

**Amendment #1 to AGREEMENT  
GCA-5116**

 **ORIGINAL**

THIS AGREEMENT is made and entered into this 5<sup>th</sup> day of July, 2007 between the STATE OF WASHINGTON Department of Transportation, hereinafter the "STATE," and the City of Stanwood, hereinafter the "CITY," both of which entities may be referred to hereinafter as "PARTIES and individually the "PARTY."

WHEREAS, the CITY and the STATE are planning the construction of a project titled, Stanwood AMTRAK Station Loading Platform and Associated Facilities, hereinafter the "PROJECT," for which the acquisition of additional property is required, and

WHEREAS, the STATE has determined the PROJECT will benefit the traveling public, and

WHEREAS, the STATE, under RCW 47.79.050, is authorized to acquire by purchase, title to property adjacent to existing state passenger rail service, to be used for platform and parking, and

WHEREAS, The 2005 Washington State Legislature in EESB 6091.PL authorized \$5,000,000 for this PROJECT, and

WHEREAS, the STATE has agreed to contribute a one time, lump sum payment of up to but not exceeding Ninety five Thousand Dollars (\$95,000.00) out of the legislated \$5,000,000, towards the CITY's purchase of property necessary for the PROJECT,

WHEREAS, the STATE's sole interest in the purchase of this property is to provide for the construction of the PROJECT and has determined that if, for any reason the platform does not become or remain functional, ownership of the property should be retained by the CITY which will best benefit alternative transportation modes,

NOW, THEREFORE, by virtue of chapter 39.34 RCW and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

**1. GENERAL**

1.1 The CITY will acquire the additional privately owned property described in Exhibit A to this AGREEMENT which property will be used for the future construction of the PROJECT providing a passenger loading platform and related facilities along the North/South AMTRAK passenger train route in Stanwood Washington. The property purchased under this AGREEMENT will be owned and controlled by the CITY. The STATE will have no ownership interest in the property.

1.2 The CITY agrees that the property shall only be used for the construction of a passenger loading platform and related facilities, or to benefit alternative

transportation modes if for any reason the PROJECT does not become or remain functional..

1.3 The CITY agrees that it shall be completely responsible to manage and maintain the property, and all facilities to be located on the property, in perpetuity, and shall assume all liability as further detailed in Section 3 of this AGREEMENT. The terms of this Section shall survive the termination or expiration of this AGREEMENT.

1.4 The CITY agrees that the STATE and its agents or contractors shall have full access to, and use of, the property as is reasonable and necessary for the design, construction or inspection of the PROJECT.

## **2. PERIOD OF PERFORMANCE**

This AGREEMENT shall be effective from the date of execution and continue in effect until the project is either completed or terminated.

## **2. CONTRIBUTION**

2.1 The CITY agrees to submit a bill to the STATE representing the actual purchase price of the property, up to but not to exceed \$95,000.00 at such time as the CITY has finalized the purchase of the and payment has been made to the private property owner.

2.2 The bill shall contain sufficient supporting documentation to show that the CITY owns the property necessary for the construction and operation of the future PROJECT.

2.3 The STATE agrees to make payment within thirty (30) days from receipt of the bill and supporting documentation from the CITY.

## **3. LEGAL RELATIONS**

3.1 It is understood that this AGREEMENT is solely for the benefit of the PARTIES hereto and gives no right to any other party. No joint venture, agent-principal relationship or partnership is formed as result of this AGREEMENT. No employees or agents of one PARTY or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees or agents of the other PARTY.

3.2 To the maximum extent permitted by law, the CITY shall defend, indemnify, and hold harmless the STATE and its officials and employees from all claims, demands, suits, actions and liability of any kind, including injuries to persons or damages (both to persons and property), that arise out of, are connected with, or are due to any negligent act or omission of the CITY or any of its officials or employees engaged in performing the work and responsibilities of this AGREEMENT; provided, however, that if (and only if) the provisions of RCW 4.24.115 apply and any such damages and injuries to persons or

property are caused by or result from the concurrent negligence of both PARTIES to this AGREEMENT, or their officials and employees, then in such instance each PARTY's obligation hereunder applies only to the extent of the negligence of such PARTY or its officials and employees.

3.3 The CITY specifically assumes potential liability for actions brought by the CITY's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CITY specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

3.4 The provisions of this section shall survive any expiration or termination of this AGREEMENT.

#### **4. RECORDS AND AUDIT**

4.1 The CITY shall maintain records and accounts pertaining to the purchase of the private property acquired under this AGREEMENT for a period of three years from the date of termination of this AGREEMENT. The records and accounts shall be maintained in accordance with a work order accounting procedure prescribed by the State Auditor's Office.

4.2 The records and accounts shall be made available for inspection and audit by representatives of the STATE upon request.

#### **5. DISPUTE RESOLUTION**

5.1 In the event that a dispute arises under this Agreement which can not be resolved between the PARTIES, the dispute shall be settled in the following manner:

Each PARTY to this AGREEMENT shall appoint a member to a dispute board. The members so appointed shall jointly appoint a third member to the dispute board whom is not employed by or affiliated in any manner with the two PARTIES to this AGREEMENT. The dispute board shall evaluate the facts, contract terms, and applicable statutes and rules and make a determination of the dispute. The determination of the dispute board shall be final and binding on the PARTIES hereto.

All costs associated with the appointment of the third party shall be shared equally between the two PARTIES

#### **6. VENUE**

6.1 In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action or proceedings shall be brought in the superior court situated in Thurston County, Washington.

#### **7. TERMINATION**

7.1 The STATE may terminate this AGREEMENT at any time prior to the property having actually been purchased if the STATE feels that the CITY is not moving forward in a timely manner or it is in the best interests of the STATE to do so.

7.2 The CITY may terminate this AGREEMENT for any reason by giving written notice to the STATE sent to:

Scott Witt  
State Rail and Marine Director  
WSDOT  
PO Box 47387  
Olympia, WA 98501

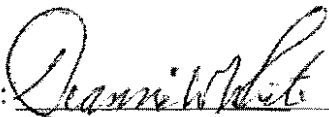
### 8. MODIFICATION

8.1 No modification of this AGREEMENT is valid unless evidenced in writing and signed by both PARTIES. No verbal agreement may supersede, replace or amend this section.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the day and year first above written.

CITY OF STANWOOD

STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION

By:   
Dianne W. White, Mayor

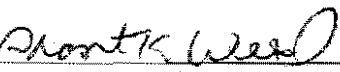
By:   
Scott Witt, State Rail and Marine Director

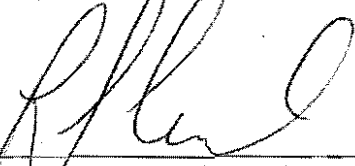
Date: 7-19-07

Date: 8/2/07

APPROVED AS TO FORM

APPROVED AS TO FORM

By:   
Grant K. Weed, City Attorney

By:   
Assistant Attorney General

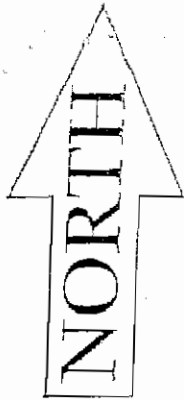
Date: 7-19-07

Date: 8/1/07

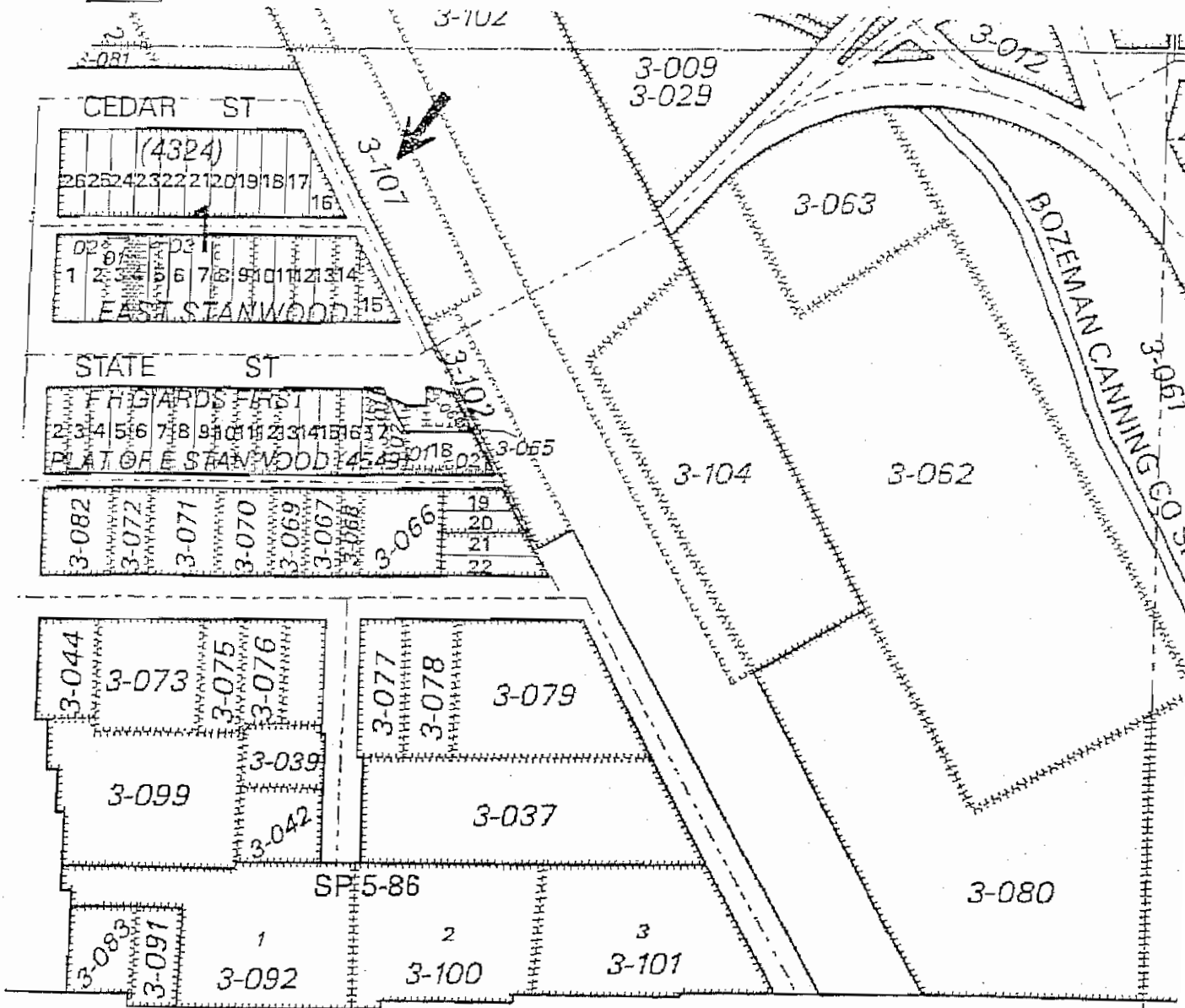
## EXHIBIT A

### Parcel 01843 (GN)

The Southwesterly 80.00 ft. of the Burlington Northern Santa Fe Railway Company's (formerly Great Northern Railway Company) 300.00 foot wide Station Ground property at Stanwood, Washington, being 200.00 feet wide on the Northeasterly side and 100.00 feet wide on the Southwesterly side of the Railway Company's Main Track centerline, as now located and constructed upon, over and across the N  $\frac{1}{2}$ , SE  $\frac{1}{4}$ , SW  $\frac{1}{4}$  of Section 19, Township 32 The Southwesterly 80.00 feet of the Burlington Northern Santa Fe Railway Company's North, Range 4 East, W. M., Snohomish County, Washington, lying between two lines drawn parallel with and distant, respectively, 20.00 feet and 100.00 feet Southwesterly, as measured at right angles from said Main Track centerline, bounded on the North by the North line of said N  $\frac{1}{2}$ , SE  $\frac{1}{4}$ , SW  $\frac{1}{4}$ , and bounded on the South by the Easterly extension of the North line of 271<sup>st</sup> Street, according to the plat of Stanwood, Washington.



ORDER NO. 182-75



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IMPORTANT: THIS IS NOT A PLAT OF SURVEY IT IS FURNISHED AS A CONVENIENCE TO LOCATE THE LAND HEREON WITH REFERENCE TO STREETS AND OTHER LAND. NO LIABILITY IS ASSUMED BY RELIANCE HEREON.