



Transportation & Public Works Committee Meeting Agenda AGENDA

Thursday, November 15, 2018
4:30 PM to 6:00 PM
SeaTac City Hall – Riverton Room

Councilmembers:
Peter Kwon, Chair
Rick Forschler
Pam Fernald

A quorum of the Council may be present

Staff Coordinators: Will Appleton, Public Works Director; Florendo Cabudol, City Engineer;

TIM E	TOPIC	PROCESS	WHO	TIME
1	Call to order		Chair	
2	Public Comment	Please raise your hand if you'd like to speak. Public comments are limited to 10 minutes total, 3 minutes per individual. Time may be reduced for each speaker in order to stay within the overall 10 minute time limit.	Chair	10
3	Prior Minutes Approval	Approve minutes from October 18.	Chair	5
4	Sound Transit DA Agreement, & Guideway Agreement	Presentation/Action	Anita Woodmass	20
5	South 216 th Hairpin turn Traffic Calming	Presentation/Action	Florendo Cabudol	20
6	WSDOT Land Exchange Agreement/Memo of Understanding	Presentation/Action	Will Appleton	20
7	Adjourn	Adjourn Meeting	Chair	



Transportation & Public Works Committee Meeting Minutes

**Approve Prior
Meeting Minutes**

Thursday, October 18, 2018
4:30 PM – 6:00 PM
SeaTac City Hall - Riverton Room 128

Members:	Present:	Absent:	Commence: 4:31 PM
			Adjourn: 6:01 PM
Peter Kwon, Chair			
Rick Forschler			
Pam Fernald			

Other Councilmembers in attendance: Joel Wachtel, Clyde Hill

Staff Coordinator: Will Appleton, Public Works Director; Florendo Cabudol, City Engineer;
 Other Staff Present: Don Robinett, Stormwater Compliance Mgr; Joe Scorcio, City Manager; Mark Johnsen, Sr. Asst. City Attorney; Kate Kaehny, Senior Planner; Anita Woodmass, Analyst

1. Public Comment	
2. Prior Minutes Approval	Committee approved minutes from September 20, 2018 T&PW September 20 minutes were approved to go to Regular Council Meeting for approval.
3. Overview of Draft NPDES Permit Requirements	<p><u>Presentation</u></p> <p>Don Robinett, Stormwater Compliance Manager, He presented a PowerPoint showing a high level overview of new program requirements and modifications that will be in the next phase of the Municipal Phase II NPDES permit, which will take effect August 1, 2019.</p> <p>New Program Requirements include</p> <ol style="list-style-type: none"> 1. Comprehensive Stormwater Planning 2. Source Control Program for Existing Development (AKA Business Inspection Program) <p>Modification of Existing Requirements</p> <ol style="list-style-type: none"> 1. Requires IDDE tracking details be uploaded to the Ecology Database; this is a duplication of effort as SeaTac already has a tracking database. The new draft permit language has no ramp up time; penalizes jurisdictions ho already have well-established

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database tracking systems; Estimated to cost the City \$20,000 to set up; no stated State benefit from the requirement.

2. New vesting language for development applications.

New stormwater standards go into effect 12/31/21. The draft permit language allows for vesting of applications submitted prior to 1/1/2017 where construction starts by 1/1/22. Draft permit language does not allow for vesting of applications submitted under existing standards (1/1/2017 – 12/30/21).

Complete permit language is expected to roll out in July 2019, going into effect August 1. If other changes come up between now and July, staff will bring this information before the Committee.

4. Permitted Uses of the Right of Way

Presentation

Will Appleton, Public Works Director, introduced the topic of “what is permitted in the right of way?” How do we as a City respond to situations where sidewalks in front of homes or businesses need repair, or if someone builds something in the right of way in front of their home (i.e., fence, shrubbery, or retaining wall).

What happens when something that a resident has built blocks sight distance? Do we grandfather things built that were from a long time ago, before cityhood? Do we treat all situations the same?

Code Compliance cannot enforce what we haven't adopted as policy.

The Committee recognized this as a large topic needing more discussion, and asked staff to schedule a future meeting just for this topic, and to invite the Sidewalk Committee and Code Compliance team. Staff is looking for a good date in early December. Staff will draft some possible policies items for discussion and revision by the group.

5. Complete Streets

Presentation

Florendo Cabudol, City Engineer, introduced this topic by sharing that the City adopted a Complete Streets Plan in 2011, and endorsed it by Resolution in 2012. What the City understood at that time by “Complete Streets” was that all streets would need to have all elements in them (i.e., bike lanes, sidewalks, pedestrian lighting, landscaping, etc.). We now know that not all elements have to be built into all streets to be a Complete Streets City, and that there are grant opportunities that we are potentially missing out on by not adopting this policy more fully. Instead, it is a “pallet of choices” that can be chosen from for each street project that is undertaken, rather than ad hoc choices.

The Committee is in favor of staff preparing a draft ordinance, and bringing it back to Council.

6. Resolution in Support of Autonomous Vehicles	<u>Action</u> Staff was asked at last Council Meeting to make several revisions to the resolution in support of Autonomous Vehicles. Will presented the revised changes, and Committee approved bringing the resolution back before the full council on October 23.
7. Adjourn	<u>Adjourn Meeting</u>

Approve Prior
Meeting Minutes



MEMORANDUM

To: Transportation and Public Works Committee
Through: William Appleton, Public Works Director
From: Anita Woodmass, City Manager's Office
Date: 11-09-2018
Subject: Sound Transit Agreements

Purpose:

Provide an update and overview of the key issues contained in the draft Development Agreement and Transit Way Agreement, to be entered into between the City and Sound Transit for the construction and operation of the Federal Way Link Extension (FWLE) Project.

Committee Action Requested: Staff is requesting the Committee recommend forwarding the Development Agreement to a public hearing to be held at RCM December 11, 2018.

Background:

The FWLE Project will connect the cities of SeaTac, Des Moines, Kent, and Federal Way to the existing Link Light Rail system at the Angle Lake Station.

The City is currently negotiating two documents with Sound Transit to allow for the FWLE project to be constructed and operated within City limits. These agreements are as follows:

1. Development Agreement.

See Attachment 1: Development Agreement

This agreement details the specific departures granted by the City and the 'terms and conditions' by which the project will be reviewed, permitted and constructed within the City. Sound Transit is intending to deliver the Project as a design-build procurement and has been coordinating with the City in preparation for Project design and construction.

The following issues/items are still in progress and under review:

- 8.2.A Buffering of At-Grade Track Corridor
- 8.6 Wetlands Mitigation Requirements
- 8.14 Column Type

- 8.2.A Buffering of At-Grade Track Corridor
- 8.6 Wetlands Mitigation Requirements
- 8.14 Column Type
- 8.15 International Boulevard Crossing
- 9.11 Project Permitting Plan
- 11.1 S 208th Street Dollar Amount
- 12.0 Minor Revisions to Project Approvals
- 16.3 Certificates of Insurance
- 16.4 Commercial Insurance
- 17.3 Claim of Ownership

2. Transit Way Agreement

See Attachment 3: Transit Way Agreement

Essentially this agreement acts as a 'Right-of -Way' (ROW) Permit as it grants Sound Transit a non-exclusive use of certain portions of the Public-Rights-of-Way. It allows for a Light Rail Transit Way to be constructed, operated, maintained, and owned upon, above, beneath and along the Light Rail Transit Way in accordance with the terms and conditions of the Agreement.

This agreement is in effect for the duration of the Light Rail System.

Disclaimer: This agreement will be subject to a final and comprehensive ST and City legal review upon mutual agreement of a final draft.

Note: City legal review will review both DA and TWA in entirety together to ensure there is no conflicting language or provisions.

**FEDERAL WAY LINK EXTENSION PROJECT DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF SEATAC AND SOUND TRANSIT
GA 0267-17**

This Development Agreement (“Agreement”) is entered into, by and between the CITY OF SEATAC (“City”), a Washington municipal corporation (“City”) and the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (“Sound Transit”), a regional transit authority. Under the authority of RCW 36.70B.170-210 and for and in consideration of the mutual covenants contained herein, the City and Sound Transit do hereby agree as follows regarding the Federal Way Link Extension Project (“Project”).

RECITALS

- A. The City is a non-charter optional municipal code city incorporated under the laws of the State of Washington, with authority to enact laws and enter into development and right-of-way agreements to promote the health, safety, and welfare of its residents.
- B. Sound Transit is a regional transit authority created pursuant to chapters 81.104 and 81.112 RCW with all powers necessary to implement a high capacity transit system within its boundaries in King, Pierce, and Snohomish Counties.
- C. This Agreement is authorized by RCW 36.70B.170 through .210. In addition, the City has adopted regulations governing development agreements, as set forth in sections 15.100.040 and 15.115.030 of the SeaTac Municipal Code (SMC), and those regulations allow a property owner to apply to the City to enter into a development agreement to address project development standards including, design standards, project phasing, review procedures, vesting, and other appropriate development requirements.
- D. The Growth Management Act (Chapter 36.70A RCW) requires that the City plan for and encourage high capacity transit facilities such as the Federal Way Link Extension (RCW 36.70A.020) and accommodate within the City such essential public facilities (RCW 36.70A.200). Likewise, the Growth Management Act grants authority to the City to impose reasonable permitting conditions on the Project.
- E. In November 2008, central Puget Sound area voters approved an extensive program of transportation projects to be implemented over the 15-year timeframe from 2009 – 2023 known as the Sound Transit 2 (ST2) Plan. Among other projects identified for implementation, ST2 included the extension of the Link light rail transit system from SeaTac to the cities of Kent

and Des Moines. In November 2016, voters approved an additional program of transportation projects, known as the Sound Transit 3 (ST3) plan. The ST3 plan included, among other projects, the extension of the Link light rail transit (LRT) system from its current terminus at the Angle Lake Station at S. 200th Street in the City of SeaTac to the City of Federal Way as part of the Federal Way Link Extension Project.

- F. Sound Transit and the City have signed a Term Sheet (attached and as incorporated as Exhibit A intended to address and document progress toward goals identified by the Sound Transit Board in Motion M2015-56, which directed Sound Transit staff to work with local jurisdictions in the corridor to identify and obtain commitments for permitting processes that would provide certainty and predictability for the Project, such as use of completed Sound Transit Environmental documents and FTA mitigation requirements, establishing a consolidated permit process, amending and resolving technical code requirements that are impractical or infeasible, supporting and accommodating the light rail system in land use plans and development regulations, and allowing for extended vesting or duration of land use approvals.
- G. On January 26, 2017, the Sound Transit Board adopted Resolution No. 2017-02, which defined and selected the Federal Way Link Extension alignment, profile, stations, and associated infrastructure to be built between S. 200th Street and the Federal Way Transit Center. This action also established the project definition for the Project's National Environmental Policy Act (NEPA) Record of Decision. The project description and alignment are depicted in Exhibit B.
- H. On July 27, 2017, the City and Sound Transit executed a City Services Agreement (attached and as incorporated as Exhibit C) establishing responsibilities for City participation in Project implementation and the means by which Sound Transit would reimburse the City for costs incurred for design review, permitting, and public right-of-way review and approval services as authorized by the terms of the City Services Agreement.
- I. Sound Transit is intending to deliver the Project as a design-build procurement ("Design-Build") and has been coordinating with the City in preparation for Project design and construction. In recognition of the multiple development permits and separate review processes, and the continuing potential for conflict, overlap, and duplication between such processes, the City and Sound Transit desire to consolidate permit and environmental review processes for the benefit of both parties and the public pursuant to the development agreement authority provided in RCW 36.70B.170-.210 and SMC 15.115.030. In addition, the City recognizes the public benefits which will accrue to the City and community from development of the property for the Project.
- J. Sound Transit has completed extensive environmental analysis of the Project in accordance with the National and State Environmental Policy Act (NEPA and SEPA). Sound Transit completed SEPA with the issuance of the Federal Way Link Extension Final Environmental Impact Statement ("FEIS") on November 18, 2016. The Federal Transit Administration ("FTA") issued a Record of Decision (ROD) on March 6, 2017 and the Federal Highway Administration (FHWA) issued a ROD on March 9, 2017 concluding the NEPA process.

- K. Sound Transit has adopted real property acquisition and relocation procedures and guidelines that comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 90-646, 84 Stat. 1894), as amended by the Uniform Relocation Act Amendments of 1987 (PL 100-17, 101 Stat. 246-256) and as implemented by the United States Department of Transportation (49 CFR 24), all of which establish a uniform policy for the expedient and consistent treatment of owners subjected to land acquisition practices and provide for the fair and equitable treatment of persons displaced as a result of public works programs or projects of a local public body (hereinafter the “Federal Regulations”). Pursuant to these policies and its statutory authority, Sound Transit has acquired or will acquire such real property interests as are necessary to construct, maintain, and operate the Project.
- L. Both Parties recognize the importance of extending the light rail system as part of the comprehensive program of regional transit improvements approved by voters and have mutually concluded that it is feasible to do so by 2024. Both parties will work in a collaborative effort to resolve any issues and risks to enable the Federal Way Link Extension Project to begin operations by 2024.
- M. Pursuant to RCW 36.70B.200 and SMC 15.115.030, the City held a properly noticed public hearing on ___DATE_____. The City Council determined that the proposed Project is generally consistent with the City’s development regulations and that any departures provided by this Agreement, including those outlined in Section 7, are offset by the benefits to be received from the Project; that the proposed Project conforms with the conditions of approval provided in SMC 15.115.030; and has authorized the City Manager to enter into this Agreement. Any further departures will be reviewed by the City on a case-by-case basis through a letter of concurrence and can be granted by amendment of this Development Agreement.

NOW THEREFORE, in consideration of mutual promises and covenants herein contained related to the approval of various development permits to Sound Transit to construct, operate, and maintain the Project, the Parties hereto agree to the terms and conditions as follows:

1.0 DEFINITIONS

For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning herein given where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. Reference to governmental entities, whether persons or entities, refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted as amended.

- 1.1 Agreement. “Agreement” means this Development Agreement approved by appropriate action of the City and of Sound Transit.
- 1.2 City. “City” means the City of SeaTac and any successor or assignee following an assignment that is permitted under this Agreement.
- 1.3 Design-Build Contractor. “Design-Build Contractor” means the entity or entities that will contract with Sound Transit to complete the design of the Project, to obtain all remaining permits for the Project, and to construct the Project, all based upon a design-build procurement method.
- 1.4 Design Submittal. “Design Submittal” means a set of design documents for the Project that have been or will be submitted to the City for review as the Project moves through various review and approval processes. The different phases of design submittal are:
 - a) “Preliminary Engineering (PE) Submittal” (30% Design Submittal) means the Design Submittal that was furnished to the City in 2017 prior to Sound Transit initiating a procurement process seeking the services of a Design/Build Contractor. These plans included conceptual design of the alignment. The City has already reviewed and provided written comment on this submittal. Sound Transit has provided a written response to the City indicating how the City’s comments have been resolved.
 - b) “Proposed Changes to the Preliminary Engineering Submittal” means a Design Submittal based on plans prepared as part of Sound Transit’s Design/Build Contractor selection process. This submittal will include any design changes to the “Preliminary Engineering (PE) Submittal” initiated by the Design/Build Contractor during procurement and/or initiated by Sound Transit in preparing the RFP. This will be provided to the City for conceptual review.
 - c) “60% Design Submittal” means a Design Submittal for a defined segment of the overall project that presents advanced details on items such as route alignment, utilities, and urban design concepts. These elements shall be identified by the DB at the time of submittal. 60% plans will also include basic concepts for other project elements that will be addressed in future submittals. This will also include the incorporation of the identified resolution to the city review comments received on the “Preliminary Engineering (PE) Submittal”.
 - d) “90% Design Submittal” means a Design Submittal reflecting advanced design for a defined segment of the overall Project, so that all reviewers can comment on specific details, as well as the overall scope of the Project prior to submittal of the Permit Submittal (100% Design). Items missing from this submittal should be minor and documented for reviewers.
- 1.5 Issued for Construction. “Issued for Construction” means a complete set of construction plans, drawings, and specifications that incorporate corrections to the Permit Submittal required by the AHJ for use by the Design-Build Contractor to construct the project.

- 1.6 Land Use Approvals. Approvals and/or entitlements authorized through procedures contained within SMC Title 14 and SMC Title 15 **that** set conditions for the establishment and operation of a use of land.
- 1.7 Over-the-Shoulder Review. “Over-the-Shoulder Review” means the informal and ongoing review of evolving design concepts and plans developed during the Project construction phase.
- 1.8 Parties. “Parties” means the City of SeaTac and the Central Puget Sound Regional Transit Authority.
- 1.9 Permit Submittal (100% Design). “Permit Submittal” means a Design Submittal illustrating detailed plans for all work proposed in the permit application. This may include utility relocation improvements, new traffic signaling plans, grading and landscaping plans, and all work to be completed as part of the Project.
- 1.10 Project. “Project” or “Federal Way Link Extension Project (FWLE)” means the light rail system as described and depicted in Exhibit B, attached and incorporated herein, and as approved by the City pursuant to the approvals described in this Agreement.
- 1.11 Project Requirements. “Project Requirements” means the requirements included within documents provided at the time of the Project’s RFQ/RFP that must be met by the Project’s D/B Contractor, and specify the capabilities, features or attributes, etc. of the Project’s deliverables as they relate to completing the Project and its objectives.
- 1.12 Sound Transit. “Sound Transit” means the Central Puget Sound Regional Transit Authority, and any other entity to the extent such entity, as permitted under this Agreement, is exercising any rights to operate the Light Rail Transit System over any portion of the Light Rail Transit Way pursuant to a specific written grant of such rights by Sound Transit.

2.0 COOPERATION AND GOOD FAITH EFFORTS

- 2.1 Cooperation. The Parties understand and agree that the activities described in this Agreement depend upon timely and open communication and cooperation between the Parties. In this regard, communication of issues, changes, or problems that arise with any aspect of the work should occur as early as possible in the process, and not wait for explicit due dates or deadlines. Each Party agrees to work cooperatively and in good faith toward resolution of any such issues.
- 2.2 Future Agreements. The Parties acknowledge that this Agreement may contemplate the execution and delivery of a number of future documents, instruments, and permits, the final form and contents of which are not presently determined. The Parties agree to provide the necessary resources and to work in good faith to develop the final form and contents of such documents, instruments, and permits, and to execute and deliver the same promptly.
- 2.3 Timely Review. The City will provide timely review by both dedicated and regular City staff of all permit applications necessary to complete the Project, subject to the City’s applicable process and regulations. This includes Sound Transit’s payment of applicable permit fees and

reimbursement for City staff time as consistent with the executed City Services Agreement for the Project.

- 2.4 Community Concerns. As a matter of course, ST will be responsive to any concern, issue, complaint, or other communication ST receives during construction, without regard to the location of the individual lodging the complaint or communication.

3.0 PROJECT LOCATION AND ELEMENTS

- 3.1 FWLE Project. As described in the Project’s FEIS, the purpose of the Project is to expand the Sound Transit Link light rail system from the City of SeaTac to the cities of Des Moines, Kent, and Federal Way in King County in order to provide a rapid, reliable, accessible, and efficient alternative for travel to and from the corridor and other urban growth and activity centers in the region. When constructed, the Project will provide a connection south from the existing Angle Lake Station crossing to the east in a manner that allows for the future construction of the SR 509 Extension Project by WSDOT. It would proceed generally within I-5 right-of-way to the Project’s terminus in the City of Federal Way. Three new LRT stations will be constructed as part of the Project with associated improvements for parking, pedestrian, bicycle, bus and other access improvements.

- 3.2 Roadway Improvements. In the City of SeaTac, specific improvements to be included as part of the Project include:

- Re-pave 28th Ave S. (just south of 204th St) to connect to Port of Seattle-owned parcels.
- Restore and re-pave S. 208th Street to serve existing access needs.
- Construct a new S. 211th Street cul-de-sac turnaround and new sidewalk.
- Reconstruct 32nd Ave South, including new sidewalk on the west side.
- All Roadway improvements listed above will include installation of new street lighting and pedestrian lighting along the entire length of the improvements.

4.0 SEPA COMPLIANCE

Sound Transit is the lead agency for compliance with SEPA. In coordination with the City, Sound Transit has completed the substantive and procedural environmental review for the Project in accordance with SEPA requirements. The environmental review covers the City’s issuance of permits for the Project as well as environmental mitigation (see Exhibit D), and the City intends to rely upon the existing environmental documents to satisfy its SEPA responsibilities, consistent with WAC 197-11-600. The foregoing is not intended to limit the City’s authority to impose reasonable permit conditions pursuant to its development regulations.

5.0. PROJECT SCHEDULE

The City is aware of the Project schedule with passenger revenue service projected to begin in 2024, and the criticality of meeting schedule milestones in order to deliver the Project efficiently and effectively and consistent with expectations of the region’s citizens, as expressed in voter-approved ballot

measures (ST2 and ST3). Sound Transit will share with the City updates to the Project Schedule and coordinate changes to this Project schedule that may impact the City and/or Port operations.

6.0 ESSENTIAL PUBLIC FACILITY REQUIREMENTS

The Parties agree that the Project is a regional transportation facility that has the status of an essential public facility (“EPF”) and that the requirements of RCW 36.70A.200 are applicable.

7.0 ONGOING COORDINATION

- 7.1 Impact on Businesses. Sound Transit will exercise its reasonable best efforts as outlined in the plans required under Section 9.1 to minimize impacts of construction activities upon current and future business operations, traffic circulation, pedestrian and bike access and pending development opportunities in the Project area.
- 7.2 WSDOT 509 Coordination. Sound Transit will co-ordinate with the WSDOT 509 project to identify opportunities to further minimize construction-related impacts to the SeaTac community.
- 7.3 Construction Updates. Sound Transit will provide regular updates to the SeaTac City Council and regularly scheduled community and business briefings regarding the progress of Project construction.
- 7.4 Resolution of Deed Restriction. Sound Transit is committed to working in good faith with the City and King County to satisfactorily resolve the deed restriction placed on Parcel #5083000070 (identified in the Project’s Final EIS as required for Project construction) entailing its use for public open space. This will include working cooperatively on a letter of intent clarifying the City’s actions regarding acquisition of suitable replacement property.
- 7.5 Surplus Property. Sound Transit will keep the City apprised of the process of identifying any property acquired for Project construction that may, in the future, be identified as surplus. If surplus property is identified, Sound Transit will keep the City apprised of the process and timeline for its disposition.
- 7.6 Property Management. Once Sound Transit obtains ownership of a parcel with an inhabitable structure, Sound Transit’s property Management (PM) Division will take all necessary measures to secure the property. The property will be actively managed by Sound Transit’s Police Department, Sound Transit Security, and the PM Division through routine patrol, inspection and maintenance of the exterior of any buildings and grounds. If issues arise, such as unauthorized residents or pest infestations, Sound Transit’s PM Division will address them using a variety of methods, such as boarding windows, erecting additional fencing, or addressing infestations of pests. The Sound Transit PM Division has a policy of responding to complaints within 48 hours of their receipt. If the issues persist, the property will be recommended by the PM Division for early demolition through an accelerated contractor award process and a coordinated permit approval process. After the demolition of structures, Sound Transit’s PM Division will take measures to restore the site and provide routine site maintenance thereafter.

8.0 DEVELOPMENT STANDARDS

- 8.1 Land Use Approval. Pursuant to RCW 36.70B.170 through 36.70B.210, as amended, as well as SMC 15.100.40, the City may enter into a Development Agreement with Sound Transit for the Project. Under the terms and conditions of this Agreement, and in an effort to streamline the permitting process and avoid duplication, the City determines that this Agreement and associated public hearing satisfy the conditional use permit process required for high capacity transit facilities. The City hereby determines that no additional Land Use Approvals are required for the Project. Sound Transit understands that this land use approval shall not be deemed to exempt the Project from any other applicable regulations or permits, and this Agreement contains such reasonable conditions as necessary to ensure the EPF satisfies the City's land use approval criteria.
- 8.2 Pre-Final PE. The City has determined that the Project as represented in the Pre-Final PE Submittal dated September 2016, and incorporated by reference, is generally well-designed. The City is allowing specific and limited departures from development regulations because the Project will be providing a benefit to the City of an equal or greater value relative to the standards from which departure is being allowed. The Land Use Codes (SMC 15) in effect at the time of the effective date of this Agreement are applicable to the project, however, the City hereby allows departures from the following codes and standards:
- 8.2.A. SMC 15.530.220 (A)(1)– Buffering of At-Grade Track Corridor. Language in Process with ST and City.
- 8.2.B. King County Road Design & Construction Standards – 2016, Section 5.03 (D)(6) – Street Trees and Landscaping. Sound Transit is requesting a departure from the referenced code's requirement to provide only temporary landscaping irrigation. This departure accommodates the City's request for permanent landscaping irrigation in City rights-of-way that will be connected to the existing permanent irrigation system.
- 8.2.C. King County Road Standards – Section 5.10. To protect the LRT guideway as well as roadway users, a barrier, rather than a clear zone, will be provided as mitigation for the placement of a LRT guideway pier in the median of International Boulevard South (SR 99). The barrier type will be proposed by Sound Transit's Design-Build Contractor and submitted for City review.
- 8.3 Regulation of Critical Areas in WSDOT ROW. Within the City, the Project is located partially within WSDOT (Interstate 5) right-of-way. Recognizing that RCW 47.52.090 gives exclusive regulatory jurisdiction to WSDOT of wetlands impacts within WSDOT rights-of-way, and that wetland impacts within WSDOT rights-of-way will be regulated and mitigated as required by the United States Army Corps of Engineers and the Washington State Department of Ecology, the City has determined that it will only regulate Critical Areas that are not within WSDOT rights-of-way for the Project. Sound Transit shall provide documentation to the City demonstrating compliance with applicable federal and state regulations for impacts to wetlands and streams within WSDOT rights-of-way upon request.

- 8.4 Early Review of Critical Areas Report. The City will provide preliminary review of Critical Areas Report prior to the Site Engineering application process which will be initiated by the Design-Build Contractor. All Critical Areas Report will include Pre-Final PE level of design and will document consistency with applicable City codes and standards. All Critical Areas Report and any subsequent changes will be included at the time of the Site Engineering permit submittal by the Design-Build Contractor.
- 8.5 Acceptance of the Critical Area Report. The City will accept the results of any Critical Area Report required pursuant to SMC 15.700.100 (A) and will not require peer review of the report if the credentials of the Qualified Professional utilized by Sound Transit to prepare the report meet or exceed requirements of the City's roster of qualified professionals.
- 8.6 Wetlands Mitigation Requirements. Language in Process with ST and City.
- 8.7 Vesting. The vesting described in this Agreement shall apply for ten years from the date of execution of this agreement or the start of service, whichever is earlier. During this period the City shall neither modify nor impose new or additional development regulations or standards for the Project, except as otherwise provided in this Agreement, or if other county, state or federal laws preempt or otherwise preclude the City's authority to vest regulations. The City reserves the authority to impose new or different officially adopted regulations, only if, and to the extent required by a serious threat to the public health and safety, as determined by the City Council after notice and an opportunity to be heard has been provided to Sound Transit unless the threat is so immediate that notice is not practical in the short term, due to the imminent threat to public health and safety. To the extent this Agreement does not establish or define development regulations or standards covering a certain subject, element, or condition, the Project shall be governed by the City development standards and regulations in effect on the date of execution of this agreement.
- 8.8 Codes in Effect. The codes and editions that will be used for the entirety of this Project's Design, Construction, and Operation are specified in Exhibit F, and are specified in Section 2.2 of the Project Requirements issued to Sound Transit's Design-Build Contractor.
- 8.9 Stormwater Drainage. Storm water drainage from the Project shall be addressed as provided in the concurrence letter executed between the City and Sound Transit dated August 23, 2017, attached and incorporated herein as Exhibit G.
- 8.10 Local Roadways. Local roadway cross-sections to be improved by Sound Transit shall be constructed in accordance with the concurrence letter addressing this subject and executed between the City and Sound Transit dated October 25, 2017, attached and incorporated herein as Exhibit H.
- 8.11 Nuisance Parking. Sound Transit will work with the City to limit the potential for any 'hide and ride' parking activity related to the design of Project facilities, understanding this potential is limited in the City of SeaTac as the Project has no new station construction.
- 8.12 Fencing. Any permanent fencing installed by Sound Transit shall be black vinyl coated chain link or architectural fencing. No barbed wire will be used on the Project. In places where temporary

construction fencing is to be installed for more than one year in one location, the fencing shall incorporate fabric screening. Sound Transit will limit the duration for placement of temporary fencing to a period not to exceed five years.

8.13 Tacoma Smelter Plume. Sound Transit shall implement the recommendations of the Department of Ecology pertaining to testing and remediation of soils contaminated by the Tacoma Smelter Plume.

8.14 Column Type. Language in Process with ST and City.

8.15 International Boulevard Crossing. Language in Process with ST and City.

9.0 DESIGN REVIEW AND PERMITTING AND INSPECTION

9. .1 Project Administration

9.1.1 City Project Liaison. The City shall assign a City staff contact for the Project (“City Project Liaison”). The City Project Liaison shall provide central coordination of all Design Submittal reviews and comments from all involved City departments and storm water utilities, and shall be an effective and empowered conduit between Sound Transit and other City staff per the Customer Service Agreement dated July, 2017. The City Project Liaison shall resolve any inconsistencies among review comments from the City departments and City utilities and shall provide Sound Transit with consistent and consolidated review, comments, and decisions. In addition to these tasks, the City Project Liaison shall participate in regularly scheduled project-level meetings. The City Project Liaison shall also be responsible for identifying and disclosing to Sound Transit as soon as practicable any other projects or proposals (e.g., utility projects, transportation projects, private development projects) that have the potential to conflict or interfere with the expeditious design and construction of the Project.

9.1.2 ST Liaison. Sound Transit will assign a Sound Transit staff contact for the Project (“ST Liaison”). The ST Liaison shall provide central coordination for Project Design Submittals and Project coordination. In addition to these tasks, the ST Liaison shall participate in regularly scheduled project-level meetings.

9.2 Design-Build Contractor. Sound Transit shall obtain approval from the City for construction of the Project through submittal of the appropriate applications, fees and Design Submittals as described in this Agreement. The City acknowledges that Sound Transit will be procuring this Project using design-build procurement method and further acknowledges that the Design-Build Contractor and their sub-contractors may, at Sound Transit’s discretion, make any of the required submittals on Sound Transit’s behalf. In that regard, references to “Sound Transit” herein shall be interpreted to mean “Sound Transit” or its Design-Build Contractor, at Sound Transit’s discretion unless the context clearly requires otherwise.

9.3 Over-the-Shoulder Review. Sound Transit, the City, and Sound Transit’s Design-Build Contractor will participate in on-going Over-the-Shoulder reviews throughout the design process. City participation will be facilitated by the City’s Project Liaison (described in Section 9.1.1), who may be co-located at the Project job office and whose primary function will be to identify and work

to resolve issues to support the design process and development of plans that satisfy the City's permitting requirements.

- 9.4 Proposed Changes to the Preliminary Engineering Submittal. ST will provide to the City for conceptual review a package highlighting significant changes to the Project design proposed during the Design/Build Contractor procurement process and/or changes that were initiated by Sound Transit in preparing the RFP. The purpose of this submittal is to establish a baseline for the Project design that the Design/Build Contractor will continue to advance. This will be provided to the City for conceptual review.
- 9.5 60% Design Submittal. ST will provide to the City for review and comment a 60% Design Submittal for each design package (as identified by the Design/Build Contractor as part of its Permitting Plan, and as agreed by the City) incorporating a narrative and clouding changes pursuant to the City's review comments of the Preliminary Engineering Submittal. The City shall perform a review of the submittal and return its unified comments and corrections on the designs, plans, and specifications from all relevant City departments to Sound Transit within a mutually-agreed upon timeframe after receipt of the submittal. The timeframe for review will be determined and agreed upon by the Parties when the Project Permitting Plan is developed and approved (see Section 9.11); however, the City and Sound Transit acknowledge the need for expeditious review of Design Submittals and are committed to this goal. Sound Transit will reimburse the City for time spent to review of the submittal, pursuant to the City Services Agreement and its subsidiary Task Orders. If deemed necessary by the Parties, and after the City's review of the 60% design plans, Sound Transit's Design/Build Contractor will convene a comment resolution meeting to inform the City of how issues have been resolved and to discuss the options for resolving the issues.
- 9.6 90% Design Submittal. ST will provide to the City for review and comment a 90% Design Submittal for each design package (as identified by the Design/Build Contractor as part of its Permitting Plan, and as agreed by the City) incorporating a narrative and clouding changes pursuant to the City's review comments on the 60% Design Submittal. The Design/Build Contractor has the option to obtain an appointment with the City's permit process team to discuss the submittal prior to review by the City. The City shall perform a review of the submittal and return its unified comments and corrections on the designs, plans, and specifications from all relevant City departments to Sound Transit within a mutually-agreed upon timeframe of receipt of the submittal. The timeframe for review will be determined and agreed upon by the Parties when the Project Permitting Plan is developed and approved (see Section 9.11); however, the City and Sound Transit acknowledge the need for expeditious review of Design Submittals and are committed to this goal. Sound Transit will reimburse the City for time spent reviewing the submittal, pursuant to the City Services Agreement and its subsidiary Task Orders. If deemed necessary by the Parties, and after the City's review of the 90% design plans, Sound Transit's Design/Build Contractor will convene a comment resolution meeting to inform the City of how issues have been resolved and to discuss the adequacy of or other options for resolving the issues.
- 9.7 100% Design Submittal. This submittal is intended as the Permit Submittal. Each permitting package will be submitted with 100% design plans for the subject project element, incorporating

a narrative and clouding changes pursuant to the City's review comments from the 90% design submittal. The City shall perform a review of the submittal and return its unified comments and corrections on the designs, plans, and specifications from all relevant City departments to Sound Transit within a mutually-agreed upon timeframe of receipt of the submittal. The timeframe for review will be determined and agreed upon by the Parties when the Project Permitting Plan is developed and approved (see Section 9.11); however, the City and Sound Transit acknowledge the need for expeditious review of Design Submittals and are committed to this goal. After the City's review of the 100% design plans, Sound Transit's Design/Build Contractor will convene a comment resolution meeting to inform the City of how issues have been resolved and to discuss the adequacy of or other options for resolving the issues.

- 9.8 Issued for Construction. The IFC set of drawings will serve as the basis for construction activities and field inspections. It will incorporate any required corrections based on review of the Permit Submittal, upon which the Design-Build Contractor will rely in constructing the Project, including, but not limited to a complete set of construction plans, drawings, and specifications.
- 9.9 Role of City Liaison. The Parties contemplate that the ongoing, collaborative Over-the-Shoulder review (see Section 9.3) will keep the City's Project Liaison apprised of the latest developments in the design. The City's Project Liaison will coordinate review required by other City staff as a means of seeking feedback from the City. To the extent that disputes arise about how a design correction should be resolved or whether a design correction is appropriate, the Parties shall use the dispute resolution process in Section 15.
- 9.10 Sound Transit Responsibility. While the Design-Build Contractor will perform final design work, Sound Transit retains responsibility for ensuring that the City receives prompt responses to requests for additional information or changes to documents, plans, specifications, and drawings.
- 9.11 Project Permitting Plan. Language in Process with ST and City.
- 9.12 Permits and Licenses: Sound Transit, at its sole cost and expense, shall (i) secure and maintain in effect, all federal, state, and local permits and licenses required for the construction, operation, and maintenance of the Light Rail Transit System, including, without limitation, crossing, zoning, building, health, environmental, and communication permits and licenses, and (ii) indemnify the City against payment of the costs thereof and against any fines or penalties that may be levied for failure to procure, or to comply with, such permits or licenses, as well as any remedial costs incurred by the City in curing any such failures.
- 9.13 Non-Interference: The City shall not intentionally interfere with Sound Transit's ability to secure, obtain, and maintain, at Sound Transit's sole cost and expense, any permits, licenses or approvals of other governmental agencies or authorities, or of any necessary Third Parties, for the use of any structures or facilities, including streets, roads, or utility poles.
- 9.14 Inspection:
- 9.14.1 Sound Transit-Owned Facilities to be retained by Sound Transit. Sound Transit shall be responsible for inspection and acceptance of work for facilities constructed by Sound

Transit's Design-Build Contractor for which Sound Transit shall have ownership, operating, and maintenance responsibilities. These facilities may include, but are not limited to: LRT track and guideway, including all appurtenances such as catenary poles and wires, fencing and other barriers, train signals and other equipment necessary for operations), LRT structures including bridges, abutments, retaining walls, and noise barriers constructed to mitigate the results of LRT-generated airborne noise, traction power substations and signal bungalows.

9.14.2 Sound Transit Owned Facilities to be Dedicated to the City. The City shall perform review and inspection of work performed by the Design-Build Contractor for facilities that will be owned and maintained by the City following completion of construction. These facilities may include, but are not necessarily limited to: street lighting standards, traffic signal poles and signal boxes, streets, sidewalks, curbs and gutters, and other infrastructure in the City's public rights-of-way.

9.14.3 Sound Transit-Owned Facilities in City Right-of-Way. The City shall review and perform field verification of Sound Transit structures as part of the ROW use permit and related civil plan review to ensure that impacts to City ROW and City facilities are addressed and/or mitigated.

10.0 CONSTRUCTION

10.1 Design-Build Contractor Mitigation Plans: It is acknowledged by the Parties that Sound Transit shall require the Design-Build Contractor in conjunction with the City and Sound Transit to develop mitigation and other plans that will be of interest to the City, businesses, property owners, and its residents. The following mitigation plans shall be required of Sound Transit's Design-Build Contractor and shall be submitted to the City for review, comments and concurrence prior to acceptance by Sound Transit. The City shall have 15 business days in which to complete its review of the mitigation plans submitted.

- Emergency Response Plan – Sound Transit to submit to the City a copy of an Emergency Response Plan that addresses the construction period.
- Transportation Management Plan – Specifying the Design-Build Contractor's overall strategy for managing issues related to transportation during construction.
- Maintenance of Traffic Plan – Specifying provisions for safely and adequately maintaining traffic during construction, including vehicular, pedestrian, bicycle and transit traffic.
- Construction Noise and Vibration Mitigation Plan – Specifying means and methods implemented by the Design-Build Contractor to minimize noise and vibration during construction.
- Construction Outreach and Communication Plan – Specifying Design-Build Contractor requirements for advance notification of construction activities and

other actions that are of interest to the community, which shall include the following features:

- A 24-hour monitoring center that provides telephone access for the public to get construction information and to make complaints and incident reports.
- A multi-media public information program to provide information regarding street closures, hours of construction, business access, and parking impacts.
- Current information on how access to businesses is being maintained during construction.
- Current information on how access for pedestrians, bicyclists, and transit riders is being maintained.
- Coordination with property owners regarding private property impacts arising as a result of Project construction activities, which will include, if needed, information on how business owners and residents can file insurance claims in the event of issues arising from Project construction.

- 10.2 Contractor Haul Routes: Sound Transit and the City have worked cooperatively to identify construction contractor haul routes that may be used to transport materials and equipment necessary to construct the Project while minimizing impacts to City businesses and residents. These haul routes are depicted in Exhibit J and the City shall issue permits for these haul routes for use by Sound Transit's Design-Build Contractor. In the event that the Design-Build Contractor proposes the use of alternate routes to Sound Transit, Sound Transit shall obtain the City's concurrence and permission prior to accepting the Design-Build Contractor's proposal.
- 10.3 Construction Detour Routes: Sound Transit and the City have worked cooperatively to identify traffic detour routes that may be used as necessary when roads are closed due to construction activities. These detour routes are depicted in Exhibit K and the City shall permit use of them by Sound Transit's Design-Build Contractor. In the event the Design-Build Contractor proposes the use of alternate detour routes to Sound Transit, Sound Transit shall seek the City's concurrence and permission prior to accepting the Design-Build Contractor's proposal. Full daytime (5am – 9pm) closures of International Boulevard shall not be permitted. A diversion of International Boulevard shall be used by the Design Build Contractor to eliminate the need for full closures of International Boulevard. If International Boulevard is required to be closed entirely to traffic during night time hours, the Design Build Contractor will be required to obtain City concurrence. The City shall not allow International Boulevard to be closed for work that could otherwise have been performed using the diversion identified in Exhibit K.
- 10.4 Contractor Work Hours: The Parties acknowledge that Sound Transit's Design-Build Contractor may propose work outside of the City's standard permissible days and/or hours for construction. In the event such a proposal is received by Sound Transit from their Design-Build Contractor, the ST Liaison will work closely with the City's Project Liaison to consider the request and to

facilitate the process of seeking a City work days, work hours, and/or noise variance, as appropriate.

- 10.5 Restoration of Contractor Haul Routes: Sound Transit shall restore the existing roadway pavement and other surface infrastructure within the public right-of-way that is affected by construction activities. Specifically, Sound Transit shall require its Design-Build Contractor to restore construction haul routes used by their Design-Build Contractor in the City. This commitment to restoration of haul routes shall consist of provision of a 2-inch mill and overlay of asphalt to be laid down after the cessation of Design-Build Contractor hauling activities on the route and prior to substantial completion of Project construction. This 2-inch mill and overlay shall be provided from curb to curb including reapplication of all striping and paving markings along the route and shall be the extent of any agreed-to restoration, with the exception of the need to provide new or improve any existing non-compliant ADA curb ramps where sidewalks are present.

In lieu of Sound Transit performing restoration of the Contractor Haul Routes, the City has the option of a fee-in-lieu payment from Sound Transit for any or all of the streets used as Project haul routes. Sound Transit is to provide written notice to the City a minimum of 30 days in advance of submittal of a ROW permit to allow the City to choose to require a fee-in-lieu payment from Sound Transit. The City shall notify Sound Transit in writing of this choice and for which (if not all) of the Contractor haul routes this payment shall apply. The payment shall be calculated using the most recent, credible bid received by the City for similar work or by using the deductive amount Sound Transit receives from their Design-Build Contractor including the addition of administrative fees, or some other methodology agreed to by the Parties. In no event will payment in lieu of haul route restoration be made by Sound Transit once restoration has commenced.

- 10.6 Lay Down Areas: Sound Transit shall obtain permits for construction lay down areas in accordance with City code. The two properties known as the 'Triangle TOD' site (King County Parcel #042204-9287) and the 'Hattaway surplus property' (King County Parcel #344500-0040) shall not be used as lay down areas.
- 10.7 Progress Reports. Sound Transit agrees to provide the City with copies of progress reports, status reports, construction contract reports, inspection reports, RFI logs, submittal logs, and schedule updates as generated by the Design-Build Contractor and as required in the construction contract for the Project, unless the City advises Sound Transit the such information does not need to be provided.
- 10.8 Access for Maintenance. In the event the City has reason to believe the presence of Sound Transit's Design-Build Contractor inhibits or impedes the City's ability to access areas within the Project construction limits for City purposes of maintenance and upkeep, the City Project Liaison shall provide notice to Sound Transit. Upon such notice, Sound Transit shall have responsibility to maintain the area having limited access to the satisfaction of the City, until such time as the impediment is removed.

11.0 PARTNERSHIP OPPORTUNITIES FOR OTHER IMPROVEMENTS

11.1 South 208th Street. S 208th Street shall be constructed in accordance with the concurrence letter addressing this subject and executed between the City and Sound Transit dated XXXX X, 2018, attached and incorporated herein as Exhibit L. To satisfy the City of SeaTac's adoption of King County Road Standards – Section 1.05, which requires urban street section improvements (including sidewalks) and which the Parties have agreed will not be provided as part of Project construction in order to best accommodate the WSDOT 509 project, Sound Transit will make a fee-in-lieu payment. The fee will be based on the estimated costs for the code-required improvements, specifically design services, right-of-way acquisition, and construction costs for the code requirements that will not be built at this location. The fee-in-lieu payment will be a lump sum payment in the amount of \$(Amount In Process with ST and City) and will be payable by Sound Transit to the City by December 31, 2019. The City and Sound Transit will continue to coordinate with WSDOT regarding the delivery of the SR 509 project and how this may affect the construction of S. 208th Street.

11.2 Monument Signage. As part of partnership efforts with the City, Sound Transit will construct a foundation and a conduit pathway for associated lighting for a monument sign (general dimensions of [Size to Be Determined Between ST and City]) in the vicinity of International Boulevard. This site shall be within the existing Project construction footprint and within City right-of-way. The City will be responsible for any required land use permitting, for sign fabrication and installation, and for any and all costs of maintenance following installation. Sound Transit will be responsible for restoring the site to its pre-construction condition following installation. Sound Transit will coordinate with the City regarding this work, and shall provide a schedule of activities and milestones (e.g., site identification, site access, site plan, etc.) which must be met by the City in order for this commitment to be met as part of Project construction. In the event that the City is unable, for any reason, to meet the schedule required in order to have this work completed as part of Project construction, the Parties agree to work in good faith to implement this commitment through other acceptable means.

12.0 MINOR REVISIONS TO PROJECT APPROVALS

Language in Process with ST and City.

13.0 UTILITY RELOCATION

13.1 City Utilities: The Parties acknowledge that certain City-owned utility infrastructure, including all stormwater utility infrastructure located within the right-of-way or on City property, will be relocated and/or impacted by the Project. The City will relocate City-owned utilities, or if it prefers, permit Sound Transit to relocate the City-owned utilities, however, the full costs of any relocation shall be borne by Sound Transit.

That portion of the Design-Build Contractor's work consisting of the City's stormwater infrastructure shall not be given final acceptance by Sound Transit until it is approved in writing by the City. The City shall not unreasonably withhold approval.

13.2 Other Utilities: Sound Transit may enter into relocation agreements with utilities that are impacted by the Project. In order to minimize the potential for the disturbance of any overlay or other improvements installed by the Design-Build Contractor, Sound Transit will coordinate with utility providers and the City as soon as reasonably practicable – the goal being to provide a two-year lookahead schedule.

14.0 OPERATION AND MAINTENANCE RESPONSIBILITIES FOR IMPROVEMENTS TO BE CONSTRUCTED UNDER THE AGREEMENT

The Parties have agreed conceptually to ownership and maintenance responsibilities for infrastructure and landscaping installed as part of the Project, as depicted in Exhibit M. This conceptual plan may change during the Project's Design-Build process; however, the following commitments will remain unchanged. Sound Transit will own and maintain all infrastructure associated with the Light Rail Transit System, including Light Rail Transit Stations and all Light Rail Transit Facilities. Upon the City's acceptance of work completed by Sound Transit's Design-Build Contractor, the City will own and maintain infrastructure installed within public rights-of-way, and other infrastructure installed as part of the Project that serves local needs. The City will be responsible for maintenance of all landscaping installed by Sound Transit's Design-Build Contractor in public rights-of-way, said responsibilities to begin upon the close of the required plant establishment period which shall be for a period of 1 year following installation. Sound Transit will be responsible for maintenance of all landscaping installed on property controlled by Sound Transit.

Sound Transit will use its reasonable best effort to maintain the operational functionality of all Light Rail related infrastructure within the City in accordance with the Federal Way Link Extension Transit Way Agreement between the Parties.

15.0 LIABILITY, INDEMNIFICATION

15.1 Indemnification. Language in Process with ST and City.

15.2 Notice of Claims. The City shall give Sound Transit prompt notice of any claims directly affecting Sound Transit about which it is aware. Sound Transit shall promptly assume responsibility for the claim or undertake the defense of any litigation on behalf of the City. The City shall cooperate fully with Sound Transit in the defense of any claim. The City shall not settle any claim directly affecting Sound Transit without the prior written consent of Sound Transit, which consent shall not be unreasonably withheld.

15.3 Sound Transit Liability. Sound Transit expressly assumes liability for any and all actions brought by Sound Transit's employees, and agents against the City and, solely for the purpose of this indemnification, expressly waives any immunity under the Industrial Insurance Law, Title 51 RCW. Both parties acknowledge that this waiver was entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

16.0 INSURANCE

- 16.1 Commercial and Self Insurance. Sound Transit shall, at its sole expense, obtain and maintain during the entire term of this Agreement an appropriate program of commercial insurance, self-insurance or any combination thereof in amounts and types sufficient to satisfy its liabilities. When commercial insurance is utilized, Sound Transit shall name the City as an Additional Insured in accordance with insurer underwriting practices, and Sound Transit insurance policies shall be primary and non-contributory to any coverage maintained by the City. Sound Transit waives all rights of subrogation against the City for claims by third-parties arising under this Agreement, other than for damages, claims or liabilities arising from negligence of the City and its officers, officials, employees, and agents. The limits of Sound Transit's selected coverage program in no way diminish Sound Transit's obligations to the City as set forth in this Agreement. Sound Transit shall maintain this coverage program throughout the term of this Agreement, and for six (6) years after its termination, to protect the City against claims that may arise as a result of the construction, operation, or maintenance of the Project. When commercial insurance is used, coverage shall include: (i) comprehensive general liability insurance; (ii) property damage liability insurance, including coverage for explosion, collapse, and instability; (iii) workers' compensation insurance, to the extent required by law; (iv) employer's liability insurance; and (v) comprehensive auto liability coverage, including owned, hired, and non-owned vehicles.
- 16.2 Insurers. When commercial insurance is used, Sound Transit shall carry such commercial insurance with responsible insurers, or self-insure or participate in an insurance pool or pools, at levels of coverage or with reserves adequate, in the reasonable judgment of Sound Transit, to protect Sound Transit and the City against loss, and as are ordinarily carried by municipal or privately owned entities engaged in the operation of facilities comparable to the Project.
- 16.3 Certificates of Insurance. Language in Process with ST and City.
- 16.4 Remedies. If Sound Transit fails to maintain the appropriate program of commercial insurance, self-insurance or any combination thereof in amounts and types sufficient to satisfy its liabilities, the City may order Sound Transit to stop construction of the Project until the appropriate insurance coverage program is obtained.
- 16.5 Additional Section Proposed by City Related to Commercial Insurance: In Progress with ST and City.

17.0 LIENS

- 17.1 Liens. The Project Facilities are not subject to a claim of lien. In the event that any City property becomes subject to any claims for mechanics', artisans' or materialmen's liens, or other encumbrances chargeable to or through Sound Transit that Sound Transit does not contest in good faith, Sound Transit shall promptly, and in any event within thirty (30) days, cause such lien

claim or encumbrance to be discharged or released of record, by payment, posting of bond, court deposit or other means, without cost to the City, and shall indemnify the City against all costs and expenses, including attorney fees, incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of Sound Transit after first giving Sound Transit five (5) business days' advance notice of its intention to do so.

17.2 Contest of Claims. Nothing herein shall preclude Sound Transit's or the City's contest of a claim for lien or other encumbrance chargeable to or through Sound Transit or the City, or of a contract or action upon which the same arose.

17.3 Claim of Ownership. Language in Process with ST and City.

18.0 DISPUTE RESOLUTION

18.1 Any disputes or questions of interpretation of this Agreement that may arise between Sound Transit and the City shall be governed under the Dispute Resolution provisions in this Section. The Parties agree that cooperation and communication are essential to resolving issues efficiently. The Parties agree to exercise their best efforts to resolve any disputes that may arise through this dispute resolution process.

18.2 The Parties agree to use their best efforts to prevent and resolve potential sources of conflict at the lowest level possible.

18.3 The Parties agree to 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 Project Manager or equivalent and the City's Engineer or designee shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar 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 Design, Engineering, and Construction Management or designee and the City's Director of Public Works or designee shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar 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 Designee and the City Manager or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level Three, either party may refer the dispute to Level Four.

18.4 Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within fourteen (14) calendar days after referral of that dispute to Level Three, the Parties are free to file suit or agree to alternative dispute resolution methods such as mediation. At all times prior to resolution of the dispute, the Parties shall 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.

19.0 DEFAULT

No party shall be in default under this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) calendar days after written notice of default from any other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure. Any party not in default under this Agreement shall have all rights and remedies provided by law including without limitation damages, specific performance or writs to compel performance or require action consistent with this Agreement. The prevailing party, or the substantially prevailing party if no one party prevails entirely, shall be entitled to reasonable attorney fees and costs.

20.0 REMEDIES; ENFORCEMENT

20.1 The Parties reserve the right to exercise any and all of the following remedies, singly or in combination, in the event the other violates any provision of this Agreement:

- (a) Commencing an action at law for monetary damages;
- (b) Commencing an action for equitable or other relief; and
- (c) Seeking specific performance of any provision that reasonably lends itself to such remedy.

20.2 Neither party shall be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure by the other party to enforce prompt compliance, nor shall such failure to enforce constitute a waiver of rights or acquiescence in the other party's conduct.

21.0 TERM; TERMINATION

- 21.1 This Agreement shall be effective as of the date the last party signs. Unless sooner terminated pursuant to the terms hereof, this Agreement shall remain in effect for so long as the Project is used for public transportation purposes.
- 21.2 Upon termination of this Agreement, Sound Transit agrees to prepare, execute and deliver to the City all documentation necessary to evidence termination of this Agreement or portion thereof so terminated. No such termination, however, shall relieve the Parties hereto of obligations accrued and unsatisfied at such termination.
- 21.3 Upon the cessation of use of the Project, to the extent any portion of it remaining in the Public Right-of-way or on any other public property is not removed by Sound Transit, the City, as expressed by ordinance, may deem it abandoned and it shall become the property of the City. If the City does not desire such ownership, Sound Transit shall remove any remaining portion of the Project.
- 21.4 Sound Transit shall file a written removal plan with the City not later than sixty (60) calendar days following the date of the receipt of any orders directing removal, or any consent to removal, describing the work that will be performed, the manner in which it will be performed, and a schedule for removal by location. The removal plan shall be subject to approval and regulation by the City. The affected property shall be restored to as good or better condition than existed immediately prior to removal.

22.0 COVENANTS AND WARRANTIES

- 22.1 By execution of this Agreement, the City warrants:
- (a) That the City has the full right and authority to enter into this Agreement and issue any permits that may be granted in accordance with the terms hereof, and that by entering into this Agreement the City is not in violation of its charter or by-laws, or any law, regulation or agreement by which it is bound or to which it is bound or to which it is subject; and
 - (b) That the execution, delivery and performance of this Agreement by the City has been duly authorized by all requisite corporate action, that the signatories for the City hereto are authorized to sign this Agreement, and that, upon approval by the City, the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement.
- 22.2 By execution of this Agreement, Sound Transit warrants:
- (a) That Sound Transit has full right and authority to enter into and perform this Agreement in accordance with the terms hereof, and by entering into or performing under this Agreement, Sound Transit is not in violation of any of its agency governance rules, or any law, regulation or agreement by which it is bound or to which it is subject; and

- (b) That the execution, delivery and performance of this Agreement by Sound Transit has been duly authorized by all requisite Board action, that the signatories for Sound Transit hereto are authorized to sign this Agreement, and that the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement.

23.0 RECORDINGS, TAXES AND OTHER CHARGES

- 23.1 This Agreement shall be recorded pursuant to the requirements of 36.70B.190.
- 23.2 Sound Transit shall pay all transfer taxes, documentary stamps, recording costs or fees, or any similar expense in connection with the recording or filing of any permits that may be granted hereunder. Sound Transit further agrees that if it is determined by any federal, state, or local governmental authority that the sale, acquisition, license, grant, transfer, or disposition of any part or portion of the Project or rights herein described requires the payment of any tax, levy, excise, assessment, or charges, including, without limitation, property, sales or use tax, under any statute, regulation, or rule, Sound Transit shall pay the same, plus any penalty and/or interest thereon, directly to said taxing authority and shall hold the City harmless therefrom. Sound Transit shall pay all taxes, levies, excises, assessments, or charges, including any penalties and/or interest thereon, levied or assessed on the Project, or on account of their existence or use, including increases attributable to such existence or use, and excluding taxes based on the income of the City, and shall indemnify the City against payment thereof. Sound Transit shall have the right to claim, and the City shall reasonably cooperate with Sound Transit in the prosecution of any such claim for refund, rebate, reduction or abatement of such tax(es).
- 23.3 The City may pay any tax, levy, excise, assessment or charge, plus any penalty and/or interest thereon, imposed upon Sound Transit for which Sound Transit is obligated pursuant to this Section if Sound Transit does not pay such tax, levy, excise, assessment, or charge when due. Sound Transit shall reimburse the City for any such payment made pursuant to the previous sentence, plus interest at the prime rate per annum, as published in the Wall Street Journal.

24.0 ASSIGNABILITY; BENEFICIARY

- 24.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors or assignees. No assignment hereof or sublease shall be valid for any purpose without the prior written consent of the other party, and any attempt by one party to assign or license the rights or obligations hereunder without prior written consent will give the other party the right, at its written election, immediately to terminate this Agreement or take any other lesser action with respect thereto. The above requirement for consent shall not apply to (i) any disposition of all or substantially all of the assets of a party, (ii) any governmental entity merger, consolidation, or reorganization, whether voluntary or involuntary, (iii) a sublease or

assignment of this Agreement, in whole or in part, to a governmental entity, or (iv) a sale, lease, or other conveyance subject to those requirements set forth in this Agreement; provided, however, that no sublease or assignment under (ii) or (iii) shall be permitted to a governmental entity not operating, constructing or maintaining the Project on behalf of Sound Transit, and provided further that no unconsented assignment shall relieve Sound Transit of its obligations and liabilities under this Agreement.

- 24.2 Either party hereto may assign any monetary receivables due them under this Agreement; provided, however, such assignment shall not relieve the assignor of any of its rights or obligations under this Agreement.
- 24.3 Sound Transit acknowledges and agrees that the City may designate, in writing, a designee to (i) receive information (including information designated or identified as confidential) and notices under this Agreement, and (ii) provide certain approvals or consents required from the City under this Agreement. In the event of such designation, Sound Transit may rely on approvals or consents by such designee on behalf of the City as fully as if such actions were performed by the designator itself.
- 24.4 Neither this Agreement nor any term or provision hereof, or any inclusion by reference, shall be construed as being for the benefit of any party not a signatory hereto.

25.0 DESIGNATED REPRESENTATIVES

- 25.1 To promote effective intergovernmental cooperation and efficiencies, the Parties each designate a representative ("Designated Representative") who shall be responsible for coordination of communications between the Parties and shall act as the point of contact for each party. The Designated Representatives shall be responsible for the performance of the objectives of this Agreement.
- 25.2 Each Designated Representative is also responsible for coordinating the input and work of its agency, consultants, and staff as it relates to the objectives of this Agreement. The Parties reserve the right to change Designated Representatives, by written notice to the other party during the term of this Agreement. Each party's Designated Representative is named below with the individual's contact information.
- 25.3 Designated Representatives and Contact Information during Construction/Operations:

SOUND TRANSIT
[insert name]
401 S Jackson St
Seattle, WA 98104

CITY OF SeaTac
Will Appleton
4800 South 188th Street
SeaTac, WA

[Insert Phone Number]
[insert email]

206 973 4741
wappleton@ci.seatac.wa.us

26.0 NOTICE

- 26.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to the Designated Representative. Any party at any time by written notice to the other party may designate a different address or person to which such notice or communication shall be given.
- 26.2 Unless otherwise provided herein, all notices shall be in writing and shall be either: (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 electronically to the other party's Designated Representative as listed herein. However, notice under Section 20, Termination, must be delivered in person or by certified mail, return receipt requested.

27.0 GENERAL PROVISIONS

- 27.1 Unreasonable Withholding. The Parties shall not unreasonably withhold requests for information, approvals or consents provided for in this Agreement. The Parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement. The City and Sound Transit agree to work cooperatively with each other to achieve the mutually agreeable goals as set forth in this Agreement.
- 27.2 Interpretation. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be King County, Washington.
- 27.3 Time is of the Essence. Time is of the essence in every provision of this Agreement. Unless otherwise set forth in this Agreement, the reference to "days" shall mean calendar days. If any time for action occurs on a weekend or legal holiday, then the time period shall be extended automatically to the next business day.
- 27.4 Appeal of City Land Use Decision. Language in Process with ST and City.
- 27.5 Rights of Action. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

- 27.6 Ambiguity. This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by applicable law including the requirements of RCW 36. 70A.200.
- 27.7 Cost Responsibility. Each Party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties.
- 27.8 Events Beyond Parties' Control. The Parties shall not be deemed in default with provisions of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods or other natural catastrophes beyond its control; the unforeseeable unavailability of labor or materials; or labor stoppages or slowdowns, or power outages exceeding back-up power supplies. This Agreement shall not be revoked or a party penalized for such noncompliance, provided that such party takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, and integrity of both parties' employees or property, or the health, safety, and integrity of the public, Public Right-of-way, public property, or private property.
- 27.9 Agreement Amendments. This Agreement may be amended only by a written instrument executed by each of the Parties hereto. No failure to exercise and no delay in exercising, on the part of any party hereto, any rights, power or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein.
- 27.10 Agreement Entirety. This Agreement constitutes the entire agreement of the Parties with respect to the subject matters hereof, and supersedes any and all prior negotiations, oral and written, understandings and agreements with respect hereto.
- 27.11 Section Headings. Section headings are intended as information only, and shall not be construed with the substance of the section they caption.
- 27.12 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.
- 27.13 Rights of Federal Access. Sound Transit's design and construction of the Project is subject to a financial assistance contract between Sound Transit and the United States Department of Transportation, and the FTA. Both parties recognize that the FTA may request a change to this Agreement to comply with its funding requirements.

28.0 SEVERABILITY

In case any term of this Agreement shall be held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement shall in any way be affected thereby.

IN WITNESS WHEREOF, each of the parties has executed this Agreement by its authorized representative.

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (SOUND TRANSIT)

THE CITY OF SEATAC

By: _____
Peter M. Rogoff, Chief Executive Officer

By: _____
Joseph Scorcio, City Manager

Date: _____

Date: _____

Authorized by Motion No. _____

Authorized by Resolution No. _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
_____, Legal Counsel

By: _____

EXHIBIT LIST

Exhibit A: Term Sheet

Exhibit B: Project Description and General Alignment

Exhibit C: City Services Agreement

Exhibit D: Mitigation Plan from FWLE ROD

Exhibit E: Landscaping

Exhibit F: Code Vesting

Exhibit G: LOC Stormwater

Exhibit H: LOC Right-of-Way Cross Sections

Exhibit I: Preliminary Permitting Plan

Exhibit J: Approved Contractor Haul Routes

Exhibit K: Approved Construction Detour Routes

Exhibit L: LOC S 208th

Exhibit M: Operations and Maintenance Responsibilities

WORKING DRAFT – REDACTED VERSION

Disclaimer: This agreement will be subject to a final and comprehensive ST and City legal review upon mutual agreement of a final draft.

Note: City legal review will review both DA and TWA in entirety together to ensure there is no conflicting language or provisions.

**AGREEMENT BETWEEN THE CITY OF SEATAC AND SOUND TRANSIT FOR GRANT OF
NON-EXCLUSIVE USE OF A LIGHT RAIL TRANSIT WAY AS RELATED TO THE FEDERAL
WAY LINK EXTENSION LIGHT RAIL TRANSIT PROJECT**

This AGREEMENT is entered into by and between the City of SeaTac (the "City") and Central Puget Sound Regional Transit Authority ("Sound Transit") and is effective when signed by all parties.

RECITALS

WHEREAS, Sound Transit is a governmental entity created pursuant to Chapters 81.104 and 81.112 RCW with all powers necessary to implement a high capacity transit system within its boundaries in King, Pierce, and Snohomish Counties, including the right to construct and maintain facilities in public rights of way without a franchise (RCW 81.112.100 and RCW 35.58.330);

WHEREAS, the City a non-charter optional municipal code city incorporated under the laws of the State of Washington pursuant to Title 35A RCW;

WHEREAS, the City owns and operates city streets, and other infrastructure improvements within the City boundaries where Sound Transit proposes certain transit improvements and light rail;

WHEREAS, the Growth Management Act (Chapter 36.70A RCW) requires the City to plan for and encourage regional high capacity transportation facilities such as the Link Light Rail Transit Project (RCW 36.70A.020);

WHEREAS, in 1996, 2008, and 2016, pursuant to state law, the Central Puget Sound Regional Transit Authority (known as "Sound Transit") proposed, and Central Puget Sound voters approved financing for, regional transit system plans known as Sound Move, ST2, and ST3, respectively;

WHEREAS, these regional transit system plans include, among other projects, the Federal Way Link Extension Project ("Project") connecting the cities of SeaTac, Des Moines, Kent, and Federal Way to the existing Link Light Rail system, which will provide numerous benefits to the City's residents, workers, and visitors, and which will help the City meet its Comprehensive Plan goals;

WHEREAS, Sound Transit and the Federal Transit Administration of the United States Department of Transportation (“FTA”) have jointly planned the Project pursuant to the National and State Environmental Policy Acts, and have completed environmental review for the projects in SeaTac, Des Moines, Kent, and Federal Way with the Federal Way Link Extension Final Environmental Impact Statement issued on November 18, 2016 and FTA’s Record of Decision issued on March 6, 2017;

WHEREAS, on January 26, 2017, the Sound Transit Board defined and selected the Federal Way Link Extension alignment, profile, stations, and associated infrastructure to be built between Angle Lake Station at S. 200th Street and the Federal Way Transit Center in Resolution 2017-02;

WHEREAS, Sound Transit is intending to deliver the Project as a design/build procurement (“Design/Build”) and has been coordinating with the City in preparation for Project Design and Construction;

WHEREAS, the City and Sound Transit want to agree on a grant of a non-exclusive use of a Light Rail Transit Way for the Federal Way Link Extension Project in the City with appropriate terms and conditions that will satisfy the FTA’s continuing control requirements; and

WHEREAS, the City and Sound Transit intend to execute a Development Agreement in coordination with this Transit Way Agreement.

NOW THEREFORE, in consideration of mutual promises and covenants herein contained related to the grant of a non-exclusive use of a Light Rail Transit Way by the City to Sound Transit to construct, operate, maintain, and own a Light Rail Transit System in the City of SeaTac within and along the Light Rail Transit Way, the parties hereto agree to the terms and conditions as follows:

SECTION I. DEFINITIONS

For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental entities, whether persons or entities, refer to those entities or their successors in authority. If specific provisions of law referred to herein be renumbered,

then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances, and regulations now in force or hereinafter enacted or amended.

1.1 Agreement. "Agreement" means this Light Rail Transit Way Agreement approved by appropriate action of the City of SeaTac and of Sound Transit.

1.2 City. "City" means the City of SeaTac and any successor or assignee following an assignment that is permitted under this Agreement.

1.3 Director. "Director" means the current Director of Public Works of the City of SeaTac.

1.4 Emergency. "Emergency" means, except as otherwise provided, a sudden, unexpected occurrence or set of circumstances demanding immediate action in order to prevent and/or avoid an imminent threat to public health or safety, public or private property, or to prevent and/or avoid serious environmental degradation.

1.5 Final Construction Plans. "Final Construction Plans" means prints showing in detail, the proposed construction and specifications of the Light Rail Transit System including alignment drawings showing the exact limits of the Light Rail Transit Way.

1.6 Final Right-of-Way Plans. "Final Right-of-Way Plans" means prints having the proposed limits of the Light Rail Transit Way mathematically tied to existing City monumentation and the Washington State Coordinate Plane System.

1.7 Liability. "Liability" means all loss, damages, cost, expense (including costs of investigation and attorney fees and expenses at arbitration, trial or appeal and without institution of arbitration or suit), liability, claims, and demands of whatever kind of nature (including those arising under the Federal Employers Liability Act), arising in any way out of an occurrence relating to this Agreement or occurring on or relating to the Light Rail Transit System described herein.

1.8 Light Rail Transit Facility. "Light Rail Transit Facility" means a structure, rail track, equipment, maintenance base, or other improvement of a Light Rail Transit System, including but not limited to ventilation structures, traction power substations, signal bungalows, Light Rail Transit Stations and related passenger amenities, bus layover and inter-modal passenger transfer facilities, and station access facilities.

1.9 Light Rail Transit Station. "Light Rail Transit Station" means a Light Rail Transit Facility whether at grade, above grade or below grade that provides pedestrian access to

Light Rail Transit System vehicles and facilitates transfer from light rail to other modes of transportation. A Light Rail Transit Station may include mechanical devices such as elevators and escalators to move passengers and may also include such passenger amenities as informational signage, seating, weather protection, fountains, or artwork.

1.10 Light Rail Transit System. "Light Rail Transit System" means a public rail transit line, including Light Rail Transit Facilities, all infrastructure (including light rail vehicles operating on the Light Rail Transit Way), passenger services and communication equipment, that operates at grade level, above grade level, or in a tunnel and that provides high-capacity, regional transit service owned or operated by a regional transit authority authorized under RCW 81.112. A Light Rail Transit System may be designed to share a street right of way although it may also use a separate right of way. Commuter rail and low capacity, or excursion rail transit service are not included.

1.11 Light Rail Transit Way. "Light Rail Transit Way" means the areas within the Public Rights of Way occupied by Sound Transit for its Light Rail Transit System after construction pursuant to this Agreement, as shown on the record drawings of the Final Right-of-Way Plans approved by the Director and on file with the City.

1.12 Parties. "Parties" means the City of SeaTac and Sound Transit.

1.13 Passenger. "Passenger" means any person who is not an employee of Sound Transit, and who is aboard any Sound Transit Light Rail Transit System vehicle.

1.14 Public Rights of Way. "Public Rights of Way" means the areas above, below, on and over public streets and easements which, under the SeaTac Municipal Code, the City ordinances, and applicable laws, the City has authority to grant rights of way, permits, or licenses for use thereof or has regulatory authority therefor.

1.15 Project. "Project" means the segments of the Light Rail Transit System in the City as described in Sound Transit Board Resolution 2017-02 and subsequent approved permits and agreements.

1.16 Record Drawings. "Record Drawings" means the final set of neatly and legibly marked set of contract drawings, maintained by Sound Transit's Design-Build Contractor with up-to-date information, showing the final locations of all items of work.

1.17 Routine Maintenance and Operation. "Routine Maintenance and Operation" means Sound Transit's maintenance and operation of the Light Rail Transit System that does not require (i) the excavation of soil that would alter or disturb the Public Rights of Way, or (ii) the use of heavy machinery within fifty (50) feet of or upon the Public Rights of Way.

1.18 Sound Transit. "Sound Transit" means the Central Puget Sound Regional Transit Authority, and any other entity to the extent such entity, as permitted under this Agreement, is exercising any rights to operate the Light Rail Transit System over any portion of the Light Rail Transit Way pursuant to a specific written grant of such rights by Sound Transit.

1.19 Third Party. "Third Party" means any person other than the City or an employee of the City, and any person other than Sound Transit or an employee of Sound Transit.

1.20 Track Access Permit. "Track Access Permit" means the process for track access, including the management, scheduling, and authorization of access to employees, third parties, and contractors to perform work on, near, or adjacent to the Light Rail Transit System or any Sound Transit facility. (See Exhibit D – Track Access Procedures.)

SECTION II. GRANT OF RIGHTS BY THE CITY

2.1 Grant of Non-Exclusive Use of a Light Rail Transit Way. The City grants to Sound Transit a non-exclusive use of certain portions of the Public-Rights-of-Way, the general location of which is described and depicted on **Exhibits A and B** hereto, to be known as a Light Rail Transit Way, to construct, operate, maintain, and own a Light Rail Transit System in, upon, above, beneath and along the Light Rail Transit Way in accordance with the terms and conditions of this Agreement. The Light Rail Transit Way shall be limited to the areas described generally in the plans and profile drawings contained in **Exhibit C** hereto and more fully described in the Final Right-of-Way Plans and hereby incorporated by reference. The Director or designee and Sound Transit's Deputy Executive Director or designee of Design and Engineering shall, from time to time, jointly revise and modify **Exhibit C** to conform to the Final Construction Plans and the Final Right-of-Way Plans as long as the revisions are, in their judgment, within the scope and intent of **Exhibit C**. The Director is hereby expressly delegated the authority to revise and modify **Exhibit C** from time to time consistent with the terms of this paragraph. This grant of a non-exclusive use of certain portions of the Public-Rights-of-Way shall take effect upon the filing with the City Clerk by the Director of approved Final Construction Plans and Final Right-of-Way Plans. Sound Transit expressly agrees that it will construct, operate, and maintain the Light Rail Transit System in compliance with this Agreement and all applicable City ordinances, state, and federal laws, now or hereafter amended.

2.2 Rights Limited to Light Rail Transit System. The non-exclusive use of a Light Rail Transit Way is granted solely for the purpose of construction, maintenance, operation, and ownership of the Light Rail Transit System detailed in the Issued for Construction Plans, and for no other purpose. Sound Transit intends, and shall have the right, to use the Light Rail Transit Way solely for Light Rail Transit System uses. Sound Transit agrees

that it shall not, without the City's written consent, construct on or along the Light Rail Transit Way any additions to or expansions of the Light Rail Transit System subsequent to the construction done in accordance with the Issued for Construction Plans and with the Final Right-of-Way Plans. Notwithstanding the foregoing, nothing contained herein shall prevent Sound Transit from replacing Light Rail Transit Facilities or equipment existing after construction after first obtaining any necessary permits and other authorizations from the City.

2.3 City Work in Light Rail Transit Way. Language in Process with ST and City.

2.4 Non-Exclusive Use. Sound Transit understands that the rights granted herein are non-exclusive. The City shall have the right to agree to other non-exclusive uses or occupancies of the Light Rail Transit Way. The City agrees that such uses or occupancies shall not unreasonably impair the ability of Sound Transit to operate the Light Rail Transit System.

2.5 Use Restricted. This Agreement does not authorize the provision of any services by Sound Transit other than the services strictly related to the operation of the Light Rail Transit System. Sound Transit's use of the Light Rail Transit Way for anything other than a Light Rail Transit System shall require written permission from the City.

2.6 Ownership. Sound Transit shall own all tracks and other Light Rail Transit Facilities within the Light Rail Transit Way, including, without limitation, improvements constructed at the cost and expense of Sound Transit that are not otherwise transferred to and accepted by the City. Nothing in this Agreement shall be construed as granting to Sound Transit any interest or right in the Light Rail Transit Way or the improvements on the Light Rail Transit Way other than the rights expressly provided herein.

2.7 No Rights by Implication. No rights shall pass to Sound Transit by implication. Without limiting the foregoing, by way of example and not limitation, this Agreement shall not include or be a substitute for the following:

A. Any other permit or authorization required for the privilege of transaction and carrying on a business within the City that may be required by the ordinances and laws of the City; or

B. Any permit, agreement or authorization required in connection with operations on or in public streets or property, including by way of example and not limitation, street cut permits; or

C. Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Agreement.

2.8 Utilities Agreements. This Agreement shall not be interpreted as diminishing in any way the City's ability to provide, control or charge for any City utility services existing now or in the future. Therefore, if Sound Transit desires to use such utilities, it must pay standard rates for utility services and obtain necessary agreements or consents for such uses, as may be required by the City, which agreements or consents shall not be unreasonably withheld.

SECTION III. PERMITS

3.1 Permits and Licenses. Sound Transit, at its sole cost and expense, shall (i) secure and maintain in effect, all federal, state, and local permits and licenses required for the construction, operation, and maintenance of the Light Rail Transit System, including, without limitation, crossing, zoning, building, health, environmental, and communication permits and licenses, and (ii) indemnify the City against payment of the costs thereof and against any fines or penalties that may be levied for failure to procure, or to comply with, such permits or licenses, as well as any remedial costs incurred by the City in curing any such failures.

3.2 Non-Interference. The City shall not interfere with Sound Transit's ability to secure, obtain, and maintain, at Sound Transit's sole cost and expense, any permits, licenses or approvals of other governmental agencies or authorities, or of any necessary Third Parties, for the use of any structures or facilities, including streets, roads, or utility poles not owned by the City.

SECTION IV. CONSTRUCTION

4.1 Approval of Construction. Sound Transit shall obtain the approval of the Director of all Light Rail Facility Final Construction Plans for work in the Public Right of Way prior to any such work commencing. Final Construction Plans must be accompanied by Final Right-of-Way Plans. Approval for construction shall consist of the issuance of a construction permit or permits by the Director for each project section or contract to be constructed by Sound Transit within the Public Rights of Way.

4.2 Record Drawings. Within six (6) months, of Sound Transit's acceptance of Design-Build Contractor Project completion, Sound Transit shall furnish to the City Record Drawings of the Final Construction Plans and Final Right-of-Way Plan, including Record Drawings and associated electronic AUTOCAD and GIS files showing the as-built condition. Upon mutual agreement as to the types and number of drawings required, Sound Transit shall furnish to the City drawings sufficient to describe the project spatially in the Washington State Plane Coordinate System. Sound Transit will assist in the conversion to the City coordinate system if necessary.

4.3 Entry Upon Light Rail Transit Way. Sound Transit, its employees, and agents shall have the right, as defined and limited pursuant to Section V of this Agreement, to enter upon the Light Rail Transit Way for the purpose of constructing, operating, and maintaining the Light Rail Transit Facilities.

4.4 Temporary Use of Public Rights of Way. During construction of the Light Rail Transit System, Sound Transit, with the prior written agreement of the City, and approval of any required permits, may fence portions of the Public Rights of Way for the temporary storage of construction equipment and materials, provided that such structures and fences (i) do not interfere with or disrupt in any way, other than ways approved in advance by the City, the ordinary use of the Public Right of Way; (ii) do not interfere with or disrupt in any way, other than in ways approved in advance by the City, the ordinary access to property on either side of the Public Rights of Way; (iii) are not used for construction worker parking; and (iv) do not unnecessarily limit the public's right to travel within the Public Right of Way. Sound Transit shall not store or temporarily place any goods, materials, or equipment (i) near a roadway, intersection, or crossing in such a manner as to interfere with the sight distance of persons approaching such crossing; or (ii) within such greater distance as prohibited by the City; provided, however, that fuel and other hazardous substances shall not be stored unless approved by appropriate officials of the City Fire Department.

4.5 Utilities During Construction. The City recognizes that the Light Rail Transit System is an essential public facility and public transportation improvement. Sound Transit will coordinate with all utilities to minimize utility relocation costs and related construction and will negotiate with non-City-owned utilities on utility relocation costs and cost allocation. Sound Transit shall fully indemnify the City for any claim and undertake the defense of any litigation directed at the City arising from the City's exercise of its franchise authority to direct such relocation to accommodate the construction of the Light Rail Transit System. The City shall cooperate fully with Sound Transit in the defense of any such claim or litigation. Notwithstanding the foregoing, the Parties agree that Sound Transit shall pay for any and all costs for relocation or protection of City-owned storm water utilities that the City determines is necessary due to construction, maintenance, or operation of the Light Rail Transit System. The specific allocation of costs of such relocation shall be defined in a series of future agreements between the City and Sound Transit relating to the separate construction segments of the Light Rail Transit System, each agreement to be entered into before construction on the particular segment begins.

4.6 Work Completed by Sound Transit. Sound Transit, at Sound Transit's sole cost and expense, will furnish all materials, parts, components, equipment, and structures necessary to construct and operate the Light Rail Transit System, or any part thereof, in accordance with this Agreement. Any and all work by Sound Transit shall be done in a

good and workman-like manner, in conformity with all applicable engineering, safety, and other statutes, laws, ordinances, regulations, rules, codes, permits, orders, or specifications of any public body or authority having jurisdiction.

4.7 Installation. All facilities and installations must meet or exceed applicable specifications of the City and be in compliance with all existing federal, state, and local laws, ordinances, permits, and regulations.

4.8 Track Support. During any work of any character by Sound Transit at locations of the Light Rail Transit Facilities, and in accordance with the Final Construction Plans, Sound Transit will support the tracks and roadbed of the Light Rail Transit System in such manner as is necessary for the safe operation of the Light Rail Transit System and ordinary use of the Public Rights of Way.

4.9 Imminent Danger. If, during construction, there is an Emergency or the Light Rail Transit System creates or is contributing to an imminent danger to health, safety, or property that Sound Transit is unable to immediately address, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Light Rail Transit System without prior notice, and seek reimbursement from Sound Transit for all costs incurred. The City shall provide notice of such Emergency or danger along with any actions taken to Sound Transit as soon as practicable taking into account the nature and complexity of the Emergency or imminent danger.

4.10 Accommodation of Moving Structures. Sound Transit shall, on the request of any Third Party holding a valid permit issued by a governmental authority and a Sound Transit Track Access permit, temporarily raise or lower its wires to permit the moving of buildings or other objects. Sound Transit may require that the expense of such temporary removal or raising or lowering of wires be paid in advance by the Third Party requesting the same.

4.11 Information Regarding Ongoing Work. In addition to providing notice to the public of ongoing work as may be required under applicable law, Sound Transit shall develop a comprehensive project-specific communication plan in coordination with the City to establish and maintain effective communication with residents and businesses to allow them to be fully informed about potentially significant disruptions, such as temporary street closures, changes in transit service, and parking availability. As part of the communication plan, Sound Transit will work with community and neighborhood groups prior to and through the construction process to identify types of impacts that would occur and communicate mitigation activities to address such impacts.

4.12 Restoration of Public Rights of Way. Sound Transit shall promptly repair any and all Public Rights of Way and public property that is disturbed or damaged during the construction of its Light Rail Transit System to substantially the same condition, or in the

case of street surfaces, better condition if reasonably necessary and within a mutually agreed-upon timeframe commensurate with the scope of repairs. In the event Sound Transit does not comply with the foregoing requirement, the City may, upon reasonable advance notice to Sound Transit, take the actions to restore the Public Rights of Way or public property at Sound Transit's sole cost and expense.

4.13 Federal Grant Conditions. Sound Transit's design and construction of the Project may become subject to a financial assistance agreement between Sound Transit and the Federal Transit Administration ("FTA"). Both parties recognize that amendments to this Agreement may be necessary in order to comply with FTA funding requirements.

SECTION V. ENTRY NOTICE

5.1 Access. Sound Transit, its employees and agents shall have access to the Public Rights of Way in connection with Sound Transit's construction, operation, and maintenance of the Light Rail Transit System as is reasonably necessary in accordance with specific conditions within this Agreement. However, except to the extent expressly provided in this Agreement, this right of access shall not be deemed to require the City to take any actions or expend any funds to enable such persons to exercise such rights of access, and provided further that such access may not interfere with or disrupt in any way, other than in ways approved in advance by the City, the use of the Light Rail Transit Way by the City or Third Parties.

5.2. Notice Prior to Initial Entry. During Project construction, Sound Transit shall give the City at least seventy-two (72) hours written notice before initial entry upon any portion of the Public Rights of Way for construction purposes.

5.3 Entry after Project Construction. After construction, any entry by Sound Transit onto the Public Rights of Way that is not pursuant to the Routine Maintenance and Operation of the Light Rail Transit System or for purposes relating to an Emergency shall require (i) advance written notice from Sound Transit to the City not less than ten (10) days prior to Sound Transit's planned entry, with notice to specify the purpose of the entry; (ii) if entry involves any new connection or removal of any portion of the Light Rail Transit System, plans as required by direction of the Director showing in detail the proposed new construction, reconstruction, or removal; and (iii) approval by the City which approval shall not be unreasonably withheld or delayed, taking into account the nature of the proposed entry.

5.4 Entry for Routine Maintenance and Operation. During Routine Maintenance and Operation, Sound Transit personnel may enter the Public Rights of Way without notice to the City, as long as such entry is for the sole purpose of Routine Maintenance and Operation. If the Routine Maintenance and Operation activities require the closure of a

traffic lane, Sound Transit will exert its best efforts to provide the City forty-eight (48)-hours written notice before closure of any portion of the Public Right-of-Way.

5.5 Emergency Access. In the event of an Emergency that interrupts or significantly disrupts Operation of the Light Rail Transit System and for purposes of taking immediate corrective action, Sound Transit personnel may enter the Public Rights of Way without notice to the City, as long as such entry is for the sole purpose of addressing the Emergency; provided, however, that if any entry for such purposes is likely to require excavation of soil that would alter or disturb the Public Rights of Way or use of heavy machinery within fifty (50) feet of or upon the Public Rights of Way, Sound Transit shall give the City verbal or telephonic notice of the places where, and the manner in which, entry is required, prior to such entry, promptly followed by written notice.

SECTION VI. OPERATION, MAINTENANCE, AND REPAIR IN STREETS AND RIGHTS OF WAY

6.1 Compliance with Laws, Rules, and Regulations. Sound Transit shall operate, maintain, and repair its Light Rail Transit System in compliance with all federal, state, and local laws, ordinances, permits, departmental rules and regulations and practices affecting such system, which include, by way of example and not limitation, the obligation to operate, maintain, and repair in accordance with the City's Land Use Code and construction codes, and City street and utility standards. In addition, the operation, maintenance, and repair shall be performed in a manner consistent with industry standards. Sound Transit shall exercise reasonable care in the performance of all its activities and shall use industry-accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public to property.

6.2 Permits Required. Except in cases of emergency repairs, Sound Transit's operation, maintenance, or repair of its Light Rail Transit System shall not commence until all required permits have been properly applied for and obtained from the proper City officials and all required permits and associated fees paid, including, but not limited to, the cost of permit-application review and inspection. In case of emergency repairs, appropriate permits shall be applied for no later than the second business day following repairs.

6.3 Level of Operation/Maintenance. All facilities shall be operated and maintained in such a manner as to minimize disruption to other users of the Public Rights of Way. All facilities shall be maintained in a state of good repair as defined by FTA in 49 CFR 625. Sound Transit will promptly repair and maintain the operational functionality of all Light Rail Transit Facilities in the City, including, but not limited to, public restrooms, escalators and elevators.

6.4 Appointment of Operator. Sound Transit may appoint an operator as Sound Transit's agent to exercise some or all of Sound Transit's rights under this Agreement, subject to the terms and conditions of this Agreement.

6.5 Regulatory Approvals. Sound Transit and its operator shall obtain and maintain all federal, state and/or local regulatory approvals as may be required for the operation of the Light Rail Transit System.

6.6 Responsibility for Equipment. The City shall have no responsibility for inspecting, maintaining, servicing, or repairing any trains or other equipment used by Sound Transit as part of the Light Rail Transit System, but all such equipment shall at all times comply with applicable federal, state, and local governmental requirements.

6.7 Prompt Repair. Sound Transit shall promptly repair any and all Public Rights of Way, public property, or private property that is disturbed or damaged during the operation, maintenance, or repair of its Light Rail Transit System. Public property and Public Rights of Way must be restored to substantially the same condition as before the disturbance or damage occurred, or, in the case of street surfaces, better condition if reasonably necessary.

6.8 Imminent Danger. Language in Process with ST and City.

6.9 No At-Grade Crossings or Crossing Gates Without Permission. Sound Transit shall not install any at-grade crossings or crossing gates or other traffic control devices without the written consent of the City.

SECTION VII. FACILITY LOCATION SIGNS

Sound Transit, at its sole cost, expense, and risk, shall secure permits, furnish, erect, and thereafter maintain signs showing the location of all Sound Transit facilities. Signs shall be in conformance with all applicable codes.

SECTION VIII. THIRD PARTY RIGHT OF WAY OWNERSHIP

This Agreement is not intended to cover and does not cover any occupancies over (i) rights of way or other land owned solely or jointly by any other person or entity, or (ii) any rights granted to the City by Third Parties.

SECTION IX. RELOCATIONS

If the City desires the relocation of a portion of the Light Rail Transit Facilities to accommodate the City, the City shall notify Sound Transit of such fact, and Sound Transit shall consult with the City to address the request.

SECTION X. LIABILITY, INDEMNIFICATION

Sound Transit shall indemnify, defend, and hold the City harmless from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses (including, without limitation, attorneys' fees) arising or growing out of or in connection with or related to, either directly or indirectly, the design, construction, maintenance, operation, repair, removal, occupancy, and use of the Light Rail Transit System in the Light Rail Transit Way, except to the extent such claims arise from the sole or partial negligence, errors or omissions of the City, its employees, servants, and agents.

Consistent with Sound Transit's indemnification obligations herein, the City shall give Sound Transit prompt notice of any claims directly affecting Sound Transit about which the City is aware of or has received formal notification. Sound Transit shall promptly assume responsibility for the claim or undertake the defense of any litigation on behalf of the City. The City shall cooperate fully with Sound Transit in the defense of any claim associated with this Agreement. The City shall not settle any claim associated with this agreement directly affecting Sound Transit without the prior written consent of Sound Transit, which consent shall not be unreasonably withheld.

Sound Transit expressly assumes potential liability for actions brought by Sound Transit's employees and agents against the City and, solely for the purpose of this indemnification, expressly waives any immunity under the Industrial Insurance Law, Title 51 RCW. Sound Transit acknowledges that this waiver was entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

The indemnification obligations provided in this Section shall survive termination of this Agreement.

SECTION XI. INSURANCE

Sound Transit shall maintain, throughout the term of this Agreement and for six (6) years after its termination, an appropriate program of insurance, self-insurance, or any combination thereof in amounts and types sufficient to satisfy its liabilities. When commercial insurance is utilized, Sound Transit shall secure and maintain in effect insurance adequate to protect the City against claims or lawsuits that may arise as a

result of the design, construction, operation, maintenance, repair, removal, occupancy, or use of the Light Rail Transit System in the Light Rail Transit Way, including, without limitation: (i) commercial general liability insurance; (ii) workers' compensation insurance (to the extent required by law); (iii) employer's liability insurance; (iv) auto liability coverage; (v) environmental liability insurance; and, (vii) during the construction phase, builder's risk.

Sound Transit shall carry such insurance with insurers who are licensed to do business in the State of Washington or self-insure or participate in an insurance pool or pools at levels of coverage or with reserves adequate, in the reasonable judgment of Sound Transit, to protect Sound Transit and the City against loss, and as are ordinarily carried by municipal or privately owned entities engaged in the operation of systems comparable to the Light Rail Transit System.

Sound Transit shall file with the City's Risk Manager Business Relations Program on an annual basis proof of an appropriate program of insurance, self-insurance, or any combination thereof in amounts and types sufficient to satisfy its liabilities. The certificates shall contain a provision that coverage shall not be canceled until at least thirty (30) days' prior written notice has been given to the City.

If Sound Transit fails to maintain the required insurance, the City may order Sound Transit to stop constructing or operating the Light Rail Transit System in the Light Rail Transit Way until the required insurance is obtained.

SECTION XII. LIENS

12.1 The Light Rail Transit Way and Light Rail Transit Facilities are not subject to a claim of lien. In the event that any City property becomes subject to any claims for mechanics, artisans, or materialmen liens, or other encumbrances chargeable to or through Sound Transit which Sound Transit does not contest in good faith, Sound Transit shall promptly, and in any event within thirty (30) days, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit or other means), without cost to the City, and shall indemnify the City against all costs and expenses, including attorney fees, incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of Sound Transit after first giving Sound Transit five (5) business days' advance notice of its intention to do so. The City shall use its reasonable best efforts to keep Sound Transit's facilities free of all liens that may adversely affect the Light Rail Transit System.

12.2 Nothing herein shall preclude Sound Transit's or the City's contest of a claim for lien or other encumbrance chargeable to or through Sound Transit or the City, or of a contract or action upon which the same arose.

12.3 Nothing in this Agreement shall be deemed to give, and the City expressly waives, any claim of ownership in and to any part or the whole of the Light Rail Transit Facilities except as may be otherwise provided herein.

SECTION XIII. TERM; TERMINATION

13.1 This Agreement shall be effective as of the date the last party signs and, unless sooner terminated pursuant to the terms hereof, shall remain in effect for so long as the Light Rail Transit Way is used for public transportation purposes.

13.2 Upon termination of this Agreement, Sound Transit agrees to prepare, execute and deliver to the City all documentation necessary to evidence termination of this Agreement or portion thereof so terminated. No such termination, however, shall relieve the parties hereto of obligations accrued and unsatisfied at such termination.

13.3 Upon the cessation of use of the Light Rail Transit Way for the Light Rail Transit System, any portion remaining in the Public Rights of Way or on any other public property that is not removed by Sound Transit may be deemed by the City to be abandoned and shall become the property of the City. If the City does not desire such ownership, Sound Transit shall remove any remaining portion of the Light Rail System.

13.4 Any order by the City issued pursuant to this Section to remove the Light Rail Transit System in whole or in part shall be sent by registered or certified mail to Sound Transit not later than twenty-four (24) months following the date of termination of this Agreement, or, if later, the final resolution of any appeal of the termination.

13.5 Sound Transit shall file a written removal plan with the City not later than sixty (60) calendar days following the date of the receipt of any orders directing removal, or any consent to removal, describing the work that will be performed, the manner in which it will be performed, and a schedule for removal by location. The removal plan shall be subject to approval and regulation by the City. The affected property shall be restored to as good or better condition than existed immediately prior to removal.

SECTION XIV. DISPUTE RESOLUTION; REMEDIES; ENFORCEMENT

14.1 Dispute Resolution.

A. Any disputes or questions of interpretation of this Agreement that may arise between Sound Transit and the City shall be governed under the Dispute Resolution provisions in this Section. The Parties agree that cooperation and communication are essential to resolving issues efficiently. The Parties agree to exercise their best efforts to resolve any disputes that may arise through this dispute resolution process.

B. The Parties agree to use their best efforts to prevent and resolve potential sources of conflict at the lowest level.

C. The Parties agree to 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:

(1) Level One - Sound Transit's Deputy Executive Director of Design, Engineering and Construction Management or Designee and the City's City Engineer or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level One, either party may refer the dispute to Level Two.

(2) Level Two - Sound Transit's Executive Director of Design, Engineering and Construction Management or Designee and the City's Public Works Director or Designee shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.

(3) Level Three - Sound Transit's Chief Executive Officer or Designee and the City Manager or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner.

D. Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within fourteen (14) calendar days after referral of that dispute to Level Three, the Parties are free to file suit or agree to alternative dispute resolution methods such as mediation. At all times prior to resolution of the dispute, the Parties shall 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.

14.2 Notice of Default. Neither party shall be in default under this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) calendar days after written notice of default from any other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured

within thirty (30) days, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure.

14.3 Remedies. Either party hereto has the right to exercise any available remedy including, but not limited to and all of the following remedies, singly or in combination, and consistent with the dispute resolution and notice of default sections of this Agreement, in the event the other party violates any provision of this Agreement:

- A. Commencing an action at law for monetary damages;
- B. Commencing an action for equitable or other relief;
- C. Seeking specific performance of any provision that reasonably lends itself to such remedy.

14.4 Cumulative Remedies. In determining which remedy or remedies for a party's violation are appropriate, a court may take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether the party has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstance. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

14.5 Failure to Enforce. Neither party hereto shall be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure of the other party to enforce prompt compliance, and one party's failure to enforce shall not constitute a waiver of rights or acquiescence in the other party's conduct.

SECTION XV. COVENANTS AND WARRANTIES

15.1 By execution of this Agreement, the City warrants:

A. That the City has full right and authority to enter into and perform this Agreement and any permits which may be granted in accordance with the terms hereof, and that by entering into or performing this Agreement the City is not in violation of any law, regulation, or agreement by which it is bound, to which it is bound, or to which it is subject; it being understood, however, that the covenant and warranty contained in this Section does not constitute a warranty, expressed or implied, by the City, of the right or rights granted by the City to Sound Transit hereunder; and

B. That the execution, delivery, and performance of this Agreement by the City has been duly authorized by all requisite corporate action, that the signatories for the City

hereto are authorized to sign this Agreement, and that, upon approval by the City, the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Agreement.

15.2 By execution of this Agreement, Sound Transit warrants:

A. That Sound Transit has full right and authority to enter into and perform this Agreement in accordance with the terms hereof and by entering into or performing under this Agreement, Sound Transit is not in violation of any of its agency governance rules, any law, regulation or agreement by which it is bound or to which it is subject; and

B. That the execution, delivery and performance of this Agreement by Sound Transit has been duly authorized by all requisite Board action, that the signatories for Sound Transit hereto are authorized to sign this Agreement, and that the joinder or consent of any other party, including a court, trustee, or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Agreement.

SECTION XVI. RECORDINGS, TAXES AND OTHER CHARGES

16.1 Sound Transit shall pay all transfer taxes, documentary stamps, recording costs or fees, or any similar expense in connection with the recording or filing of any permit which may be granted hereunder. Sound Transit further agrees that if it is determined by any federal, state, or local governmental authority that the sale, acquisition, license, grant, transfer, or disposition of any part or portion of the Light Rail Transit Facilities or right herein described requires the payment of any tax, levy, excise, assessment, or charges, including without limitation, property, sales or use tax, under any statute, regulation or rule, Sound Transit shall pay these, plus any penalty and/or interest thereon, directly to said taxing authority and shall hold the City harmless therefrom. Sound Transit shall pay all taxes, levies, fees, excises, assessments, or charges, including any penalties and/or interest thereon, levied or assessed on the Light Rail Transit Facilities, or on account of their existence or use, including increases thereof attributable to such existence or use, and excluding taxes based on the income of the City, shall indemnify the City against payment thereof. Sound Transit shall have the right to claim, and the City shall reasonably cooperate with Sound Transit in the prosecution of any such claim, for refund, rebate, reduction, or abatement of such tax(es).

16.2 The City may pay any tax, levy, fee, excise, assessment or charge, plus any penalty and/or interest thereon, imposed upon Sound Transit for which Sound Transit is obligated pursuant to this Section if Sound Transit does not pay such tax, levy, excise, assessment, or charge when due. Sound Transit shall reimburse the City for any such payment made

pursuant to the previous sentence, plus interest at the prime rate per annum, as published in the Wall Street Journal.

SECTION XVII. ASSIGNABILITY; BENEFICIARY

17.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, operators or assignees. No assignment hereof or sublease shall be valid for any purpose without the prior written consent of the other party, and any attempt by one party to assign or license the rights or obligations hereunder without prior written consent will give the other party the right, at its written election, immediately to terminate this Agreement or take any other lesser action with respect thereto. The above requirement for consent shall not apply to (i) any disposition of all or substantially all of the assets of a party; (ii) any governmental entity merger, consolidation or reorganization, whether voluntary or involuntary; (iii) a sublease or assignment of this Agreement, in part or in whole, to a governmental entity; or (iv) a sale, lease, or other conveyance by the City, subject to those requirements set forth in this Agreement; provided however, that no sublease or assignment under (ii) or (iii) shall be permitted to a governmental entity not operating, constructing or maintaining a Light Rail Transit System on behalf of Sound Transit, and provided further that no unconsented assignment shall relieve Sound Transit of its obligations and liabilities under this Agreement.

17.2 Either party hereto may assign any monetary receivables due them under this Agreement; provided, however, such assignment shall not relieve the assignor of any of its rights or obligations under this Agreement.

17.3 Sound Transit acknowledges and agrees that the City may designate in writing a designee to (i) receive information, including information designated or identified as confidential, and notices under this Agreement, and (ii) provide certain approvals or consents required from the City under this Agreement. In the event of such designation, Sound Transit may rely on approvals or consents by such designee on behalf of the City as fully as if such actions were performed by the designator itself.

17.4 Neither this Agreement nor any term or provision hereof, or any inclusion by reference, shall be construed as being for the benefit of any party not a signatory hereto.

SECTION XVIII. NOTICES

18.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to (one copy each):

Central Puget Sound Regional Transit Authority
Attention: Deputy Executive Director DECM
401 South Jackson Street
Seattle, WA 98104-2826

And to:

City of SeaTac
Attention: City Manager
4800 South 188th Street
SeaTac, WA 98188

SECTION XIX. MISCELLANEOUS

19.1 This Agreement shall survive delivery and/or recordation of each may be granted hereunder.

19.2 Each party shall be responsible for its own costs, including legal fees, in negotiating or finalizing this Agreement, unless otherwise agreed by the Parties.

19.3 No Party shall be deemed in default of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond that Party's control; the unforeseeable unavailability of labor or materials; labor stoppages or slowdowns; or power outages exceeding back-up power supplies. This Agreement shall not be revoked nor shall either Party be penalized for such noncompliance, provided that the Party takes immediate and diligent steps to return to compliance and to comply as soon as practicable under the circumstances without duly endangering the health, safety, and integrity of their employees or property, or health, safety, and integrity of the public, Public Rights of Way, public property, or private property.

19.4 This Agreement may be amended only by a written instrument executed by each of the parties hereto, save and except for revisions or modifications to **Exhibit C** as provided for in Section 2.1 herein. No failure to exercise and no delay in exercising, on the part of any party hereto, any rights, power or privilege hereunder shall operate as a waiver hereof except as expressly provided herein.

19.5 This Agreement constitutes the entire agreement of the parties with respect to the subject matters hereof, and supersedes any and all prior negotiations, oral and written, understandings and agreement with respect hereto.

19.6 Section headings are intended as information only, and shall not be construed with the substance of the section they caption.

19.7 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.

SECTION XX. LEGAL FORUM

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be King County, Washington.

SECTION XXI. INTERPRETATION

This Agreement is executed by all parties under current interpretations of applicable federal, state or local statute, ordinance, law, or regulation.

SECTION XXII. SEVERABILITY

In case any term of this Agreement shall be held invalid, illegal, or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement shall in anyway be affected thereby.

IN WITNESS WHEREOF, each of the parties hereto has executed this Light Rail Transit Way Agreement by having its authorized representative affix his/her name in the appropriate space below.

SOUND TRANSIT

CITY OF SEATAC

By: _____
Peter M. Rogoff, Chief Executive Officer

By: _____

Date: _____

Date: _____

Authorized by Motion XX on XX

Authorized by Resolution No.

Approved as to form:

Approved as to form:

By: _____
Stephen G. Sheehy,
Senior Legal Counsel

By: _____

- Exhibit A: General Description of Light Rail Alignment and Station Location(s)
- Exhibit B: Graphic Representation of Light Rail Alignment and Station Location(s)
- Exhibit C: Federal Way Link Extension Plans and Profiles
- Exhibit D: Track Access Procedures (June 15, 2015)

EXHIBIT A:

GENERAL DESCRIPTION OF LIGHT RAIL ALIGNMENT AND STATION LOCATION

General Description of Federal Way Link Extension Alignment Location in SeaTac
Route: Approximately 0.9 miles from the Angle Lake Station tail track along the west side of I-5 in a combination of retained cut, retained fill, at-grade, and elevated structures to the southern City limits on the north side of S 216th Street.

EXHIBIT B

LIGHT RAIL ALIGNMENT AND STATION LOCATIONS

(REVIEWERS: Please reference associated PDF entitled: AE 0044-12 Transit Way
Template Exhibit B: Light Rail Alignment and Station Locations)

EXHIBIT C

PLAN AND PROFILE

(REVIEWERS: Please reference associated PDF entitled: AE 0044-12 City of SeaTac Transit Way Agreement Exhibit C Plan and Profile).

EXHIBIT D

TRACK ACCESS PROCEDURES

(REVIEWERS: Please reference associated PDF entitled: AE 0044-12 City of SeaTac Transit Way Agreement Exhibit D Track Access Procedures).

WORKING DRAFT – REDACTED VERSION

Disclaimer: This agreement will be subject to a final and comprehensive ST and City legal review upon mutual agreement of a final draft.

Note: City legal review will review both DA and TWA in entirety together to ensure there is no conflicting language or provisions.

AGREEMENT BETWEEN THE CITY OF SEATAC AND SOUND TRANSIT FOR GRANT OF NON-EXCLUSIVE USE OF A LIGHT RAIL TRANSIT WAY AS RELATED TO THE FEDERAL WAY LINK EXTENSION LIGHT RAIL TRANSIT PROJECT

This AGREEMENT is entered into by and between the City of SeaTac (the "City") and Central Puget Sound Regional Transit Authority ("Sound Transit") and is effective when signed by all parties.

RECITALS

WHEREAS, Sound Transit is a governmental entity created pursuant to Chapters 81.104 and 81.112 RCW with all powers necessary to implement a high capacity transit system within its boundaries in King, Pierce, and Snohomish Counties, including the right to construct and maintain facilities in public rights of way without a franchise (RCW 81.112.100 and RCW 35.58.330);

WHEREAS, the City a non-charter optional municipal code city incorporated under the laws of the State of Washington pursuant to Title 35A RCW;

WHEREAS, the City owns and operates city streets, and other infrastructure improvements within the City boundaries where Sound Transit proposes certain transit improvements and light rail;

WHEREAS, the Growth Management Act (Chapter 36.70A RCW) requires the City to plan for and encourage regional high capacity transportation facilities such as the Link Light Rail Transit Project (RCW 36.70A.020);

WHEREAS, in 1996, 2008, and 2016, pursuant to state law, the Central Puget Sound Regional Transit Authority (known as "Sound Transit") proposed, and Central Puget Sound voters approved financing for, regional transit system plans known as Sound Move, ST2, and ST3, respectively;

WHEREAS, these regional transit system plans include, among other projects, the Federal Way Link Extension Project ("Project") connecting the cities of SeaTac, Des Moines, Kent, and Federal Way to the existing Link Light Rail system, which will provide numerous benefits to the City's residents, workers, and visitors, and which will help the City meet its Comprehensive Plan goals;

WHEREAS, Sound Transit and the Federal Transit Administration of the United States Department of Transportation (“FTA”) have jointly planned the Project pursuant to the National and State Environmental Policy Acts, and have completed environmental review for the projects in SeaTac, Des Moines, Kent, and Federal Way with the Federal Way Link Extension Final Environmental Impact Statement issued on November 18, 2016 and FTA’s Record of Decision issued on March 6, 2017;

WHEREAS, on January 26, 2017, the Sound Transit Board defined and selected the Federal Way Link Extension alignment, profile, stations, and associated infrastructure to be built between Angle Lake Station at S. 200th Street and the Federal Way Transit Center in Resolution 2017-02;

WHEREAS, Sound Transit is intending to deliver the Project as a design/build procurement (“Design/Build”) and has been coordinating with the City in preparation for Project Design and Construction;

WHEREAS, the City and Sound Transit want to agree on a grant of a non-exclusive use of a Light Rail Transit Way for the Federal Way Link Extension Project in the City with appropriate terms and conditions that will satisfy the FTA’s continuing control requirements; and

WHEREAS, the City and Sound Transit intend to execute a Development Agreement in coordination with this Transit Way Agreement.

NOW THEREFORE, in consideration of mutual promises and covenants herein contained related to the grant of a non-exclusive use of a Light Rail Transit Way by the City to Sound Transit to construct, operate, maintain, and own a Light Rail Transit System in the City of SeaTac within and along the Light Rail Transit Way, the parties hereto agree to the terms and conditions as follows:

SECTION I. DEFINITIONS

For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental entities, whether persons or entities, refer to those entities or their successors in authority. If specific provisions of law referred to herein be renumbered,

then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances, and regulations now in force or hereinafter enacted or amended.

1.1 Agreement. "Agreement" means this Light Rail Transit Way Agreement approved by appropriate action of the City of SeaTac and of Sound Transit.

1.2 City. "City" means the City of SeaTac and any successor or assignee following an assignment that is permitted under this Agreement.

1.3 Director. "Director" means the current Director of Public Works of the City of SeaTac.

1.4 Emergency. "Emergency" means, except as otherwise provided, a sudden, unexpected occurrence or set of circumstances demanding immediate action in order to prevent and/or avoid an imminent threat to public health or safety, public or private property, or to prevent and/or avoid serious environmental degradation.

1.5 Final Construction Plans. "Final Construction Plans" means prints showing in detail, the proposed construction and specifications of the Light Rail Transit System including alignment drawings showing the exact limits of the Light Rail Transit Way.

1.6 Final Right-of-Way Plans. "Final Right-of-Way Plans" means prints having the proposed limits of the Light Rail Transit Way mathematically tied to existing City monumentation and the Washington State Coordinate Plane System.

1.7 Liability. "Liability" means all loss, damages, cost, expense (including costs of investigation and attorney fees and expenses at arbitration, trial or appeal and without institution of arbitration or suit), liability, claims, and demands of whatever kind of nature (including those arising under the Federal Employers Liability Act), arising in any way out of an occurrence relating to this Agreement or occurring on or relating to the Light Rail Transit System described herein.

1.8 Light Rail Transit Facility. "Light Rail Transit Facility" means a structure, rail track, equipment, maintenance base, or other improvement of a Light Rail Transit System, including but not limited to ventilation structures, traction power substations, signal bungalows, Light Rail Transit Stations and related passenger amenities, bus layover and inter-modal passenger transfer facilities, and station access facilities.

1.9 Light Rail Transit Station. "Light Rail Transit Station" means a Light Rail Transit Facility whether at grade, above grade or below grade that provides pedestrian access to

Light Rail Transit System vehicles and facilitates transfer from light rail to other modes of transportation. A Light Rail Transit Station may include mechanical devices such as elevators and escalators to move passengers and may also include such passenger amenities as informational signage, seating, weather protection, fountains, or artwork.

1.10 Light Rail Transit System. "Light Rail Transit System" means a public rail transit line, including Light Rail Transit Facilities, all infrastructure (including light rail vehicles operating on the Light Rail Transit Way), passenger services and communication equipment, that operates at grade level, above grade level, or in a tunnel and that provides high-capacity, regional transit service owned or operated by a regional transit authority authorized under RCW 81.112. A Light Rail Transit System may be designed to share a street right of way although it may also use a separate right of way. Commuter rail and low capacity, or excursion rail transit service are not included.

1.11 Light Rail Transit Way. "Light Rail Transit Way" means the areas within the Public Rights of Way occupied by Sound Transit for its Light Rail Transit System after construction pursuant to this Agreement, as shown on the record drawings of the Final Right-of-Way Plans approved by the Director and on file with the City.

1.12 Parties. "Parties" means the City of SeaTac and Sound Transit.

1.13 Passenger. "Passenger" means any person who is not an employee of Sound Transit, and who is aboard any Sound Transit Light Rail Transit System vehicle.

1.14 Public Rights of Way. "Public Rights of Way" means the areas above, below, on and over public streets and easements which, under the SeaTac Municipal Code, the City ordinances, and applicable laws, the City has authority to grant rights of way, permits, or licenses for use thereof or has regulatory authority therefor.

1.15 Project. "Project" means the segments of the Light Rail Transit System in the City as described in Sound Transit Board Resolution 2017-02 and subsequent approved permits and agreements.

1.16 Record Drawings. "Record Drawings" means the final set of neatly and legibly marked set of contract drawings, maintained by Sound Transit's Design-Build Contractor with up-to-date information, showing the final locations of all items of work.

1.17 Routine Maintenance and Operation. "Routine Maintenance and Operation" means Sound Transit's maintenance and operation of the Light Rail Transit System that does not require (i) the excavation of soil that would alter or disturb the Public Rights of Way, or (ii) the use of heavy machinery within fifty (50) feet of or upon the Public Rights of Way.

1.18 Sound Transit. "Sound Transit" means the Central Puget Sound Regional Transit Authority, and any other entity to the extent such entity, as permitted under this Agreement, is exercising any rights to operate the Light Rail Transit System over any portion of the Light Rail Transit Way pursuant to a specific written grant of such rights by Sound Transit.

1.19 Third Party. "Third Party" means any person other than the City or an employee of the City, and any person other than Sound Transit or an employee of Sound Transit.

1.20 Track Access Permit. "Track Access Permit" means the process for track access, including the management, scheduling, and authorization of access to employees, third parties, and contractors to perform work on, near, or adjacent to the Light Rail Transit System or any Sound Transit facility. (See Exhibit D – Track Access Procedures.)

SECTION II. GRANT OF RIGHTS BY THE CITY

2.1 Grant of Non-Exclusive Use of a Light Rail Transit Way. The City grants to Sound Transit a non-exclusive use of certain portions of the Public-Rights-of-Way, the general location of which is described and depicted on **Exhibits A and B** hereto, to be known as a Light Rail Transit Way, to construct, operate, maintain, and own a Light Rail Transit System in, upon, above, beneath and along the Light Rail Transit Way in accordance with the terms and conditions of this Agreement. The Light Rail Transit Way shall be limited to the areas described generally in the plans and profile drawings contained in **Exhibit C** hereto and more fully described in the Final Right-of-Way Plans and hereby incorporated by reference. The Director or designee and Sound Transit's Deputy Executive Director or designee of Design and Engineering shall, from time to time, jointly revise and modify **Exhibit C** to conform to the Final Construction Plans and the Final Right-of-Way Plans as long as the revisions are, in their judgment, within the scope and intent of **Exhibit C**. The Director is hereby expressly delegated the authority to revise and modify **Exhibit C** from time to time consistent with the terms of this paragraph. This grant of a non-exclusive use of certain portions of the Public-Rights-of-Way shall take effect upon the filing with the City Clerk by the Director of approved Final Construction Plans and Final Right-of-Way Plans. Sound Transit expressly agrees that it will construct, operate, and maintain the Light Rail Transit System in compliance with this Agreement and all applicable City ordinances, state, and federal laws, now or hereafter amended.

2.2 Rights Limited to Light Rail Transit System. The non-exclusive use of a Light Rail Transit Way is granted solely for the purpose of construction, maintenance, operation, and ownership of the Light Rail Transit System detailed in the Issued for Construction Plans, and for no other purpose. Sound Transit intends, and shall have the right, to use the Light Rail Transit Way solely for Light Rail Transit System uses. Sound Transit agrees

that it shall not, without the City's written consent, construct on or along the Light Rail Transit Way any additions to or expansions of the Light Rail Transit System subsequent to the construction done in accordance with the Issued for Construction Plans and with the Final Right-of-Way Plans. Notwithstanding the foregoing, nothing contained herein shall prevent Sound Transit from replacing Light Rail Transit Facilities or equipment existing after construction after first obtaining any necessary permits and other authorizations from the City.

2.3 City Work in Light Rail Transit Way. Language in Process with ST and City.

2.4 Non-Exclusive Use. Sound Transit understands that the rights granted herein are non-exclusive. The City shall have the right to agree to other non-exclusive uses or occupancies of the Light Rail Transit Way. The City agrees that such uses or occupancies shall not unreasonably impair the ability of Sound Transit to operate the Light Rail Transit System.

2.5 Use Restricted. This Agreement does not authorize the provision of any services by Sound Transit other than the services strictly related to the operation of the Light Rail Transit System. Sound Transit's use of the Light Rail Transit Way for anything other than a Light Rail Transit System shall require written permission from the City.

2.6 Ownership. Sound Transit shall own all tracks and other Light Rail Transit Facilities within the Light Rail Transit Way, including, without limitation, improvements constructed at the cost and expense of Sound Transit that are not otherwise transferred to and accepted by the City. Nothing in this Agreement shall be construed as granting to Sound Transit any interest or right in the Light Rail Transit Way or the improvements on the Light Rail Transit Way other than the rights expressly provided herein.

2.7 No Rights by Implication. No rights shall pass to Sound Transit by implication. Without limiting the foregoing, by way of example and not limitation, this Agreement shall not include or be a substitute for the following:

A. Any other permit or authorization required for the privilege of transaction and carrying on a business within the City that may be required by the ordinances and laws of the City; or

B. Any permit, agreement or authorization required in connection with operations on or in public streets or property, including by way of example and not limitation, street cut permits; or

C. Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Agreement.

2.8 Utilities Agreements. This Agreement shall not be interpreted as diminishing in any way the City's ability to provide, control or charge for any City utility services existing now or in the future. Therefore, if Sound Transit desires to use such utilities, it must pay standard rates for utility services and obtain necessary agreements or consents for such uses, as may be required by the City, which agreements or consents shall not be unreasonably withheld.

SECTION III. PERMITS

3.1 Permits and Licenses. Sound Transit, at its sole cost and expense, shall (i) secure and maintain in effect, all federal, state, and local permits and licenses required for the construction, operation, and maintenance of the Light Rail Transit System, including, without limitation, crossing, zoning, building, health, environmental, and communication permits and licenses, and (ii) indemnify the City against payment of the costs thereof and against any fines or penalties that may be levied for failure to procure, or to comply with, such permits or licenses, as well as any remedial costs incurred by the City in curing any such failures.

3.2 Non-Interference. The City shall not interfere with Sound Transit's ability to secure, obtain, and maintain, at Sound Transit's sole cost and expense, any permits, licenses or approvals of other governmental agencies or authorities, or of any necessary Third Parties, for the use of any structures or facilities, including streets, roads, or utility poles not owned by the City.

SECTION IV. CONSTRUCTION

4.1 Approval of Construction. Sound Transit shall obtain the approval of the Director of all Light Rail Facility Final Construction Plans for work in the Public Right of Way prior to any such work commencing. Final Construction Plans must be accompanied by Final Right-of-Way Plans. Approval for construction shall consist of the issuance of a construction permit or permits by the Director for each project section or contract to be constructed by Sound Transit within the Public Rights of Way.

4.2 Record Drawings. Within six (6) months, of Sound Transit's acceptance of Design-Build Contractor Project completion, Sound Transit shall furnish to the City Record Drawings of the Final Construction Plans and Final Right-of-Way Plan, including Record Drawings and associated electronic AUTOCAD and GIS files showing the as-built condition. Upon mutual agreement as to the types and number of drawings required, Sound Transit shall furnish to the City drawings sufficient to describe the project spatially in the Washington State Plane Coordinate System. Sound Transit will assist in the conversion to the City coordinate system if necessary.

4.3 Entry Upon Light Rail Transit Way. Sound Transit, its employees, and agents shall have the right, as defined and limited pursuant to Section V of this Agreement, to enter upon the Light Rail Transit Way for the purpose of constructing, operating, and maintaining the Light Rail Transit Facilities.

4.4 Temporary Use of Public Rights of Way. During construction of the Light Rail Transit System, Sound Transit, with the prior written agreement of the City, and approval of any required permits, may fence portions of the Public Rights of Way for the temporary storage of construction equipment and materials, provided that such structures and fences (i) do not interfere with or disrupt in any way, other than ways approved in advance by the City, the ordinary use of the Public Right of Way; (ii) do not interfere with or disrupt in any way, other than in ways approved in advance by the City, the ordinary access to property on either side of the Public Rights of Way; (iii) are not used for construction worker parking; and (iv) do not unnecessarily limit the public's right to travel within the Public Right of Way. Sound Transit shall not store or temporarily place any goods, materials, or equipment (i) near a roadway, intersection, or crossing in such a manner as to interfere with the sight distance of persons approaching such crossing; or (ii) within such greater distance as prohibited by the City; provided, however, that fuel and other hazardous substances shall not be stored unless approved by appropriate officials of the City Fire Department.

4.5 Utilities During Construction. The City recognizes that the Light Rail Transit System is an essential public facility and public transportation improvement. Sound Transit will coordinate with all utilities to minimize utility relocation costs and related construction and will negotiate with non-City-owned utilities on utility relocation costs and cost allocation. Sound Transit shall fully indemnify the City for any claim and undertake the defense of any litigation directed at the City arising from the City's exercise of its franchise authority to direct such relocation to accommodate the construction of the Light Rail Transit System. The City shall cooperate fully with Sound Transit in the defense of any such claim or litigation. Notwithstanding the foregoing, the Parties agree that Sound Transit shall pay for any and all costs for relocation or protection of City-owned storm water utilities that the City determines is necessary due to construction, maintenance, or operation of the Light Rail Transit System. The specific allocation of costs of such relocation shall be defined in a series of future agreements between the City and Sound Transit relating to the separate construction segments of the Light Rail Transit System, each agreement to be entered into before construction on the particular segment begins.

4.6 Work Completed by Sound Transit. Sound Transit, at Sound Transit's sole cost and expense, will furnish all materials, parts, components, equipment, and structures necessary to construct and operate the Light Rail Transit System, or any part thereof, in accordance with this Agreement. Any and all work by Sound Transit shall be done in a

good and workman-like manner, in conformity with all applicable engineering, safety, and other statutes, laws, ordinances, regulations, rules, codes, permits, orders, or specifications of any public body or authority having jurisdiction.

4.7 Installation. All facilities and installations must meet or exceed applicable specifications of the City and be in compliance with all existing federal, state, and local laws, ordinances, permits, and regulations.

4.8 Track Support. During any work of any character by Sound Transit at locations of the Light Rail Transit Facilities, and in accordance with the Final Construction Plans, Sound Transit will support the tracks and roadbed of the Light Rail Transit System in such manner as is necessary for the safe operation of the Light Rail Transit System and ordinary use of the Public Rights of Way.

4.9 Imminent Danger. If, during construction, there is an Emergency or the Light Rail Transit System creates or is contributing to an imminent danger to health, safety, or property that Sound Transit is unable to immediately address, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Light Rail Transit System without prior notice, and seek reimbursement from Sound Transit for all costs incurred. The City shall provide notice of such Emergency or danger along with any actions taken to Sound Transit as soon as practicable taking into account the nature and complexity of the Emergency or imminent danger.

4.10 Accommodation of Moving Structures. Sound Transit shall, on the request of any Third Party holding a valid permit issued by a governmental authority and a Sound Transit Track Access permit, temporarily raise or lower its wires to permit the moving of buildings or other objects. Sound Transit may require that the expense of such temporary removal or raising or lowering of wires be paid in advance by the Third Party requesting the same.

4.11 Information Regarding Ongoing Work. In addition to providing notice to the public of ongoing work as may be required under applicable law, Sound Transit shall develop a comprehensive project-specific communication plan in coordination with the City to establish and maintain effective communication with residents and businesses to allow them to be fully informed about potentially significant disruptions, such as temporary street closures, changes in transit service, and parking availability. As part of the communication plan, Sound Transit will work with community and neighborhood groups prior to and through the construction process to identify types of impacts that would occur and communicate mitigation activities to address such impacts.

4.12 Restoration of Public Rights of Way. Sound Transit shall promptly repair any and all Public Rights of Way and public property that is disturbed or damaged during the construction of its Light Rail Transit System to substantially the same condition, or in the

case of street surfaces, better condition if reasonably necessary and within a mutually agreed-upon timeframe commensurate with the scope of repairs. In the event Sound Transit does not comply with the foregoing requirement, the City may, upon reasonable advance notice to Sound Transit, take the actions to restore the Public Rights of Way or public property at Sound Transit's sole cost and expense.

4.13 Federal Grant Conditions. Sound Transit's design and construction of the Project may become subject to a financial assistance agreement between Sound Transit and the Federal Transit Administration (“FTA”). Both parties recognize that amendments to this Agreement may be necessary in order to comply with FTA funding requirements.

SECTION V. ENTRY NOTICE

5.1 Access. Sound Transit, its employees and agents shall have access to the Public Rights of Way in connection with Sound Transit's construction, operation, and maintenance of the Light Rail Transit System as is reasonably necessary in accordance with specific conditions within this Agreement. However, except to the extent expressly provided in this Agreement, this right of access shall not be deemed to require the City to take any actions or expend any funds to enable such persons to exercise such rights of access, and provided further that such access may not interfere with or disrupt in any way, other than in ways approved in advance by the City, the use of the Light Rail Transit Way by the City or Third Parties.

5.2. Notice Prior to Initial Entry. During Project construction, Sound Transit shall give the City at least seventy-two (72) hours written notice before initial entry upon any portion of the Public Rights of Way for construction purposes.

5.3 Entry after Project Construction. After construction, any entry by Sound Transit onto the Public Rights of Way that is not pursuant to the Routine Maintenance and Operation of the Light Rail Transit System or for purposes relating to an Emergency shall require (i) advance written notice from Sound Transit to the City not less than ten (10) days prior to Sound Transit's planned entry, with notice to specify the purpose of the entry; (ii) if entry involves any new connection or removal of any portion of the Light Rail Transit System, plans as required by direction of the Director showing in detail the proposed new construction, reconstruction, or removal; and (iii) approval by the City which approval shall not be unreasonably withheld or delayed, taking into account the nature of the proposed entry.

5.4 Entry for Routine Maintenance and Operation. During Routine Maintenance and Operation, Sound Transit personnel may enter the Public Rights of Way without notice to the City, as long as such entry is for the sole purpose of Routine Maintenance and Operation. If the Routine Maintenance and Operation activities require the closure of a

traffic lane, Sound Transit will exert its best efforts to provide the City forty-eight (48)-hours written notice before closure of any portion of the Public Right-of-Way.

5.5 Emergency Access. In the event of an Emergency that interrupts or significantly disrupts Operation of the Light Rail Transit System and for purposes of taking immediate corrective action, Sound Transit personnel may enter the Public Rights of Way without notice to the City, as long as such entry is for the sole purpose of addressing the Emergency; provided, however, that if any entry for such purposes is likely to require excavation of soil that would alter or disturb the Public Rights of Way or use of heavy machinery within fifty (50) feet of or upon the Public Rights of Way, Sound Transit shall give the City verbal or telephonic notice of the places where, and the manner in which, entry is required, prior to such entry, promptly followed by written notice.

SECTION VI. OPERATION, MAINTENANCE, AND REPAIR IN STREETS AND RIGHTS OF WAY

6.1 Compliance with Laws, Rules, and Regulations. Sound Transit shall operate, maintain, and repair its Light Rail Transit System in compliance with all federal, state, and local laws, ordinances, permits, departmental rules and regulations and practices affecting such system, which include, by way of example and not limitation, the obligation to operate, maintain, and repair in accordance with the City's Land Use Code and construction codes, and City street and utility standards. In addition, the operation, maintenance, and repair shall be performed in a manner consistent with industry standards. Sound Transit shall exercise reasonable care in the performance of all its activities and shall use industry-accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public to property.

6.2 Permits Required. Except in cases of emergency repairs, Sound Transit's operation, maintenance, or repair of its Light Rail Transit System shall not commence until all required permits have been properly applied for and obtained from the proper City officials and all required permits and associated fees paid, including, but not limited to, the cost of permit-application review and inspection. In case of emergency repairs, appropriate permits shall be applied for no later than the second business day following repairs.

6.3 Level of Operation/Maintenance. All facilities shall be operated and maintained in such a manner as to minimize disruption to other users of the Public Rights of Way. All facilities shall be maintained in a state of good repair as defined by FTA in 49 CFR 625. Sound Transit will promptly repair and maintain the operational functionality of all Light Rail Transit Facilities in the City, including, but not limited to, public restrooms, escalators and elevators.

6.4 Appointment of Operator. Sound Transit may appoint an operator as Sound Transit's agent to exercise some or all of Sound Transit's rights under this Agreement, subject to the terms and conditions of this Agreement.

6.5 Regulatory Approvals. Sound Transit and its operator shall obtain and maintain all federal, state and/or local regulatory approvals as may be required for the operation of the Light Rail Transit System.

6.6 Responsibility for Equipment. The City shall have no responsibility for inspecting, maintaining, servicing, or repairing any trains or other equipment used by Sound Transit as part of the Light Rail Transit System, but all such equipment shall at all times comply with applicable federal, state, and local governmental requirements.

6.7 Prompt Repair. Sound Transit shall promptly repair any and all Public Rights of Way, public property, or private property that is disturbed or damaged during the operation, maintenance, or repair of its Light Rail Transit System. Public property and Public Rights of Way must be restored to substantially the same condition as before the disturbance or damage occurred, or, in the case of street surfaces, better condition if reasonably necessary.

6.8 Imminent Danger. Language in Process with ST and City.

6.9 No At-Grade Crossings or Crossing Gates Without Permission. Sound Transit shall not install any at-grade crossings or crossing gates or other traffic control devices without the written consent of the City.

SECTION VII. FACILITY LOCATION SIGNS

Sound Transit, at its sole cost, expense, and risk, shall secure permits, furnish, erect, and thereafter maintain signs showing the location of all Sound Transit facilities. Signs shall be in conformance with all applicable codes.

SECTION VIII. THIRD PARTY RIGHT OF WAY OWNERSHIP

This Agreement is not intended to cover and does not cover any occupancies over (i) rights of way or other land owned solely or jointly by any other person or entity, or (ii) any rights granted to the City by Third Parties.

SECTION IX. RELOCATIONS

If the City desires the relocation of a portion of the Light Rail Transit Facilities to accommodate the City, the City shall notify Sound Transit of such fact, and Sound Transit shall consult with the City to address the request.

SECTION X. LIABILITY, INDEMNIFICATION

Sound Transit shall indemnify, defend, and hold the City harmless from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses (including, without limitation, attorneys' fees) arising or growing out of or in connection with or related to, either directly or indirectly, the design, construction, maintenance, operation, repair, removal, occupancy, and use of the Light Rail Transit System in the Light Rail Transit Way, except to the extent such claims arise from the sole or partial negligence, errors or omissions of the City, its employees, servants, and agents.

Consistent with Sound Transit's indemnification obligations herein, the City shall give Sound Transit prompt notice of any claims directly affecting Sound Transit about which the City is aware of or has received formal notification. Sound Transit shall promptly assume responsibility for the claim or undertake the defense of any litigation on behalf of the City. The City shall cooperate fully with Sound Transit in the defense of any claim associated with this Agreement. The City shall not settle any claim associated with this agreement directly affecting Sound Transit without the prior written consent of Sound Transit, which consent shall not be unreasonably withheld.

Sound Transit expressly assumes potential liability for actions brought by Sound Transit's employees and agents against the City and, solely for the purpose of this indemnification, expressly waives any immunity under the Industrial Insurance Law, Title 51 RCW. Sound Transit acknowledges that this waiver was entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

The indemnification obligations provided in this Section shall survive termination of this Agreement.

SECTION XI. INSURANCE

Sound Transit shall maintain, throughout the term of this Agreement and for six (6) years after its termination, an appropriate program of insurance, self-insurance, or any combination thereof in amounts and types sufficient to satisfy its liabilities. When commercial insurance is utilized, Sound Transit shall secure and maintain in effect insurance adequate to protect the City against claims or lawsuits that may arise as a

result of the design, construction, operation, maintenance, repair, removal, occupancy, or use of the Light Rail Transit System in the Light Rail Transit Way, including, without limitation: (i) commercial general liability insurance; (ii) workers' compensation insurance (to the extent required by law); (iii) employer's liability insurance; (iv) auto liability coverage; (v) environmental liability insurance; and, (vii) during the construction phase, builder's risk.

Sound Transit shall carry such insurance with insurers who are licensed to do business in the State of Washington or self-insure or participate in an insurance pool or pools at levels of coverage or with reserves adequate, in the reasonable judgment of Sound Transit, to protect Sound Transit and the City against loss, and as are ordinarily carried by municipal or privately owned entities engaged in the operation of systems comparable to the Light Rail Transit System.

Sound Transit shall file with the City's Risk Manager Business Relations Program on an annual basis proof of an appropriate program of insurance, self-insurance, or any combination thereof in amounts and types sufficient to satisfy its liabilities. The certificates shall contain a provision that coverage shall not be canceled until at least thirty (30) days' prior written notice has been given to the City.

If Sound Transit fails to maintain the required insurance, the City may order Sound Transit to stop constructing or operating the Light Rail Transit System in the Light Rail Transit Way until the required insurance is obtained.

SECTION XII. LIENS

12.1 The Light Rail Transit Way and Light Rail Transit Facilities are not subject to a claim of lien. In the event that any City property becomes subject to any claims for mechanics, artisans, or materialmen liens, or other encumbrances chargeable to or through Sound Transit which Sound Transit does not contest in good faith, Sound Transit shall promptly, and in any event within thirty (30) days, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit or other means), without cost to the City, and shall indemnify the City against all costs and expenses, including attorney fees, incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of Sound Transit after first giving Sound Transit five (5) business days' advance notice of its intention to do so. The City shall use its reasonable best efforts to keep Sound Transit's facilities free of all liens that may adversely affect the Light Rail Transit System.

12.2 Nothing herein shall preclude Sound Transit's or the City's contest of a claim for lien or other encumbrance chargeable to or through Sound Transit or the City, or of a contract or action upon which the same arose.

12.3 Nothing in this Agreement shall be deemed to give, and the City expressly waives, any claim of ownership in and to any part or the whole of the Light Rail Transit Facilities except as may be otherwise provided herein.

SECTION XIII. TERM; TERMINATION

13.1 This Agreement shall be effective as of the date the last party signs and, unless sooner terminated pursuant to the terms hereof, shall remain in effect for so long as the Light Rail Transit Way is used for public transportation purposes.

13.2 Upon termination of this Agreement, Sound Transit agrees to prepare, execute and deliver to the City all documentation necessary to evidence termination of this Agreement or portion thereof so terminated. No such termination, however, shall relieve the parties hereto of obligations accrued and unsatisfied at such termination.

13.3 Upon the cessation of use of the Light Rail Transit Way for the Light Rail Transit System, any portion remaining in the Public Rights of Way or on any other public property that is not removed by Sound Transit may be deemed by the City to be abandoned and shall become the property of the City. If the City does not desire such ownership, Sound Transit shall remove any remaining portion of the Light Rail System.

13.4 Any order by the City issued pursuant to this Section to remove the Light Rail Transit System in whole or in part shall be sent by registered or certified mail to Sound Transit not later than twenty-four (24) months following the date of termination of this Agreement, or, if later, the final resolution of any appeal of the termination.

13.5 Sound Transit shall file a written removal plan with the City not later than sixty (60) calendar days following the date of the receipt of any orders directing removal, or any consent to removal, describing the work that will be performed, the manner in which it will be performed, and a schedule for removal by location. The removal plan shall be subject to approval and regulation by the City. The affected property shall be restored to as good or better condition than existed immediately prior to removal.

SECTION XIV. DISPUTE RESOLUTION; REMEDIES; ENFORCEMENT

14.1 Dispute Resolution.

A. Any disputes or questions of interpretation of this Agreement that may arise between Sound Transit and the City shall be governed under the Dispute Resolution provisions in this Section. The Parties agree that cooperation and communication are essential to resolving issues efficiently. The Parties agree to exercise their best efforts to resolve any disputes that may arise through this dispute resolution process.

B. The Parties agree to use their best efforts to prevent and resolve potential sources of conflict at the lowest level.

C. The Parties agree to 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:

(1) Level One - Sound Transit's Deputy Executive Director of Design, Engineering and Construction Management or Designee and the City's City Engineer or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level One, either party may refer the dispute to Level Two.

(2) Level Two - Sound Transit's Executive Director of Design, Engineering and Construction Management or Designee and the City's Public Works Director or Designee shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.

(3) Level Three - Sound Transit's Chief Executive Officer or Designee and the City Manager or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner.

D. Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within fourteen (14) calendar days after referral of that dispute to Level Three, the Parties are free to file suit or agree to alternative dispute resolution methods such as mediation. At all times prior to resolution of the dispute, the Parties shall 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.

14.2 Notice of Default. Neither party shall be in default under this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) calendar days after written notice of default from any other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured

within thirty (30) days, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure.

14.3 Remedies. Either party hereto has the right to exercise any available remedy including, but not limited to and all of the following remedies, singly or in combination, and consistent with the dispute resolution and notice of default sections of this Agreement, in the event the other party violates any provision of this Agreement:

- A. Commencing an action at law for monetary damages;
- B. Commencing an action for equitable or other relief;
- C. Seeking specific performance of any provision that reasonably lends itself to such remedy.

14.4 Cumulative Remedies. In determining which remedy or remedies for a party's violation are appropriate, a court may take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether the party has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstance. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

14.5 Failure to Enforce. Neither party hereto shall be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure of the other party to enforce prompt compliance, and one party's failure to enforce shall not constitute a waiver of rights or acquiescence in the other party's conduct.

SECTION XV. COVENANTS AND WARRANTIES

15.1 By execution of this Agreement, the City warrants:

A. That the City has full right and authority to enter into and perform this Agreement and any permits which may be granted in accordance with the terms hereof, and that by entering into or performing this Agreement the City is not in violation of any law, regulation, or agreement by which it is bound, to which it is bound, or to which it is subject; it being understood, however, that the covenant and warranty contained in this Section does not constitute a warranty, expressed or implied, by the City, of the right or rights granted by the City to Sound Transit hereunder; and

B. That the execution, delivery, and performance of this Agreement by the City has been duly authorized by all requisite corporate action, that the signatories for the City

hereto are authorized to sign this Agreement, and that, upon approval by the City, the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Agreement.

15.2 By execution of this Agreement, Sound Transit warrants:

A. That Sound Transit has full right and authority to enter into and perform this Agreement in accordance with the terms hereof and by entering into or performing under this Agreement, Sound Transit is not in violation of any of its agency governance rules, any law, regulation or agreement by which it is bound or to which it is subject; and

B. That the execution, delivery and performance of this Agreement by Sound Transit has been duly authorized by all requisite Board action, that the signatories for Sound Transit hereto are authorized to sign this Agreement, and that the joinder or consent of any other party, including a court, trustee, or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Agreement.

SECTION XVI. RECORDINGS, TAXES AND OTHER CHARGES

16.1 Sound Transit shall pay all transfer taxes, documentary stamps, recording costs or fees, or any similar expense in connection with the recording or filing of any permit which may be granted hereunder. Sound Transit further agrees that if it is determined by any federal, state, or local governmental authority that the sale, acquisition, license, grant, transfer, or disposition of any part or portion of the Light Rail Transit Facilities or right herein described requires the payment of any tax, levy, excise, assessment, or charges, including without limitation, property, sales or use tax, under any statute, regulation or rule, Sound Transit shall pay these, plus any penalty and/or interest thereon, directly to said taxing authority and shall hold the City harmless therefrom. Sound Transit shall pay all taxes, levies, fees, excises, assessments, or charges, including any penalties and/or interest thereon, levied or assessed on the Light Rail Transit Facilities, or on account of their existence or use, including increases thereof attributable to such existence or use, and excluding taxes based on the income of the City, shall indemnify the City against payment thereof. Sound Transit shall have the right to claim, and the City shall reasonably cooperate with Sound Transit in the prosecution of any such claim, for refund, rebate, reduction, or abatement of such tax(es).

16.2 The City may pay any tax, levy, fee, excise, assessment or charge, plus any penalty and/or interest thereon, imposed upon Sound Transit for which Sound Transit is obligated pursuant to this Section if Sound Transit does not pay such tax, levy, excise, assessment, or charge when due. Sound Transit shall reimburse the City for any such payment made

pursuant to the previous sentence, plus interest at the prime rate per annum, as published in the Wall Street Journal.

SECTION XVII. ASSIGNABILITY; BENEFICIARY

17.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, operators or assignees. No assignment hereof or sublease shall be valid for any purpose without the prior written consent of the other party, and any attempt by one party to assign or license the rights or obligations hereunder without prior written consent will give the other party the right, at its written election, immediately to terminate this Agreement or take any other lesser action with respect thereto. The above requirement for consent shall not apply to (i) any disposition of all or substantially all of the assets of a party; (ii) any governmental entity merger, consolidation or reorganization, whether voluntary or involuntary; (iii) a sublease or assignment of this Agreement, in part or in whole, to a governmental entity; or (iv) a sale, lease, or other conveyance by the City, subject to those requirements set forth in this Agreement; provided however, that no sublease or assignment under (ii) or (iii) shall be permitted to a governmental entity not operating, constructing or maintaining a Light Rail Transit System on behalf of Sound Transit, and provided further that no unconsented assignment shall relieve Sound Transit of its obligations and liabilities under this Agreement.

17.2 Either party hereto may assign any monetary receivables due them under this Agreement; provided, however, such assignment shall not relieve the assignor of any of its rights or obligations under this Agreement.

17.3 Sound Transit acknowledges and agrees that the City may designate in writing a designee to (i) receive information, including information designated or identified as confidential, and notices under this Agreement, and (ii) provide certain approvals or consents required from the City under this Agreement. In the event of such designation, Sound Transit may rely on approvals or consents by such designee on behalf of the City as fully as if such actions were performed by the designator itself.

17.4 Neither this Agreement nor any term or provision hereof, or any inclusion by reference, shall be construed as being for the benefit of any party not a signatory hereto.

SECTION XVIII. NOTICES

18.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to (one copy each):

Central Puget Sound Regional Transit Authority
Attention: Deputy Executive Director DECM
401 South Jackson Street
Seattle, WA 98104-2826

And to:

City of SeaTac
Attention: City Manager
4800 South 188th Street
SeaTac, WA 98188

SECTION XIX. MISCELLANEOUS

19.1 This Agreement shall survive delivery and/or recordation of each may be granted hereunder.

19.2 Each party shall be responsible for its own costs, including legal fees, in negotiating or finalizing this Agreement, unless otherwise agreed by the Parties.

19.3 No Party shall be deemed in default of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond that Party's control; the unforeseeable unavailability of labor or materials; labor stoppages or slowdowns; or power outages exceeding back-up power supplies. This Agreement shall not be revoked nor shall either Party be penalized for such noncompliance, provided that the Party takes immediate and diligent steps to return to compliance and to comply as soon as practicable under the circumstances without duly endangering the health, safety, and integrity of their employees or property, or health, safety, and integrity of the public, Public Rights of Way, public property, or private property.

19.4 This Agreement may be amended only by a written instrument executed by each of the parties hereto, save and except for revisions or modifications to **Exhibit C** as provided for in Section 2.1 herein. No failure to exercise and no delay in exercising, on the part of any party hereto, any rights, power or privilege hereunder shall operate as a waiver hereof except as expressly provided herein.

19.5 This Agreement constitutes the entire agreement of the parties with respect to the subject matters hereof, and supersedes any and all prior negotiations, oral and written, understandings and agreement with respect hereto.

19.6 Section headings are intended as information only, and shall not be construed with the substance of the section they caption.

19.7 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.

SECTION XX. LEGAL FORUM

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be King County, Washington.

SECTION XXI. INTERPRETATION

This Agreement is executed by all parties under current interpretations of applicable federal, state or local statute, ordinance, law, or regulation.

SECTION XXII. SEVERABILITY

In case any term of this Agreement shall be held invalid, illegal, or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement shall in anyway be affected thereby.

IN WITNESS WHEREOF, each of the parties hereto has executed this Light Rail Transit Way Agreement by having its authorized representative affix his/her name in the appropriate space below.

SOUND TRANSIT

CITY OF SEATAC

By: _____
Peter M. Rogoff, Chief Executive Officer

By: _____

Date: _____

Date: _____

Authorized by Motion XX on XX

Authorized by Resolution No.

Approved as to form:

Approved as to form:

By: _____
Stephen G. Sheehy,
Senior Legal Counsel

By: _____

- Exhibit A: General Description of Light Rail Alignment and Station Location(s)
- Exhibit B: Graphic Representation of Light Rail Alignment and Station Location(s)
- Exhibit C: Federal Way Link Extension Plans and Profiles
- Exhibit D: Track Access Procedures (June 15, 2015)

EXHIBIT A:

GENERAL DESCRIPTION OF LIGHT RAIL ALIGNMENT AND STATION LOCATION

General Description of Federal Way Link Extension Alignment Location in SeaTac
Route: Approximately 0.9 miles from the Angle Lake Station tail track along the west side of I-5 in a combination of retained cut, retained fill, at-grade, and elevated structures to the southern City limits on the north side of S 216th Street.

EXHIBIT B

LIGHT RAIL ALIGNMENT AND STATION LOCATIONS

(REVIEWERS: Please reference associated PDF entitled: AE 0044-12 Transit Way
Template Exhibit B: Light Rail Alignment and Station Locations)

EXHIBIT C

PLAN AND PROFILE

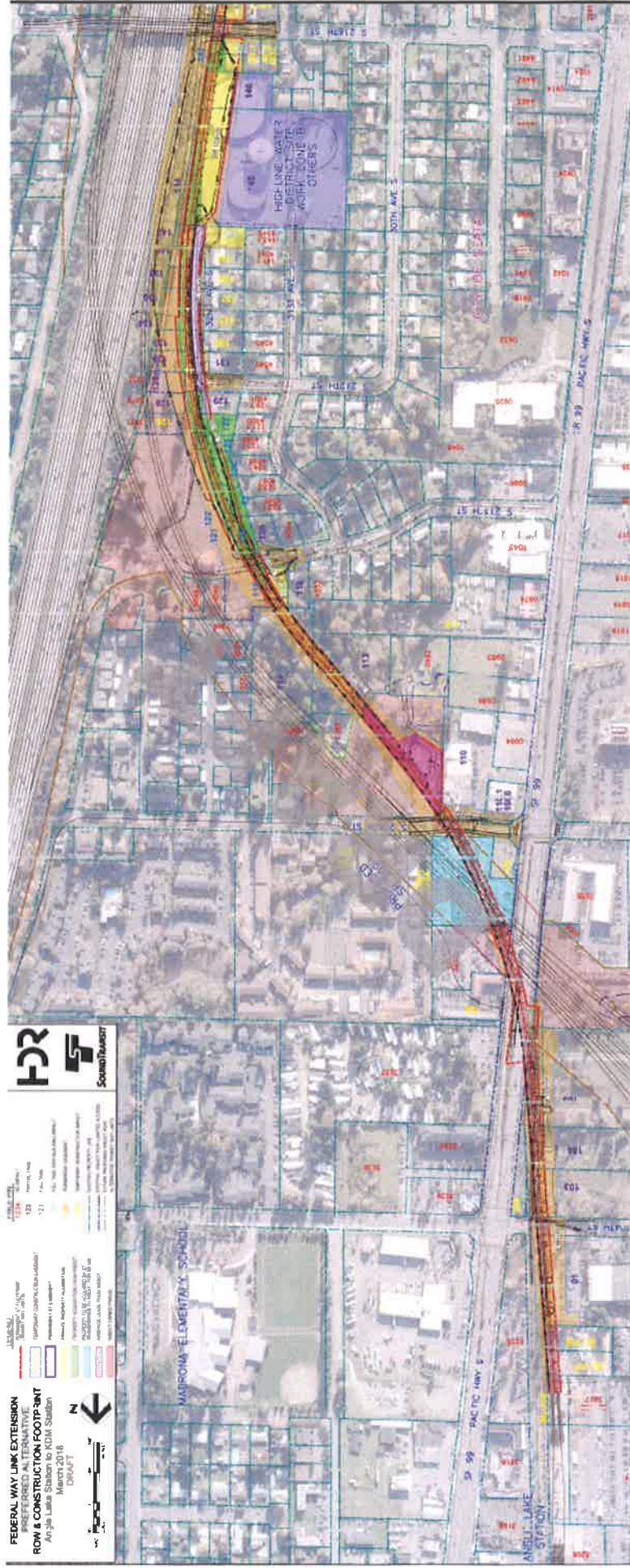
(REVIEWERS: Please reference associated PDF entitled: AE 0044-12 City of SeaTac Transit Way Agreement Exhibit C Plan and Profile).

EXHIBIT D

TRACK ACCESS PROCEDURES

(REVIEWERS: Please reference associated PDF entitled: AE 0044-12 City of SeaTac Transit Way Agreement Exhibit D Track Access Procedures).

FWLE Alignment (a large map will be provided at the Committee meeting)





MEMORANDUM

To: Transportation and Public Works Committee
Through: William Appleton, Public Works Director
From: Colum Lang, Civil Engineer II
Date: 11/15/18
Subject: 35th Ave South Safety Improvements

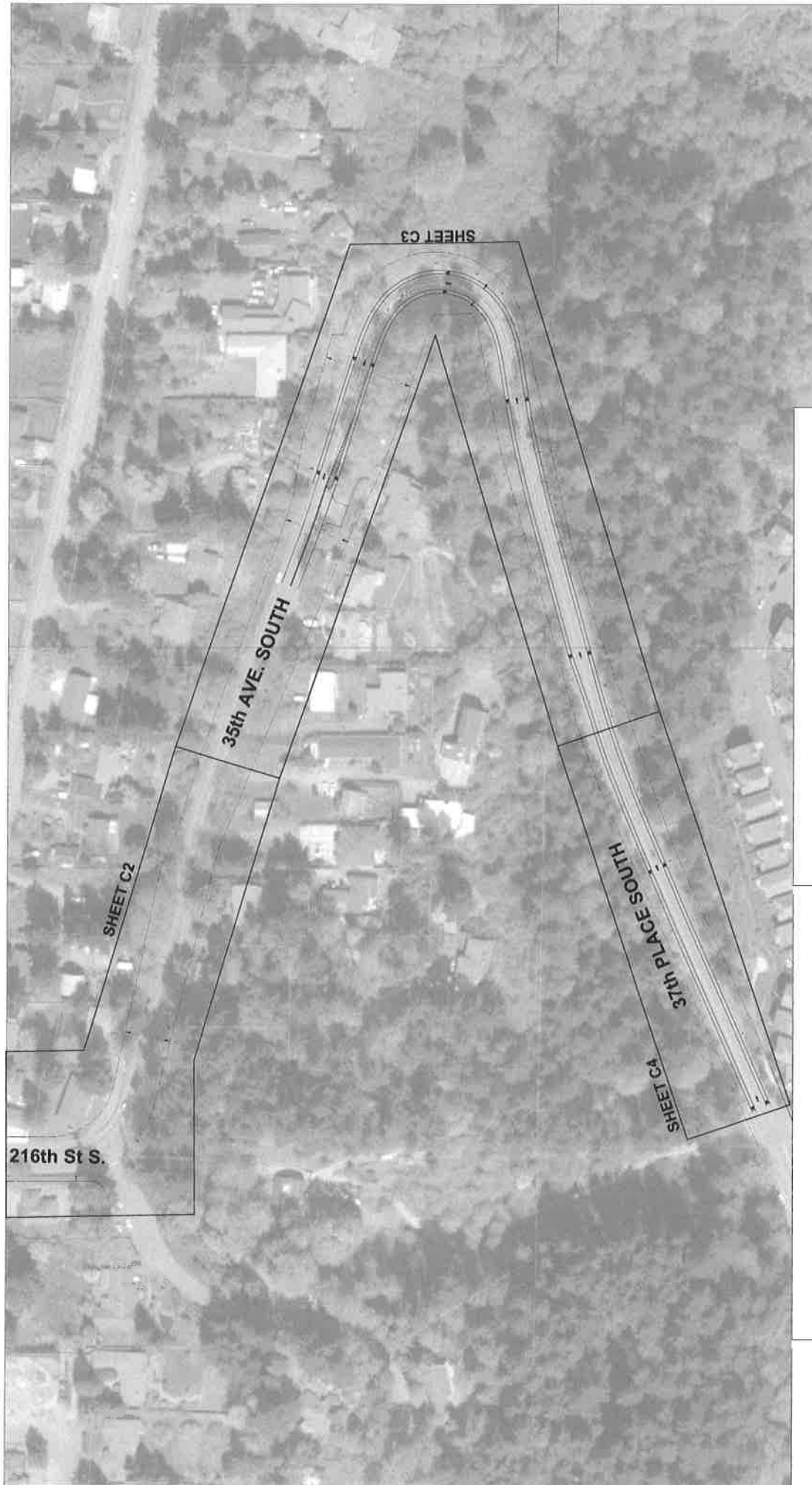
Purpose:

To provide a status update to the committee, and review low impact solutions to address frequent accidents at the hairpin turn.

Background:

In October 2017, Police requested assistance from Public Works to reduce accidents at the 35th Avenue South hairpin turn. The issue and conceptual alternatives were presented at the December 20 2017 TP&W meeting. WSDOT crash data details 87 incidents in the last 5 years, mostly in wet conditions. Speeding was also noted as a contributing factor in most incidents. A petition from twenty-two residents along 35th Avenue South for speed humps has been received. Traffic counts west of the hairpin showed 85th percentile speeds are 38mph northbound and 36 mph southbound, with a volume of 5,409 Average Daily Traffic (ADT), exceeding the thresholds established in the Neighborhood Traffic Safety Program (NTSP) - 10 mph above posted speed limit and greater than 200 ADT.

Two alternatives are being considered to address the safety issue: temporarily converting the road to a one way westbound (uphill) or installing speed humps. Considerations for the one-way option include impacts to emergency response, potential detour routes for eastbound traffic and provision for a turnaround. Considerations for speed humps include siting where road grades are less than 10% per NTSP guidelines, sight distances and emergency response impacts. Speed humps would likely be temporary, similar to the type installed on 51st Avenue South between South 178th and South 182nd Streets.



Public Works Department
 William Appleton, P.E., Public Works Director
 Florendo Cabudol, P.E., City Engineer
 4800 South 188th Street, Seattle, WA 98188-8605
 Telephone: (206) 973-4730, Engineering Division

**216TH ST and 35th AVE
 SAFETY IMPROVEMENT PROJECT
 CONCEPT OPTION 2**

FILENAME	DATE
SCALE	1"=100'





CONSTRUCTION NOTES

1. INSTALL ROAD CLOSED TO THRU TRAFFIC SIGN TYPE R11-4

2. INSTALL LOCAL TRAFFIC ONLY SIGN TYPE R11-5RA16

3. INSTALL ONE WAY ROAD SIDE TYPE R6-2L

4. ADD CHEVRON SIGN TYPE WR-8L

5. CHANNELIZATION EDGE LINE

6. BIKE LANE SYMBOL

7. PAVEMENT REPAIR

8. HIGH FRICTION PAVEMENT

9. CONSTRUCT VEHICLE TURN AROUND



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**216TH ST and 35th AVE
 SAFETY IMPROVEMENT PROJECT**



FILE NAME
 SCALE 1" = 100'

DRAWN BY
C2

- CONSTRUCTION NOTES**
1. INSTALL ROAD CLOSED TO THRU TRAFFIC SIGN TYPE R11-4
 2. INSTALL LOCAL TRAFFIC ONLY SIGN TYPE R11-5RA16
 3. INSTALL ONE WAY ROAD SIDE TYPE RB-2L
 4. ADD CHEVRON SIGN TYPE WR-8L
 5. CHANNELIZATION EDGE LINE
 6. BIKE LANE SYMBOL
 7. CORE AREA STRIPING
 8. DIRECTIONAL ARROW
 9. CONSTRUCT VEHICLE TURN AROUND



BID ITEM	UNIT	AMOUNT	QUANTITY	TOTAL
MOBILIZATION	LS	7500	1	7500
TESC	LS	2500	1	2500
TRAFFIC CONTROL	LS	8000	1	8000
PERMANENT SIGNS	LS	3750	1	3750
VEHICLE TURN AROUND	EA	15000	1	15000
CHANNELIZATION	LF	3125	2	6250
PAVEMENT MARKINGS	EA	18	350	6300
PAINT LINE REMOVAL	LF	3	2750	8250
TOTAL				\$47,550.00



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**216TH ST and 35th AVE
 SAFETY IMPROVEMENT PROJECT**

FILENAME	SCALE	EXHIBIT
	1" = 60'	C3



CONSTRUCTION NOTES

- 1) INSTALL ROAD CLOSED TO THRU TRAFFIC SIGN TYPE R11-4
- 2) INSTALL LOCAL TRAFFIC ONLY SIGN TYPE R11-5RA16
- 3) INSTALL ONE WAY ROAD SIDE TYPE R6-2L
- 4) ADD CHEVRON SIGN TYPE WR-8L
- 5) CHANNELIZATION EDGE LINE
- 6) BIKE LANE SYMBOL
- 7) GORE AREA STRIPING
- 8) DIRECTIONAL ARROW
- 9) CONSTRUCT VEHICLE TURN AROUND



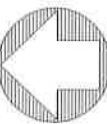
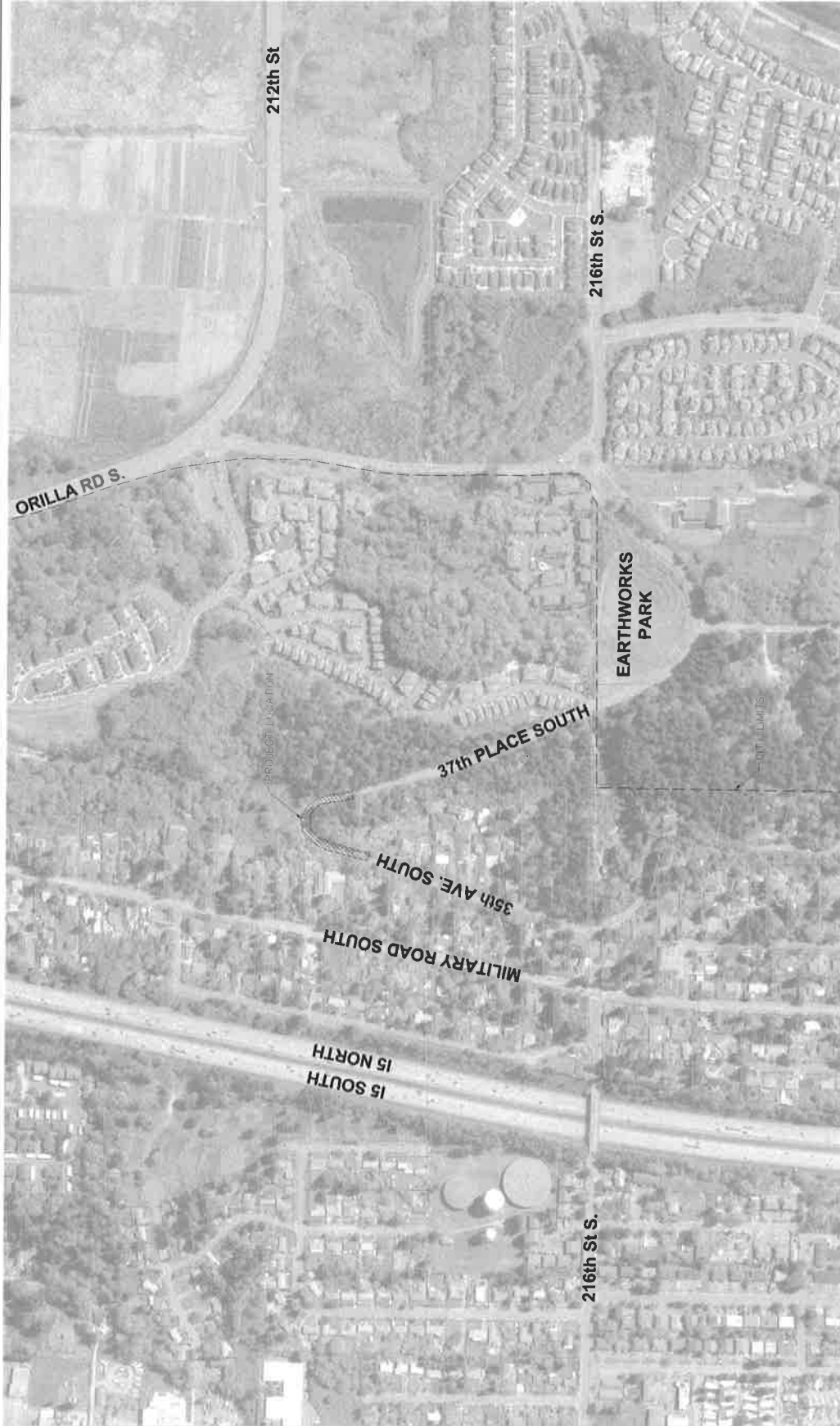
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**216TH ST and 35th AVE
 SAFETY IMPROVEMENT PROJECT**



FILENAME
 SCALE 1"=60'

EXHIBIT
C4



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**35TH AVE SOUTH SAFETY IMPROVEMENT
 VICINITY MAP**



FILENAME: _____
 SCALE: 1"=100'

EXHIBIT