tacoma Rail  
2601 SR 509 N Frontage Road  
Tacoma, WA 98421

With a copy to:  
City of Tacoma dba Tacoma Rail  
c/o Real Property Services  
3628 South 35th Street  
Tacoma, WA 98409

or to such person and at such other addresses as either Party may at any time or from time to time designate for itself by notice in accordance herewith. Each such request, notice, demand, authorization, direction, consent, waiver or other document will be deemed to be delivered to a Party when received at its address set forth or designated as above provided.

#### 10.6 RIGHTS AND REMEDIES

The duties, obligations, rights, and remedies available under this agreement are in addition to and not a limitation of or waiver regarding any duties, obligations, rights and remedies otherwise available by law except as otherwise provided in Section 9. No waiver by either Party of any default affects or impairs any right arising from any subsequent default. The failure of either Party to insist at any time upon the strict observance or performance of any of the provisions of this agreement or to exercise any right or remedy provided for in this agreement does not impair any such right or remedy nor be construed as a waiver or relinquishment of that right or remedy.

#### 10.7 APPLICABLE LAW; CHOICE OF FORUM

The laws of the State of Washington govern the interpretation of this agreement, the relationship of the Parties, and all disputes relating to the matters stated in this agreement, without regard to the choice of law principles of that State. Litigation arising out of or in connection with this agreement may be instituted and maintained only in the courts located in the Seattle or Tacoma, Washington, and the Parties consent to the exercise by those courts of jurisdiction and consent to service of process issued by such courts. The venue for any action relating to this agreement is the State of Washington.

## 10.8 SUCCESSORS

This agreement is binding and inures to the benefit of the successors of the City and Sound Transit. Any successor is required to accede, in writing, to all of the terms, conditions, and requirements of this agreement.

## 10.9 TRANSFER OR ASSIGNMENT

- A. The City may transfer or assign its freight easement, and the right conferred by the easement to conduct freight operations on the Tacoma Dome Segment, to a TPO subject to the provisions of this Section. A transfer of the freight easement must include an assignment of the City's interest in this agreement.
- B. The City will provide Sound Transit one years' notice of its intent to transfer or assign its freight rights to a TPO. The notice must contain the intended transfer date and the name of the proposed TPO and a contact person with the TPO who will be responsive to Sound Transit's investigation.
- C. Sound Transit may research the TPO, including interviewing the TPO and others, to help determine the safety record of the TPO, the financial viability (including the ability to secure adequate insurance) of the TPO, and the suitability of the TPO for conducting freight operations on the Tacoma Dome Segment. If Sound Transit believes, in its reasonable judgment, that the proposed TPO does not have an acceptable safety performance history, or, in the case of a TPO that has not previously conducted rail operations, does not demonstrate a commitment and capability of performing safe rail operations in the future on the Tacoma Dome Segment, Sound Transit may notify the City within two months of receipt of the notice of Sound Transit's safety concerns. If Sound Transit believes, in its reasonable judgment, that the proposed TPO does not have the financial resources to fulfill all the obligations of the City transferred to the TPO, Sound Transit may notify the City of Sound Transit's safety or financial concerns. If Sound Transit provides the City notice of any safety or financial concerns, the City and Sound Transit will meet to address such concerns. If, after such meetings, Sound Transit still believes, in its reasonable judgment, that the proposed TPO does not have an adequate safety record or the financial resources to conduct freight operations on the Tacoma Dome Segment, Sound Transit may notify the City in writing of its rejection of the proposed TPO. To the extent that the City is not in agreement with Sound Transit's rejection, the City may invoke the dispute resolution provisions of Article 9. If Sound Transit does not provide written notification of its rejection of the TPO within 6 months from the initial City notice, the City may proceed with the transfer or assignment of freight rights.

## 10.10 BENEFITS

This agreement is intended for the sole benefit of the Parties. Nothing in this agreement is intended or may be construed to give any person or entity, other than the Parties hereto, their permitted successors, and permitted assigns, any legal or equitable right, remedy, or claim under this agreement.

10.11 PREPARATION

The Parties and their legal counsel have cooperated in the drafting of this agreement. Accordingly, this agreement is deemed to be the joint work product of the Parties and not be construed against either Party by reason of such preparation.

10.12 HEADINGS

The section headings of this agreement are for convenience and reference only and not to define, limit or describe the scope or intent of the section or this agreement.

10.13 - COUNTERPARTS

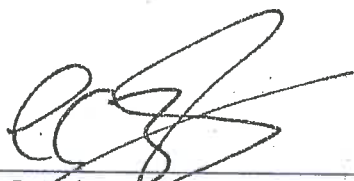
This agreement may be simultaneously executed in duplicate counterparts, each of which will be deemed an original copy of the agreement.

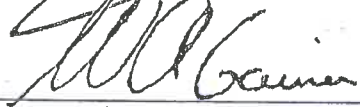
This agreement is signed by authorized representatives of the Parties on the dates shown below.

Central Puget Sound Regional  
Transit Authority

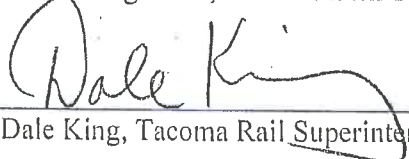
City of Tacoma

By:  
Title:

  
\_\_\_\_\_  
T.C. Broadnax, City Manager

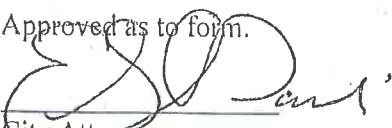
  
\_\_\_\_\_  
William Gaines, Director/CEO Tacoma Public Utilities

  
\_\_\_\_\_  
Kurtis Kingsolver, Public Works Director

  
\_\_\_\_\_  
Dale King, Tacoma Rail Superintendent

Approved as to form.

\_\_\_\_\_  
Sound Transit Legal Counsel

Approved as to form.  
  
\_\_\_\_\_  
City Attorney

Attest:

  
\_\_\_\_\_  
Doris Sorum, City Clerk

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**Central Puget Sound Regional  
Transit Authority**

**City of Tacoma**



By:  
Title:

\_\_\_\_\_  
T.C. Broadnax, City Manager

\_\_\_\_\_  
William Gaines, Director/CEO Tacoma Public Utilities

\_\_\_\_\_  
Kurtis Kingsolver, Public Works Director

\_\_\_\_\_  
Dale King, Tacoma Rail Superintendent

Approved as to form.

Approved as to form.

  
\_\_\_\_\_  
Sound Transit Legal Counsel

\_\_\_\_\_  
City Attorney

Attest:

\_\_\_\_\_  
Doris Sorum, City Clerk



## Appendix A

### Adjustment of Car Mile Rate

Commencing effective January 1, 2015, the Car Mile Rate set forth in this Agreement shall be adjusted annually, upward or downward by the amounts specified above.

For example, the \$0.248 per Car Mile Rate will be adjusted annually with the first adjustment in February, 2005, retroactive to January 1, 2005. The adjustment will be based on 80% of the annual percentage change in the Labor Component of the Rail Cost Adjusted Factor and 20% of the annual percentage change in the Consumer Price Index for Seattle-Tacoma-Bremerton WA. The Labor Component of the RCAF (LRCAF) is available from Table D, Line 1 of the Quarterly publication of the Association of American Railroads titled "AAR Railroad Cost Indexes." The Consumer Price Index for Seattle-Tacoma-Bremerton WA is available from the Bureau of Labor Statistics, U.S. Department of Labor. (See link to web site below).

To calculate the Labor Component, the average of the labor index for the four quarters of the most recent year will be compared to the average of the labor index for the four quarters of the previous year and the result is multiplied by 80.0%. To calculate the Consumer Price Index, the annual price index of the most recent year is compared to the annual price index of the previous year and the result is multiplied by 20.0%. The rate of change (i.e., escalator) for the contract is the sum of the Labor and CPI results described above.

For example, the February, 2003 rate adjustment would have been as follows:

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
2001 LRCAF	254.4	254.5	256.3	253.0
2002 LRCAF	260.3	257.3	257.1	267.6

$$\text{CLRCAF} = (260.3 + 257.3 + 257.1 + 267.6) / 4 = 260.575$$

$$\text{PLRCAF} = (254.4 + 254.5 + 256.3 + 253.0) / 4 = 254.55$$

$$\text{CCPI} = \text{Then current CPI-Seattle for 2002} = 189.3$$

$$\text{PCPI} = \text{Then prior CPI-Seattle for 2001} = 185.7$$

$$\begin{aligned} \text{AER} &= [1 + (((260.575 - 254.550) / 254.550) * .80) + (((189.3 - 185.7) / 185.7) * .20)] * \text{BR} \\ &= (1 + 0.022813) * \text{BR} \end{aligned}$$

In other words, the escalation from the prior rate is 2.2813 %.

Thus, the adjusted rate effective January 1, 2005 for an original rate established and effective January 1, 2004 shall be determined as follows:

Annual Rate Adjustment Formula:

$$\text{AER} = \left[ \left( \frac{\text{CLRCF} - \text{PLRCF}}{\text{PLRCF}} \right) \times 0.80 \right] + \left[ \left( \frac{\text{CCPI} - \text{PCPI}}{\text{PCPI}} \right) \times 0.20 + 1 \right] \times \text{BR}$$

Where:

AER = the Annual Effective Rate as of March 1, 2005

CLRCF = (LRCAF 1st Qtr. 2004 + LRCAF 2nd Qtr. 2004 + LRCAF 3rd Qtr. 2004 + LRCAF 4th Qtr. 2004) / 4

PLRCF = (LRCAF 1st Qtr. 2003 + LRCAF 2nd Qtr. 2003 + LRCAF 3rd Qtr. 2003 + LRCAF 4th Qtr. 2003) / 4

CCPI = the Current CPI--Seattle published for the full year, 2004

PCPI = the Previous CPI--Seattle published for the full year, 2003

BR = the Base Rate; where, for example, the Base Rate equals \$0.248 per car mile through 2004 and escalated according to the cumulative impact of the 80/20 adjustment for subsequent years.

The adjustment process described above shall be repeated from 2006 through 2015 and by the end of February each year thereafter during the Term of this Agreement, with the new Annual Effective Rates for the twelve (12) month period retroactive to January 1 prior to each such adjustment being determined by application of the formula described above for that Adjustment Date to the Annual Effective Rates and charges in effect during the preceding twelve (12) month period, provided in no event shall any of the rates or payments be adjusted below its original level at the time of execution of the agreement. Adjustment billings shall be made to reflect the adjustment retroactive to January 1.

If the AAR or a successor ceases to publish the Labor Component of the RCAF, or materially alters the methodology by which the RCAF is derived, the Parties shall meet to determine the most appropriate substitute index to be used for adjustments for the remainder of the Term of this Agreement. If, within sixty (60) days after the discontinuance or material alteration of the RCAF, the Parties are unable to reach agreement on a suitable substitute index either Sound Transit or BNSF may submit the matter for resolution by arbitration in accordance with Article 9 of this Agreement.

If the AAR or the STB, or Department of Commerce (or successor) rebases the LRCAF or CPI respectively during the Term of this Agreement, a linking factor shall be developed and applied in order to calculate the first adjustment to the Effective Rates occurring on or after the date the rebasing takes effect. The linking factor shall be equal to the ratio of the respective index for the year prior to rebasing divided by the index for the same year as rebased. The current year's index value as adjusted by the linking factor will then be on a similar basis as used for the year prior to rebasing. The linking factor shall only be used to rebase the index as described herein for the annual adjustment immediately following the rebasing. Commencing with the next ensuing Adjustment Date, the rebased index value as published for the prior and current years shall be used for purposes of adjustments hereunder.

In computing the annual adjustment described herein, all published indices shall be rounded to the nearest thousandth of an index point, all calculated indices shall be rounded to the nearest tenth of an index point, and all rates and charges shall be rounded to the nearest half cent. If there is no nearest thousandth of an index point, tenth of an index point, or half cent, as the case may be, the indices, rates, and charges shall be rounded to the nearest even thousandth of an index point, tenth of an index point, or half cent. For example, \$0.2835 and \$0.2845 would be rounded to \$0.284.

Link to Bureau of Labor Statistics:

[http://data.bls.gov/servlet/SurveyOutputServlet?data\\_tool=dropmap&series\\_id=CUURA423SA0,CUUSA423SA0](http://data.bls.gov/servlet/SurveyOutputServlet?data_tool=dropmap&series_id=CUURA423SA0,CUUSA423SA0)