

**FIRST AMENDMENT TO  
THE SOUTH LINK DEVELOPMENT AND TRANSIT WAY AGREEMENT  
BETWEEN THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY  
AND THE CITY OF SEATAC**

**THIS** First Amendment is made by and between the City of SeaTac, a municipal corporation (“SeaTac” or “City”), and Central Puget Sound Regional Transit Authority organized under RCW 81.112 (hereinafter referred to as “Sound Transit”), to the Development and Transit Way Agreement executed between the parties on July 20, 2012.

**RECITALS**

**WHEREAS**, the City and Sound Transit entered into the Development and Transit Way Agreement for Sound Transit Central Link Light Rail South Link Project on July 20, 2012 (the “2012 Agreement”);

**WHEREAS**, the 2012 Agreement contemplated that the City could identify alternative mitigation measures to address Project impacts and that Sound Transit would contribute funding toward the alternative mitigation measures;

**WHEREAS**, pursuant to the 2012 Agreement, the City identified the City’s “Connecting 28<sup>th</sup>/24<sup>th</sup> Avenue South Project (ST-131)” as the alternative mitigation measure (the “Alternative Mitigation Measure”) and the parties entered into a Term Sheet on October 30, 2012 whereby the parties agreed that Sound Transit will contribute \$3,400,000 toward this Alternative Mitigation Measure upon successful completion of the milestones and other terms as provided in the 2012 Agreement and this First Amendment;

**WHEREAS**, the parties desire to enter into this First Amendment to revise the list of Project mitigation measures identified in the 2012 Agreement and provide for incorporation of certain applicable federal provisions into the 2012 Agreement and future agreements;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the City and Sound Transit do hereby agree to amend the 2012 Agreement as described below.

**1.0** Purpose of this First Amendment.

The purpose of this First Amendment is to amend the 2012 Agreement regarding Sound Transit’s responsibility for traffic and alternative mitigation measures with the City as a result of Sound Transit’s commitment to contribute funding to alternative mitigation measures described in the 2012 Agreement. In addition, this Amendment addresses issues pertaining to the culvert under South 200<sup>th</sup> Street when developing pedestrian/bicycle pathways along South 200<sup>th</sup> Street, and provides that Sound Transit will be responsible for construction of certain sidewalks along South 204<sup>th</sup> Street.

**2.0** Section 6.2 of the 2012 Agreement is amended as follows:

## 6.2 South 200<sup>th</sup> Street Station Improvements by Sound Transit

A. As part of the construction of the Project, Sound Transit will fund, design, and construct the South 200th Street Station Area Transportation Improvements limited to those listed below and shown in Exhibit F-1, attached and incorporated herein, PROVIDED THAT, the City may release Sound Transit from the obligation to fund, design, and construct certain of these improvements if Sound Transit funds the Alternative Mitigation Measure pursuant to this Agreement:

- (a) Frontage improvements on South 200<sup>th</sup> Street from International Blvd. to 26<sup>th</sup> Avenue South, including paved vehicular lanes, bike lanes, curb, gutter, sidewalk, storm drainage, illumination, and landscaping. Additional rights-of-way necessary to construct these improvements will be acquired by Sound Transit and dedicated to the City.
- (b) A new, dedicated right-turn lane for eastbound traffic on South 200<sup>th</sup> Street turning to travel southbound on International Boulevard. Additional rights-of-way necessary to construct these improvements will be acquired by Sound Transit and dedicated to the City. However, this mitigation measure is not required if Sound Transit contributes funding towards the Alternative Mitigation Measure referred to in Section 6.4.
- (c) A new traffic signal on South 200<sup>th</sup> Street located between International Boulevard and 26<sup>th</sup> Avenue S. to facilitate access/egress for the proposed parking garage at the South 200<sup>th</sup> Street Station, and improve station area traffic network performance.
- (d) Frontage improvements on 28<sup>th</sup> Avenue South between South 200<sup>th</sup> Street and the intersection of 28<sup>th</sup> and 26<sup>th</sup> Avenues South. Improvements will include paved vehicular lanes, curb, gutter and sidewalk, storm drainage, and illumination. Additional rights-of-way necessary to construct these improvements will be acquired by Sound Transit and dedicated to the City.
- (e) Frontage improvements on 28<sup>th</sup> Avenue South between South 200<sup>th</sup> Street and the south end of the Station platform. Permanent improvements will be constructed to match the future permanent roadway section defined by the City for 28<sup>th</sup> Avenue South between the south end of the Station platform and the intersection of 28<sup>th</sup> Avenue South and S. 204<sup>th</sup> Street. Improvements will include paved vehicular lanes, curb, gutter and sidewalk, storm drainage, and illumination. Additional rights-of-way necessary to construct these improvements will be acquired by Sound Transit and dedicated to the City.
- (f) Rebuilding of 28<sup>th</sup> Avenue South from the south end of the Station platform to South 204<sup>th</sup> Street, including reconstruction of the South 204<sup>th</sup> Street and 28<sup>th</sup> Avenue South intersection, to either:

i) “Urban Access” standards if Sound Transit does not make the Alternative Mitigation Payment described in Section 6.4, or

ii) “Local Access” standards if Sound Transit makes the Alternative Mitigation Payment described in Section 6.4

in accordance with the September 7, 2012 concept design plans, “South Corridor 30% Submittal: Roadway Improvements: 28<sup>th</sup> Avenue S./International Boulevard/S. 200<sup>th</sup> Street” including access for pedestrians along the rebuilt roadway connecting the S. 204<sup>th</sup> Street pedestrian crossing of International Boulevard with sidewalk/plaza abutting the Station’s eastern-most edge. Because facilities in the area in which this improvement will be located are planned to be demolished when the Light Rail Transit System extension to the Kent/Des Moines area is constructed, the improvement will be designed to a 10-year life-cycle and no permanent drainage improvements will be required to be part of its construction. The need for and definition of permanent improvements in this area will be addressed at such time that Sound Transit submits a new application for future extensions of the Light Rail Transit System.

- (g) Pedestrian/Bicycle pathways will be constructed within existing right-of-way limits along S. 200<sup>th</sup> Street to connect the western extent of improvements between International Blvd and 26<sup>th</sup> Avenue S with the trailhead of the Des Moines Creek Trail. Pedestrian crossing signs and warning devices will be installed at the trailhead’s driveway on S. 200<sup>th</sup> Street. In developing the pedestrian/bicycle pathways along S. 200<sup>th</sup> Street, the parties agree that the culvert carrying Des Moines Creek under S. 200<sup>th</sup> Street shall not be altered in any way that would increase coverage or shading of the Creek’s waters or impinge permanently upon the Creek’s buffer zone in such a way as would trigger the City’s, or other authority having jurisdiction, mitigation requirements during the permitting process. As a result the parties agree that at a minimum, an eight foot (8’) wide shared path on one side of South 200<sup>th</sup> Street will be provided across Des Moines Creek.
- (h) Improvements to I-5/Military/S. 200<sup>th</sup> intersection as negotiated between Sound Transit and WSDOT and approved by the City.
- (i) Lengthening the existing left- turn pocket for northbound traffic on International Boulevard turning to travel westbound on South 204<sup>th</sup> Street. The additional turn pocket length will be taken from the existing median such that no additional right of way will need to be acquired by Sound Transit. However, this mitigation measure is not required if Sound Transit contributes funding towards the Alternative Mitigation Measure referred to in Section 6.4.

- (j) South 204<sup>th</sup> Street: sidewalk infill on the south side of the street to provide continuous pedestrian connection between the western driveway of the Brookstone Apartments and International Boulevard.

**3.0** Section 6.3 of the 2012 Agreement is amended as follows:

6.3 South 200<sup>th</sup> Street Station Area Improvements by the City

In connection with the construction of the Project, and no later than May 31, 2013, Sound Transit shall contribute to the City a total lump sum amount of \$445,000 (“2030 Mitigation Payment”) to provide partial funding for the City to design and construct the South 200<sup>th</sup> Street Station Area Improvements depicted in Exhibit F-1. These improvements are intended to mitigate impacts to station area traffic. This contribution by Sound Transit will satisfy Sound Transit’s funding toward the following category of improvements:

- (a) Mitigations required in 2030: Sound Transit’s traffic studies indicate that growth in area background traffic will trigger the need for additional mitigating improvements by 2030. The City will be responsible for implementing mitigation measures required after the Project opens for revenue service, and Sound Transit shall contribute funding toward the total cost of such mitigation measures in proportion to the effect of light rail transit patrons’ driving to/from the Station upon area network performance, as depicted in Exhibit F-1. The 2030 Mitigation Payment is the true and full present value of Sound Transit’s contribution to the future cost of these capital improvements and shall fulfill all of its obligations to the City relating to the future traffic impacts of the Project described in this subsection.

Section 6.3 (a) defines Sound Transit’s financial responsibility for traffic mitigation measures required in 2030. The Alternative Mitigation Measure described in Section 6.4 will eliminate the need for many of the mitigation measures required in 2030, as identified in the Agreement. The amount of Sound Transit’s payment defined in 6.3 (a) will remain unchanged and the City will be solely responsible to determine the appropriate application of these funds, whether to the Alternative Mitigation Measure or to other, future mitigation measures.

**4.0** Section 6.4 of the 2012 Agreement is amended as follows:

6.4 Alternative Mitigation Measure

The City has identified an Alternative Mitigation Measure that will perform as well as, or better than, those identified above. Sound Transit will contribute to the City Three Million Four Hundred Thousand Dollars (\$3,400,000), which has been determined to be the full value of a mutually agreed upon portion of the funds, for

implementing the mitigation measures listed above in Sections 6.2(b), 6.2(i), and the difference in cost between Urban Access standards and Local Access standards identified in Section 6.2 (f), to the agreed-upon Alternative Mitigation Measure (the “Alternative Mitigation Payment”), PROVIDED THAT, the City shall be responsible for all design, environmental review, federal, state, and local permitting, and all other soft costs associated with the Alternative Mitigation Measure and for any construction costs that exceed the Alternative Mitigation Payment.

This alternative mitigation process depends upon timely implementation by the City for it to succeed. Time is of the essence with respect to the City’s deadlines below. Any failure by the City (other than schedule delays resulting from events of force majeure as described in Section 27.9) to meet the schedule set forth below shall render the alternative mitigation process terminable by Sound Transit at its election. Any election by Sound Transit to excuse one or more schedule failures by the City shall in no way limit its ability to terminate the alternative mitigation process in the event of subsequent failures. Termination by Sound Transit of the alternative mitigation process shall not release Sound Transit from its other obligations described in this Agreement. The identified Alternative Mitigation Measure must comply with the following implementation schedule milestones, unless otherwise agreed in writing by the Parties:

- (a) The City must be able to demonstrate secured funding for final design by June 15, 2013;
- (b) The City must have completed any required environmental review and executed a contract for final design by October 15, 2013;
- (c) The City must be able to demonstrate secured funding for construction by August 15, 2014; and
- (d) The City must award a construction contract, or demonstrate award of a construction contract by a partner agency or municipality, by April 15, 2015 with contract duration no greater than twenty-four (24) months.

If this alternative mitigation process is not terminated by Sound Transit, the Alternative Mitigation Payment will be made in the form of reimbursements for payments made by the City under the construction contract for the Alternative Mitigation Measure. The process to reimburse the City is set forth in Section 8.1 of this Agreement. Upon payment by Sound Transit pursuant to this Section of the Alternative Mitigation Payment, Sound Transit may request and the City shall provide a written release, executed by the City Manager, releasing Sound Transit from its mitigation obligations identified in Sections 6.2 (b) and 6.2(i) above, and the obligation to construct the mitigation identified in Section 6.2 (f) to “Urban Access” standards.

At Sound Transit's election, Sound Transit may deposit the entire Alternative Mitigation Payment into an escrow or other similar third party account that is acceptable to the City, and the City shall receive reimbursement described in the preceding paragraph through such an account. Upon depositing the Alternative Mitigation Payment into the escrow or other third party account, Sound Transit may request and the City shall provide the written release described in the preceding paragraph. Sound Transit shall pay any escrow fees associated with such account, and any interest accrued shall be the property of Sound Transit.

If the City terminates construction of the Alternative Mitigation Measure after Sound Transit has contributed some but not all of the Alternative Mitigation Payment, the Parties will work together to determine how the remaining unspent portion of the Alternative Mitigation Payment will be allocated to the projects described in Sections 6.2(b), 6.2(f), and 6.2 (i).

For purposes of this Agreement, the City's "Connecting 28<sup>th</sup>/24<sup>th</sup> Avenue South Project", (ST-131), is the Alternative Mitigation Measure.

**5.0** Sections 8.1 and 8.2 of the 2012 Agreement are amended as follows:

8.1 Reimbursement Procedures

- (a) Unless expressly stated otherwise, the procedures and requirements of this subsection shall apply to all subjects of reimbursement under subsection 8.2.
  - (i) The City shall invoice Sound Transit on a quarterly basis based on actual expenditures of staff time in excess of that typically covered by building permit and other administrative permit fees. The City shall provide Sound Transit with sufficient documentation to show that the direct costs invoiced to Sound Transit under this Agreement are for goods and services that would not have been covered by the amount of permit fees paid by Sound Transit or its contractors. Invoices shall bear a purchase order number (currently #136203) and be addressed to Sound Transit, Accounts Payable, 401 S. Jackson Street, Seattle, WA 98104. Within thirty (30) calendar days after Sound Transit's receipt of any complete and accurate City invoice, Sound Transit shall remit the reimbursement for the amount of valid expenditures.
  - (ii) The City is committed to work efficiently and will closely monitor the time required to complete work products consistent with the scope of work for the Project. As part of the quarterly invoicing, the City shall prepare and submit detailed monthly progress reports to Sound Transit. These monthly reports shall document tasks completed, changes in the scope of work assumed and upcoming challenges and projections of the next month's activities. These monthly reports shall be submitted within sixty (60) calendar days after the end of the month for which progress is being reported. The City and Sound Transit will provide active, ongoing

oversight to ensure that Sound Transit funds are expended efficiently, in a manner that adds value to the Project.

(iii) The City's Designated Representative, or other designated City official, shall coordinate requests for reimbursements by all City departments and offices.

(b) Unless expressly stated otherwise, the procedures and requirements of this subsection shall apply to all subjects of reimbursement under subsection 6.4.

(i) The City shall invoice Sound Transit on a monthly or quarterly (at the City's discretion) basis for reimbursement of payments made under the construction contract for the Alternative Mitigation Measure. The City shall provide Sound Transit (and escrow agent, if applicable) with a contractor pay estimate covering the period invoiced and documentation of electronic fund transfer payment to show that the costs invoiced to Sound Transit are for eligible construction costs. Invoices shall bear a purchase order number (currently #137518) and be addressed to Sound Transit, Accounts Payable, 401 S. Jackson Street, Seattle, WA 98104. Within thirty (30) calendar days after Sound Transit's receipt of any complete and accurate City invoice, Sound Transit shall remit the reimbursement for the amount of cost invoiced.

(ii) The City is committed to work efficiently and will closely monitor the time required to complete work products consistent with the scope of work for the Project. As part of the monthly or quarterly invoicing, the City shall prepare and submit detailed monthly progress reports to Sound Transit. These monthly reports shall document tasks completed, changes in the scope of work assumed and upcoming challenges and projections of the next month's activities. These monthly reports shall be submitted within sixty (60) calendar days after the end of the month for which progress is being reported. The City and Sound Transit will provide active, ongoing oversight to ensure that Sound Transit funds are expended efficiently, in a manner that adds value to the Project.

(iii) The City's Designated Representative, or other designated City official, shall coordinate requests for reimbursements by all City departments and offices.

## 8.2 Qualifying Subjects of Reimbursement

Sound Transit shall reimburse the City for the following three types of Project review costs:

(a) Peer Review. The cost of conducting peer review of the Project's noise & vibration report technical memorandum (dated June 30, 2011) and the parking demand study interim technical memorandum (dated January 14,

2011) for a total amount not to exceed Twenty-Six Thousand Dollars (\$26,000).

- (b) Structural Review. The cost of conducting structural review and approval of the Project's structural design but only to the extent that such review is not funded by permit fees paid to the City by Sound Transit and PROVIDED THAT, in no case shall Sound Transit pay the City more than One Hundred Fifty Thousand Dollars (\$150,000) over and above Project building permit fees for this type of review.
  
- (c) Staff Time Dedicated to the Project. In order to facilitate expedited review and approval of the Project, to obtain a higher level of service than the City would otherwise be able to provide with its existing staff, and to mitigate the direct financial impact of the Project upon the City, Sound Transit shall reimburse the City for the direct costs incurred by the City in excess of the City's typically anticipated costs associated with reviewing plans and performing construction inspections as provided in adopted application and permit fees. Upon selection of the Project contractor by Sound Transit, the parties shall work cooperatively in good faith to determine if any modifications to this subsection 8.2(c) are necessary regarding expenditures of future City staff time. For the purposes of this Agreement, "staff time" shall mean the time dedicated to the Project by regular employees of the City and employees of any consulting firm retained by the City to assist in facilitating expedited review and approval of the Project. Sound Transit agrees to reimburse the City for the three different categories of staff time as described in subsection (i) through (iii) below, subject to the limitations in subsection (iv), below:
  - (i) Sound Transit shall reimburse the City for the cost of City staff time dedicated to the Project during the period from November 2010 until July 20, 2012 (the date the Development Agreement was executed by the parties), PROVIDED THAT, Sound Transit's total financial reimbursement to the City under this subsection (i) shall not exceed One Hundred Fifty-Two Thousand Dollars (\$152,000), unless otherwise mutually agreed in advance by the Parties.
  
  - (ii) Sound Transit shall reimburse the City for that proportion of the salaries of City staff commensurate with the proportion of each staff member's time dedicated to the Project, as measured in FTEs (Full Time Equivalentents) during the period from the date after the Development Agreement is executed by the parties until one hundred twenty (120) days after the design/build contract for the Project is awarded by the Sound Transit board, PROVIDED THAT, the City shall dedicate no fewer than 2.5 FTEs to the Project during this period and FURTHER PROVIDED THAT, Sound Transit's reimbursement under this section (c)(ii) shall not exceed the cost of 3.8 FTEs regardless of the actual number of City staff dedicated to the Project.



- (iii) Sound Transit shall reimburse the City for that proportion of the salaries of City staff commensurate with the proportion of each staff member's time dedicated to the Project, as measured in FTEs (Full Time Equivalents) during the period from one hundred twenty-one (121) days after the design/build contract for the Project is awarded by the Sound Transit board and the date that Project revenue service begins, PROVIDED THAT, the City shall dedicate no fewer than 3.0 FTEs to the Project during this period and FURTHER PROVIDED THAT, Sound Transit's obligation under this section (c)(iii) shall equate to no less than eighteen (18) months of salary for the applicable dedicated staff, even if Project revenue service begins sooner, and FURTHER PROVIDED THAT, the City shall hire, and Sound Transit shall reimburse the City for additional staff dedicated to the Project if Sound Transit determines that 3.0 FTEs is not adequate and Sound Transit requests in writing that the City hire additional dedicated staff.
- (iv) Sound Transit's reimbursement to the City will be made for actual hours expended by city staff on the Project and documented by the City (excluding staff time covered by building permit fees as described in Section 8.2(c)), PROVIDED THAT, those hours of City staff assigned at less than 1.0 FTE each must exceed those covered by the permit fees paid by Sound Transit to the City, and FURTHER PROVIDED THAT, nothing in this subsection shall be construed to allow an increase in the not-to-exceed amounts set forth in subsections (i) through (iii) above.

**6.0** Section 10.18 of the 2012 Agreement is amended as follows:

10.18 Sound Transit's design and construction of the Project is subject to a financial assistance contract between Sound Transit and the Federal Transit Administration ("FTA"). In addition, the Alternative Mitigation Measure identified in Section 6.4 and depicted in Exhibit F-1 of this Agreement will be partially funded through a grant received by the City through the Federal Highway Administration (FHWA).

In order to prevent conflicts between FTA and FHWA federal provisions, it is agreed that the contracts related to the construction of the Alternative Mitigation Measure identified in Section 6.4 and depicted in Exhibit F-1 will incorporate only the FHWA federal requirements. In the event that compliance with applicable federal provisions would result in increased cost for mitigation measures or reimbursements described in Sections 6 or 8 of this Agreement, Sound Transit agrees to make reasonable adjustments to funding levels to cover the actual costs of the commitments made in this Agreement, unless mutually agreed otherwise by the parties. In addition, both parties recognize that the FTA may request further changes to this Agreement to comply with its funding requirements. The Parties agree to consider any such request in good faith.

**7.0** Section 6.5(e) of the 2012 Agreement is amended as follows:

(e) Sound Transit shall provide Fire/Life-Safety mitigation as provided in the concurrence letter, executed between Sound Transit and the City on May 21, 2012 attached and incorporated herein as Exhibit H. The parties agree that the federal procurement provisions listed on Exhibit M, shall apply to the City's procurement of fire apparatus as described in Exhibit H.

**8.0** The following exhibits to the 2012 Agreement are amended as follows:

Exhibit D is replaced in its entirety with the attached Exhibit D - 1.

Exhibit F is replaced in its entirety with the attached Exhibit F -1.

A new Exhibit M (Applicable Federal Provisions – Procurement) is added, a copy of which is attached to this First Amendment.

**9.0** Effect of this First Amendment.

Unless expressly revised by this First Amendment, all other terms and conditions of the 2012 Agreement shall remain in effect and unchanged by this First Amendment.

**IN WITNESS WHEREOF**, each of the Parties hereto has executed this First Amendment to the 2012 Agreement by having its authorized representative affix her or his name in the appropriate space below:

**CENTRAL PUGET SOUND  
REGIONAL TRANSIT AUTHORITY  
(SOUND TRANSIT)**

**THE CITY OF SEATAC**

By: \_\_\_\_\_  
Joan M. Earl, Chief Executive Officer

By: \_\_\_\_\_  
Todd Cutts, City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

Approved as to form:

By: \_\_\_\_\_  
Joanna Valeri, Legal Counsel

By: \_\_\_\_\_  
Mary Mirante Bartolo, City Attorney

Authorized by Motion No. \_\_\_\_\_

Authorized by Resolution No. \_\_\_\_\_