

June 14, 2007

Hon. John Ladenburg, Chairman  
Sound Transit  
Central Puget Sound Region, Washington State

Dear Executive Ladenburg:

In re: Future financial impact of the Master Implementation Agreement (Motion M2007-62) between Sound Transit and University of Washington related to light rail construction.

Coalition for Effective Transportation Alternatives (CETA) requests that the Sound Transit Board's approval of the MIA with University of Washington include deliberation and consideration of the financial risk being accepted by the Sound Transit Board in agreeing to the possibility of the liquidated damage penalties stated in the MIA and summarized below for the Board's consideration.

We in CETA understand that there is a mathematical probability associated with each of these per diem damage payments that can be translated to a quantified expectation of payment that should be built into Sound Transit financial plans and budgets. We request that the numbers be determined and published.

If the probability of making future payments under the MIA liquidated damage provisions is considered to be zero, that expectation should be part of the public record of the Board's decision on Motion M2007-62.

Following is an informal summarization of provisions in the agreement with University of Washington:

**Liquidated damage payments related to light rail construction:**

**\$20,000 per day** if the six acre construction site required beside Husky Stadium is not reduced to two acres by the 1,733rd day of construction.

**\$20,000 per day** if the use of a full six acres at the construction site is needed for more than 1,095 days from beginning to end.

**\$20,000 per day** if the Husky Stadium construction site is not closed by the 2,008th day following the opening of the site.

**\$20,000 per day** if under-campus tunnel construction goes beyond 304 days.

**Liquidated damage payments during light rail operations:**

**\$10,000 for each passage of a light rail vehicle** under campus in the event of a vibration or magnetic field exceedance caused by failure of that vehicle.

**\$50,000 for each passage of a defective vehicle** causing excess vibration or magnetic fields under campus if Sound Transit allows the same defective vehicle to pass under the campus more than once.

**\$10,000 per day** for the first seven days of exceeding vibration or magnetic field limits caused by infrastructure failure.

**\$75,000 per day** for the eighth day and beyond of infrastructure failure until remedied if the failure is in both tubes of the under-campus tunnel.

**\$100,000 per day** after the first day of a monitored, continuing exceedance in vibration or magnetic fields if failure occurs in only one tube of the tunnel, and Sound Transit continues to use that tunnel.

**\$100,000 per day** until the magnetic fields and vibration monitoring and warning system is made operational in the event this system fails to operate for more than two consecutive days.

**\$5,000 per day** for each day after 90 days until a plan for remediation is established and approved in the event a long term trend of system degradation is identified by the vibration and magnetic fields monitoring program that could result in exceedances within two years if general system improvements are not implemented.

**\$20,000 per day** for each day until the trend of system degradation is remedied in the event Sound Transit fails to come up with an amended plan meeting the University's approval, which may include operational measures as well as physical modifications.

**\$150,000 per each day** of any monitored vibration or magnetic field exceedance that occurs beyond the two year period and is attributable to Sound Transit's failure to perform.

**Additional pertinent considerations related to liquidated damage payments:**

Liquidated damages shall apply separately to vibration and magnetic field exceedances.

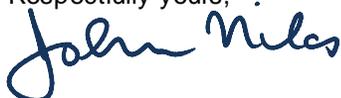
DAMAGES AND RELIEF FOR LARGE SCALE OR LONG-TERM FAILURES. The estimates of damage underlying the liquidated damages set forth in this Agreement are based on the assumption that Sound Transit's failures will be neither severe nor prolonged. **The liquidated damages will not be adequate estimates of the University's direct, indirect, and consequential damages for large scale or long-term failures.** Therefore the liquidated damages set forth above shall apply only for a reasonable period of time as determined by the University on a case by case basis depending on the nature of the research or experimental activity being damaged. After such determination by the University, and the University's notification to Sound Transit of such determination, such liquidated damages shall cease and the University will be permitted to prove and recover actual damages in excess of the liquidated damages and/or may seek any relief at law or in equity including immediate relief directly through superior court.

FAILURE TO PERFORM – COSTS AND DAMAGES. **For impacts which are caused by Sound Transit's failure to perform under this Agreement but which are not addressed by liquidated damages under this Agreement, including but not limited to personal and property damage, Sound Transit shall pay to the University the true and full costs** including, but not limited to, all direct, indirect, and consequential damages, and attorney fees incurred by the University to enforce this Agreement and Sound Transit performance resulting from such failure by Sound Transit to perform under this Agreement.

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Thank you for the Sound Transit Board's consideration of the future financial impact of the above provisions in this agreement with University of Washington.

Respectfully yours,



John Niles  
CETA Technical Co-Chairman