

WORKING DRAFT: May 16, 2012

DEVELOPMENT AND TRANSIT WAY AGREEMENT

for

SOUND TRANSIT CENTRAL LINK LIGHT RAIL

SOUTH LINK PROJECT

between

CITY OF SEATAC, WASHINGTON

and

SOUND TRANSIT

Date: [_____]

PUBLIC HEARING SCHEDULED FOR _____, 2012

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This Development and Transit Way Agreement (“Agreement”) is entered into, by and between the CITY OF SEATAC, a Washington municipal corporation (“City”), and the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (“Sound Transit”), a regional transit authority. For and in consideration of the mutual covenants contained herein, the City and Sound Transit do hereby agree as follows regarding the Sound Transit Central Link Light Rail South Link 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 citizens.
- 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, 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).
- 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 at SMC 15.22.055, 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, mitigation measures, project phasing, review procedures, vesting, and other appropriate development requirements.
- D. The Growth Management Act (RCW 36.70A) requires that the City plan for and encourage regional high capacity transit facilities such as South Link (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 and mitigation conditions on the Project.

Sound Transit requested approval of the Project through both a conditional use permit and development agreement and submitted applications on August 16, 2011 and September 13, 2011, respectively. On February 16, 2012, Sound Transit requested a code interpretation as to whether a conditional use permit is required for projects that are processed and approved using a development agreement. On March 19, 2012, the City issued a code interpretation determination that “[a] Conditional Use Permit is not required if the City and Sound Transit enter into a Development Agreement which explicitly states that a Conditional Use Permit is not required.” In the interest of streamlining, and to avoid duplication of processes, the City Manager has recommended that this Development Agreement expressly not require a Conditional Use Permit for the Project.

- E. On November 5, 1996, central Puget Sound area voters approved local funding for Sound Move, the ten-year regional transit system plan. Sound Move includes three new types of regional transportation -- light rail, commuter rail, and a regional express bus/HOV system -- which will be integrated with local transit systems and use a single or integrated, regional fare structure.
- F. One component of Sound Move is the Central Link Light Rail System (“Central Link”), an electric light rail transit system connecting some of the state’s largest employment and education centers, highest density residential areas, and highest regional transit ridership areas.
- G. On July 14, 2005, Sound Transit approved the alignment and station locations of the Airport Link Project (“Project”) from the Tukwila International Boulevard Station in Tukwila to 200th Street South in the City, and selected the portion of Airport Link from Tukwila International Boulevard Station to SeaTac/Airport Station to be constructed and in operation before the end of 2009, as set forth in Sound Transit Resolution R2005-16, incorporated by reference herein.
- H. In 2006, the City issued approvals for the Airport Link Project and that segment began revenue service in December 2009.
- I. On Nov. 4, 2008, voters of the Central Puget Sound region approved the Sound Transit 2 ballot measure to provide an alternative to rising gas prices and greenhouse gas emissions. The ST2 plan adds regional express bus and commuter rail service while building 36 additional miles of light rail to form a 55-mile regional system. The ST2 plan will extend Link light rail to the South 200th Street station and beyond, eventually making the South 200th Street station an inline station rather than the southern terminus of Link light rail. The ST2 plan contemplates a light rail extension from Sea-Tac International Airport to the Redondo/Star Lake area near Federal Way, with three planned new stations at South 200th Street, the vicinity of Highline Community College, and Redondo/Star Lake, each with a park-and-ride facility.
- J. On September 9, 2010, the Sound Transit Board of Directors directed staff to study the feasibility of accelerating the start of light rail service at the South 200th Street Station by up to five years earlier than scheduled in the ST2 plan, so as to coincide with the start of light rail service to the University of Washington (“U-Link”) in 2016. On July 28, 2011,, the Sound Transit Board adopted Resolution R2011-05 to accelerate delivery of the South Link Project to open for service before the end of September 2016. Sound Transit intends to use a design/build procurement (“Design/Build”) method for the Project to meet the delivery schedule goal.
- K. The City owns and operates city streets and other infrastructure improvements within the City boundaries where Sound Transit proposes certain Project improvements. As described in this Agreement, and as was the case with the Airport Link Project, Sound Transit will apply to the City for temporary right of

way use permits for construction of the Project and the City will grant Sound Transit a non-exclusive use of a Light Rail Transit Way in the City for the Project's long term needs.

- L. In anticipation of the Project, Sound Transit and the City have engaged in planning efforts to identify capital improvements that would be necessary to increase safe and efficient accessibility to the light rail station and mitigate project impacts. The commitments contained in this Agreement regarding capital improvements are intended by the Parties to fully mitigate project impacts and satisfy Sound Transit's financial contribution toward such capital improvements.
- M. Sound Transit is proceeding to design and build the Project, and will seek various land use, administrative and right-of-way approvals for construction and operation of the system within the City. 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 15.22.055. In addition, the City recognizes the public benefits which will accrue to the City and community from development of the property for the Project.
- N. Sound Transit has completed extensive environmental analysis of the Project. In November 1999, U.S. Department of Transportation Federal Transit Administration ("FTA") and Sound Transit completed an Environmental Impact Statement for the entire Central Link Light Rail Project; on November 18, 1999, Sound Transit approved the alignment for construction of the Central Link Light Rail System from South 200th Street in the City to Northgate in Seattle (Sound Transit Resolution R99-34); on September 27, 2001, Sound Transit identified the preferred Initial Segment extending from South 154th to Westlake, subject to completion of environmental review (Sound Transit Motion M2001-103); on November 16, 2001, the Final Supplemental EIS and a SEPA Addendum for the Initial Segment was issued ("Tukwila SEIS"); on November 29, 2001, the Sound Transit Board adopted the Initial Segment (Sound Transit Resolution R2001-16); on February 5, 2002, an Environmental Assessment for the Initial Segment was issued; on May 8, 2002, the FTA issued an Amended Record of Decision ("ROD") for the Initial Segment; on August 5, 2004, a SEPA Addendum to the Tukwila SEIS was issued.

An Environmental Assessment for Airport Link and South Link, as part of the Central Link Light Rail Transit Project, was issued on May 13, 2005 and the FTA issued an Amended Record of Decision ("ROD") on September 13, 2005. An Environmental Assessment for the Project was issued on May 13, 2005 and the FTA issued an Amended Record of Decision ("ROD") on September 13, 2005. The ROD states the FTA's decision, identifies the alternatives considered by the FTA in making its decision, and concludes that the federal environmental process

is complete for the Central Link Light Rail Transit and the Airport Link Project

- O. In 2011, Sound Transit issued a SEPA Addendum to the Environmental Assessment referenced above. This Addendum analyzed project changes that have been identified in the 2011 Design Refinements when compared to the 2005 Environmental Assessment. The probable significant adverse impacts of the South Link project are addressed by the range of alternatives and impacts analyzed in the existing environmental documents. The project changes in the 2011 Design Refinements do not substantially change the analysis of significant impacts and alternatives in the previous EIS and EA/Addendum.
- P. 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 91-646, 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, as described in Resolution 2005-16, Exhibit “___,” attached and incorporated herein.
- Q. Both Parties recognize the importance of extending the light rail system from the Airport to South 200th and have mutually concluded that it is feasible to do so by 2016. Both parties will work in a collaborative effort to resolve any issues and risks to ensure that the South Link Project begins operations by the end of 2016.
- R. The City Council appointed an Ad Hoc Committee to review the Project on February 22, 2011 and the Committee held meetings between November 14, 2011 and [date to be inserted by Seatac]. The Ad Hoc Committee’s role is to provide input on the project, including the Development Agreement, to ensure the project is compatible with nearby land uses, standard infrastructure, development regulations, and the Comprehensive Plan, and has included appropriate and adequate mitigations. The Committee provided its recommendations to the City Council on [insert date], attached and incorporated herein as Exhibit “___.”
- S. Pursuant to RCW 36.70B.200 and SMC 15.22.055, the City held a properly noticed public hearing, and the City Council finds: that the proposed Project is generally consistent with the City development regulations and that any departures therefrom provided by this Agreement are offset by the benefits to be received from the Project including, increased transit service, transit oriented development opportunities, infrastructure improvements, and enhanced

mitigations; that the proposed Project conforms with the criteria provided in SMC 15.22.055; and has authorized the City Manager to enter into this Agreement.

NOW THEREFORE, in consideration of mutual promises and covenants herein contained related to the approval of various development permits and a grant of a non-exclusive use of a City right of way by the City 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 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 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 or amended.

- 1.1 Agreement. “Agreement” means this Development and Transit Way Agreement approved by appropriate action of the City and of Sound Transit.
- 1.2 Approved Building Permit Plans. “Approved Building Permit 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, and further described in the building permits approved by the City.
- 1.3 City. “City” means the City of SeaTac and any successor or assignee following an assignment that is permitted under this Agreement.
- 1.4 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.
- 1.5 Design Submittal. “Design Submittal” means a set of design documents for the Project that will be submitted to the City for review as the Project moves through various review and approval processes. There shall be four different phases of design submittal as follows:

- (a) "30% Design Submittal" means the Design Submittal that exists at the time this Agreement is executed, which included conceptual design of the alignment, station, and park-and-ride facilities.
- (b) "50% Design Submittal" means a Design Submittal that presents the basic concept of the overall Project including advanced detail on route alignment, existing utilities and proposed major utility line relocations, construction phasing, traffic lane configurations, structural types, sizes and locations, urban design concepts, new and proposed right-of-way limits, extent of roadway modifications, retaining walls, soil nail/tie back depth, angles, lengths and locations, and other supporting concepts to define the intent of the Project. This submittal is intended to trigger any requests for significant changes or corrections that may be required by the City.
- (c) "100% Design Submittal" (or "Building Permit Submittal") means a Design Submittal that illustrates the entire scope of the work under design so that all reviewers can comment on the overall scope of the Project, including grade crossings, utility relocation improvements, track plan and profile, retaining walls, signal footprints, new traffic signaling plans, ADA crossings, and grading plan. This submittal is intended to ensure that new, never-before-seen items of significance do not appear for the first time in the Issued for Construction Design Submittal. This submittal shall constitute the Building Permit Submittal.
- (d) "Issued for Construction Design Submittal" means a Design Submittal that has incorporated any corrections required based on review of the 100% Design, or Building Permit, Submittal and that is sufficiently complete for Project Approval and upon which the Design/Build Contractor will rely in constructing the Project, including but not limited to a complete set of constructions plans, drawings, and specifications, draft construction schedule, and traffic plan. The Approved Building Permit Plans and the Final Right-Of-Way Plans shall not materially differ from the Issued for Construction Design Submittal.

1.6 Emergency. "Emergency" means, except as otherwise provided, a sudden, unexpected occurrence or set of circumstances demanding immediate action.

1.7 Final Right-of-Way Plans. "Final Right-of-Way Plans" means prints showing the proposed limits of the Light Rail Transit Way mathematically tied to existing City monumentation.

1.8 Liability. "Liability" means all loss, damage, cost, expense (including costs of investigation and attorneys' fees and expenses at arbitration, trial

or appeal and without institution of arbitration or suit), liability, claims and demands of whatever kind or nature (including those arising under the Federal Employers Liability Act), arising out of an occurrence relating to this Agreement or occurring on or relating to the Light Rail Transit System described herein.

- 1.9 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, Light Rail Transit Stations and related passenger amenities, bus layover and inter-modal passenger transfer facilities, park-and-ride lots, and transit station access facilities.
- 1.10 Light Rail Transit System. “Light Rail Transit System” means a public rail transit line that operates at grade level or above grade level, and that provides high-capacity, regional transit service owned or operated by a regional transit authority authorized under chapter 81.112 RCW. 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.
- 1.11 Light Rail Transit Way. “Light Rail Transit Way” means the areas of the Public Right-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 City and on file with the City.
- 1.12 Parties. “Parties” means the City of SeaTac and the Central Puget Sound Regional Transit Authority.
- 1.13 Passenger. “Passenger” means any person who is not an employee or agent of Sound Transit, and who is aboard any Sound Transit Light Rail Transit System vehicle.
- 1.14 Project. “Project” or “South Link Project” means the light rail system as described in Exhibit “___,” attached and incorporated herein, and as approved by the City pursuant to the approvals described in this Agreement. The South Link Project consists of the elements described in Exhibit “_XX_”, all of which Sound Transit will fund, design, and construct.
- 1.15 Public Right-of-Way. “Public Right-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 therefore.
- 1.16 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 Right-of-Way; or (ii) the use of heavy machinery within fifty (50) feet of or upon the Public Right-of-Way.

- 1.17 South 200th Street Station. “South 200th Street Station” or “Station” means the Light Rail Transit Facility located at S. 200th Street near the intersection of South 200th Street and 28th Avenue South that provides pedestrian access to Light Rail Transit System vehicles and facilitates transfer from light rail to other modes of transportation. The Station may include mechanical devices such as security cameras, elevators and escalators to move passengers, and passenger amenities such as informational signage, seating, weather protection, drinking fountains, artwork, concessions, public restrooms, and parking areas.
- 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.

2.0 COOPERATION AND GOOD-FAITH EFFORTS

- 2.1 The Parties understand and agree that the process described in this Agreement depends 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 The Parties acknowledge that this Agreement contemplates 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.

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 described in Section 8 and consistent with Exhibit “___,” attached and incorporated herein.

- 2.3 The City further agrees to take all necessary actions to implement the improvements identified in Section 6.2, below, concurrent with construction of the South Link Project, as practicable, including any required environmental review, right of way acquisition, design and construction. Sound Transit acknowledges that the City is not responsible for delays resulting from extenuating circumstances beyond its control.
- 2.4 The City may apply for grants available to local agencies to supplement Sound Transit funds for street, sidewalk or other improvements contemplated by this Agreement. Upon request, Sound Transit will provide letters of support for grant applications made by the City.
- 2.5 Sound Transit will provide technical assistance to the City to plan public improvements in the station area intended to incentivize transit-oriented development.:

3.0 SEPA COMPLIANCE

- 3.1 Sound Transit is the “lead agency” for purposes of Project compliance with the State Environmental Policy Act, RCW Chapter 43.21C (“SEPA”). The City agrees that the Project has been subject to full and complete procedural and substantive SEPA review through issuance of the following environmental documents, which taken together comprise the “Project Environmental Documents,” incorporated herein by reference:
 - (a) Central Link Light Rail Transit Project Final EIS (November 1999);
 - (b) Addendum to the Final EIS for the Initial Segment (November 16, 2001);
 - (c) Initial Segment Environmental Assessment (February 2002);
 - (d) Central Puget Sound Regional Transit Authority Central Link Light Rail Project: Tukwila Freeway Route Addendum to Tukwila Freeway Route Final Supplemental Impact Statement (August 2004);
 - (e) Airport Link Environmental Assessment/SEPA Addendum to the Central Link Light Rail Final Environmental Impact Statement (May 13, 2005);
 - (f) Record of Decision for Central Puget Sound Regional Transit Authority’s Airport Link Segment of the Central Link Light Rail Transit Project, King County, Washington (September 13, 2005); and

(g) South Link SEPA Addendum to Airport Link Environmental Assessment/SEPA Addendum (July 5, 2011).

- 3.2 The Parties agree that pursuant to WAC 197-11-600, the Project Environmental Documents will be used by the City unchanged for its review and decisions on permit applications related to the Project, unless (i) the applicant makes changes to the Project that are likely to have significant adverse environmental impacts not previously analyzed or (ii) new information is discovered regarding the Project that indicates a probable significant adverse impact not previously analyzed.
- 3.3 The Parties agree that the mitigation measures described in this Agreement shall constitute the full and complete exercise of the City's substantive SEPA authority. The City has carefully considered the environmental impacts associated with the Project and the mitigation measures contained in the Project Environmental Documents. Pursuant to the authority granted in RCW 43.21C.060 and the SeaTac Municipal Code, the Parties agree that the mitigation measures included as part of the Project are necessary to mitigate specific adverse environmental impacts and are deemed sufficient to mitigate such impacts, are reasonable, and are capable of being accomplished.
- 3.4 The City shall be responsible for performing any necessary environmental review related to the City's construction of capital improvements as described in Section 6.2 of this Agreement, in the event that such construction projects exceed the scope of environmental analysis contained in the Project Environmental Documents.

4.0 DEVELOPMENT STANDARDS

- 4.1 In a letter dated August 8, 2011, the City notified Sound Transit that the Project is an Essential Public Facility. Under the terms and conditions of this Agreement, and in an effort to streamline the process and avoid duplication, the City hereby waives the requirement that Sound Transit obtain a Conditional Use Permit for the Project. This Agreement provides an equivalent level of public input through the participation of the Ad Hoc Committee and public hearings before the City Council, and it facilitates the City's exercise of its authority to impose reasonable conditions on the Project to mitigate potential impacts, consistent with state law.
- 4.2 The proposed Project is a permitted use of the property identified in Exhibit __ and will be generally consistent with current City development standards and regulations. Any departures from these development standards and regulations are offset by the Project's public benefits to the City and community, and by the requirements of this Agreement.

- 4.3 Sound Transit acknowledges that pursuant to Ordinance 11-1020, adopted on December 3, 2011, the rezone for the Port of Seattle properties generally bounded by S. 200th Street to the south, 26th/28th Ave. S. to the west and 28th Ave. S. to the east as Aviation Business Center (ABC), a zone appropriate for Sound Transit’s proposed use, will not become effective until such time as ownership of the property is transferred from the Port of Seattle to Sound Transit. –The South 200th Street Project is located within the following zoning districts as defined at SMC 15.11.140: CB (Community Business in Urban Center), AVO (Aviation Operations), ABC (Aviation Business), AVC (Aviation Commercial), UH-900 (Urban High Density Residential), and UL-7200 (Urban Low Density Residential). Any development approvals or permits issued for development within the Project shall be consistent with the provisions of this Agreement. Except as provided in this Agreement, the Project shall be governed by the City’s development regulations or standards as such regulations or standards existed on August 16, 2011, or as regulations and standards may be determined inapplicable because of the non-preclusive requirements for essential public facilities provided in RCW 36.70A.200. As provided in RCW 36.70B.170(4), the City shall reserve its authority to adopt new or different regulations to the extent required by a serious threat to public health and safety, after notice and an opportunity to be heard has been provided to Sound Transit, and such regulations shall apply to the Project. The City regulations or standards contained in the SMC shall prevail unless superseded by the terms of this Agreement.
- 4.4 The vesting described in this Agreement shall apply throughout the “Construction Buildout Period” for the Project, which the Parties have established as ten years following execution of this Agreement. During the Construction Buildout Period, the City shall neither modify nor impose new or additional development regulations or standards for the Project beyond those set forth in this Agreement. 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 August 16, 2011.
- 4.5 The South 200th Street Station will straddle the street with pedestrian entrances on either side, therefore the City has determined that construction of a pedestrian bridge over South 200th Street is not necessary.
- 4.6 The City has determined that the Project as represented in the 30% design is generally well-designed and that pursuant to SMC 15.36.020(C), strict interpretation of certain High Capacity Transit Standards and other Zoning Code regulations would be contrary to the overall purpose of the Comprehensive Plan. Therefore, the City is allowing certain departures from development regulations for interim components of the Project as

allowed by SMC 15.22.055.C.9. Under SMC 15.22.055.C.11, the City is allowing other departures from development regulations because the Project will be providing a benefit to the City of an equal or greater value relative to the standard from which departure is being allowed. The City hereby allows departures from the following standards as follows:

- (a) Track Design, SMC 15.36.210.B.
- (b) SMC 15.36.220.A.2. The City agrees that hardscaping confers greater benefit to the City than landscaping underneath the guideway structures.
- (c) SMC 15.36.120 B.2 and 3.
- (d) SMC 15.36.410. For interim parking only, subject to subsection (g), below, departure is allowed from Threshold Standard for the Inclusion of Structured Parking. Sound Transit's parking demand studies for the Project predict an estimated demand for 1,050 parking spaces while the station is the light rail system's southern terminus. When the system is extended southwards and the Station becomes an in-line station, demand is estimated to drop to 700 parking spaces. To avoid building more parking than is estimated to be needed after the system expansion, and thereby possibly reduce opportunities for transit-oriented development around the station, the City agrees that interim parking on nearby existing surface parking lots located within one-quarter mile of the Station is a desirable method to meet the higher intermediate demand for parking and to encourage transit-oriented development in the station area. Therefore, the City finds that interim parking need not be accommodated in structured facilities.
- (e) SMC 15.14.090. For interim parking only, subject to subsection (g), below, within the Project area as shown on Exhibit XX, departure is allowed from Landscaping of Surface Parking Areas.
- (f) SMC 15.36.320.B. For interim parking only, subject to subsection (g) below, within the Project area as shown on Exhibit XX, departure is allowed from Surface Parking Lot Landscaping and Treatment of Perimeter.
- (g) In the event that Sound Transit determines that the interim surface parking is necessary for more than ten (10) years after the start of Project revenue service, the standards referenced in Section 4.6 (d), (e) and (f) shall become applicable to the Project, unless otherwise agreed by the parties. In the event that Sound Transit proposes to develop interim surface parking on property not identified for such use in the Project Environmental Documents or on property

located more than one-quarter mile from the Station, such proposed development activity will be subject to review and approval by the City pursuant to the applicable City Codes.

- 4.7 Sound Transit will locate permanent and interim parking within the boundary shown in Exhibit “___”. If any parking is located outside of the properties identified in Exhibit “___”, additional environmental review of project impacts and mitigations may be required, and may necessitate updates to the Development Agreement. In addition, if parking is outside of the boundary shown in Exhibit “___”, the following will apply:
- (a) Parking will be located within ¼ mile of the station.
 - (b) Sound Transit will minimize impacts to existing businesses, such as displacement, by leasing the minimum area needed to meet parking requirements and limiting such leases to no more than ten (10) years after the start of Project revenue service.
 - (c) Parking will include temporary landscaping and lighting and appropriate stormwater facilities, as approved by the City.
- 4.8 SMC 15.36.440 Retail space requirements of the HCT code shall be understood to be fulfilled by dedicated convertible retail/commercial structures, potentially fully forward of the face of parking structure and may be typical “core and shell” construction utilized for commercial / retail development where tenants have not been identified at the time of construction. Therefore the first floor height of the garage may be less than ten feet in clear height provided the other retail/commercial requirements are fulfilled. The first floor of the garage need not be sprinklered if the retail/commercial component is fully sprinklered and separated from the parking by one-hour construction. Alternatives to the requirements of SMC 15.36.440 that are mutually agreed upon by the parties and supportive of the City’s Comprehensive Plan’s designations for properties in the station area may be considered and implemented as designs to accommodate station parking are further developed.
- 4.9 Sound Transit shall construct restroom(s) pursuant to the City’s HTC Code. However, consistent with Sound Transit Board policy described in Motion M98-67, Sound Transit shall not be responsible for the maintenance and operation of the restroom(s). Restroom(s) constructed with the Project will serve retail spaces described in 4.8 and transit customers, and leases for the retail space will require that restroom(s) remain open to the public during regular hours of business.

The Parties shall continue good faith negotiations to execute a mutually acceptable future agreement before January 1, 2016 to address leasing of the retail spaces and the operation, maintenance and repair of the

restroom(s). Options which the Parties will consider may include, but not be limited to: the transfer of ownership of the commercial space to the City; a master lease of the commercial space; or a right of first option or refusal for the City in the event that Sound Transit determines it is in its best interest to offer the commercial space for sale at anytime in the future.

- 4.10 Pursuant to SMC15.05.057, the City has determined that the Project is generally consistent with the Comprehensive Plan and development regulations. So long as the Project is developed consistent with appropriate City permit approvals and this Agreement, the public health, interest, and welfare are adequately protected within the bounds of the law.
- 4.11 In addition to this Agreement, additional permits and approvals will be required by the City, including but not limited to: building, right-of-way, clearing, grading, and drainage, hauling route, sign, demolition, fire alarm, sprinkler, plumbing, mechanical, and electrical permits. Subsequent to execution of this Agreement, the City agrees that it shall issue permits and approvals necessary to complete the Project consistent with this Agreement and any other applicable laws and regulations within the City's jurisdiction. The City shall exercise due diligence to review and issue decisions on subsequent permits and approvals efficiently and in a timely manner as further described in this Agreement and subject to Sound Transit's staff funding reimbursement responsibilities described in Section 8.
- 4.12 The City has determined that satisfactory implementation of this Agreement will provide for infrastructure improvements that enhance vehicular, pedestrian and bicycle access to the South 200th Street Station and which adequately address the City's high capacity transit standards in chapter 15.36 SMC.
- 4.13 Upon adoption of the ordinance or resolution that approves this Agreement, the City shall issue a Notice of Decision that conforms to the content and distribution requirements of SMC 16A.15.020 and SMC 16A.15.030, respectively.

5.0 ESSENTIAL PUBLIC FACILITY REQUIREMENTS

- 5.1 The Project is a critical component of the Link Light Rail regional transportation system and is an Essential Public Facility ("EPF") as provided in the Growth Management Act at RCW 36.70A.200. Because cities are not regional decision-making bodies under the Growth Management Act they may not make decisions regarding system location of regional EPFs. A city's role is limited to attempting to influence such decisions by providing information to the regional body, commenting on the alternatives under consideration, or expressing local preferences in its

comprehensive plan. However, after the regional decision is made, the city then has a duty to accommodate the EPF, and in the exercise of its land use powers may impose reasonable permit and mitigation conditions.

- 5.2 Sound Transit, as the regional transit authority sponsoring the Project, has the primary authority to make siting and location decisions for the Project. Under RCW 36.70A, the City may not utilize development regulations to preclude Sound Transit's decisions on siting and location of the Project; however, the City may impose reasonable permit and mitigation conditions on the Project.
- 5.3 The Parties agree that the requirements of RCW 36.70A.200 regarding the siting of essential public facilities are applicable to the Project.

6.0 PROJECT MITIGATIONS AND CONDITIONS

- 6.1 Through the environmental documentation and determination process and further negotiation between City and Sound Transit, impacts of the Project have been defined and improvements identified to mitigate the Project impacts. Such mitigating improvements will be funded, in proportion to the Project's share of impacts upon existing and future conditions, by Sound Transit; these improvements will be designed and constructed by either Sound Transit or City.

While the mitigating improvements defined in this section are deemed adequate by the Parties, alternative improvements may be identified that could provide an equal or higher level of mitigation than those identified as adequate. If the Parties agree that such alternative improvements have the potential to improve overall performance of the transit system, station, or area roadway network and its constituent elements, the Party proposing the alternative improvement(s) shall conduct studies sufficient to demonstrate, to the Parties' mutual satisfaction, the alternative's equal or superior mitigation of Project impacts in the affected area(s). Recognizing that Sound Transit's historical light rail ridership data for any given station location show an approximate two-year period during which daily ridership slowly grows to reach a generally stable number, the Parties agree that any delivery of mutually beneficial alternative mitigating improvements may occur after opening the Project for revenue service, but in any case no later than June 15, 2017, unless otherwise agreed by the Parties.

Should an alternative mitigating improvement be identified for implementation by the Parties, the Parties will work together to determine the value of the portion of the defined mitigating improvements that would no longer be required to mitigate Project impacts, and the agreed-upon value may, with certain conditions being met, be transferred to funding the improvement(s) identified for implementation.

6.2 Mitigations:

(a) [ADD TOTAL VALUE OF MITIGATIONS HERE]

(b) South 200th Street Station Area Improvements by Sound Transit:

As part of the construction of the Project, Sound Transit will fund, design, and construct South 200th Street Station Area Transportation Improvements limited to those listed below and shown in Exhibit __, attached and incorporated herein:

- (i) Frontage improvements on South 200th Street from International Blvd to 26th Avenue South, including paved vehicular lanes, bike lanes, curb, gutter, sidewalk, storm drainage, illumination, and landscaping. A new, dedicated right-turn lane for eastbound traffic turning to travel southbound on International Boulevard is included in these roadway improvements. Additional rights-of-way necessary to construct these improvements will be acquired by Sound Transit and dedicated to the City. (\$ VALUE)
- (ii) A new traffic signal on South 200th Street located between International Boulevard and 26th Avenue S. to facilitate access/egress for the proposed parking garage at the South 200th Street Station and improve station area traffic network performance. (\$ VALUE)
- (iii) Frontage improvements on 28th Avenue South between South 200th Street and the intersection of 28th and 26th Avenues South. Improvements will include paved vehicular lanes, curb, gutter and sidewalk, storm drainage, and illumination. Additional rights-of-way necessary to construct these improvements will be dedicated to the City. (\$ VALUE)
- (iv) Frontage improvements on 28th Avenue South between South 200th Street and the south end of the Station platform. Permanent improvements will be constructed to match the future permanent roadway section defined by City for 28th Avenue South between the south end of the Station platform and the intersection of 28th Avenue South and S. 204th Street. Improvements will include paved vehicular lanes, curb, gutter and sidewalk, storm drainage, and illumination. Additional rights-of-way necessary to construct these improvements will be dedicated to the City. (\$ VALUE)
- (v) Rebuilding of 28th Avenue S. from south end of Station platform to S. 204th Street, including reconstruction of the S. 204th Street and 28th Avenue S. intersection, to “Urban Access”

standards, as defined in King County Road Design & Construction Standards (2007), including access for pedestrians along the rebuilt roadway connecting the S. 204th Street pedestrian crossing of International Boulevard with sidewalk/plaza abutting the Station's eastern-most edge. Because facilities in the area in which this improvement will be located are planned to be demolished when the Light Rail Transit System extension to the Kent/Des Moines area is constructed, the improvement will be designed to a 10-year life-cycle and no permanent drainage improvements will be required to be part of its construction. The need for and definition of permanent improvements in this area will be addressed at such time that Sound Transit submits a new application for future extensions of the Light Rail Transit System. (\$ VALUE)

(vi) Pedestrian/Bicycle pathways will be constructed within existing right-of-way limits along S. 200th Street to connect the western extent of improvements between International Blvd and 26th Avenue S with the trailhead of the Des Moines Creek Trail. Pedestrian crossing signs and warning devices will be installed at the trailhead's driveway on S. 200th Street. (\$ VALUE)

(vii) Improvement to I-5/Military/S. 200th intersection as negotiated between Sound Transit and WSDOT and approved by City. (\$ VALUE)

(viii) 28th Avenue South Improvements: As part of the construction of the Project, Sound Transit will fund, design, and construct restorations and improvements along 28th Avenue South between the southern boundary of Port of Seattle property located north of S. 188th Street and the intersection of 28th Avenue South and 26th Avenue South, limited to those listed below and described in Exhibit “__” (\$ TOTAL VALUE OF COMPONENTS LISTED BELOW)

New sidewalk, curb and gutter, landscaping and street lighting to replace the existing streetscape features that will be demolished as part of the elevated guideway construction. (\$ VALUE)

Replace entire section of northbound lanes. Sound Transit shall replace all existing concrete roadway pavement that is subjected to loading from heavy equipment in the construction work area on 28th Avenue South between S. 188th Street and the intersection of 28th Avenue South with 26th Avenue South,

unless agreed to otherwise by the City. Prior to the start of construction, the City shall consider in good faith any value engineering proposals from Sound Transit's design-build contractor that do not require replacement of the existing concrete pavement, wherein the City will share in the actual cost savings and schedule benefits and may reject any proposal that the City determines will not provide a roadway pavement, after the completion of construction, that is equal to or better than the current roadway pavement. Prior to the completion of construction, approval by the City, and acceptance by Sound Transit, the City may also inspect and evaluate any existing roadway pavement in the construction work zone in 28th Avenue South that has been subjected to heavy equipment loading and if the City determines it has been damaged may require the pavement to be replaced.(\$ VALUE)

(c) South 200th Street Station Area Improvements by the City:

In connection with the construction of the Project, and no later than January 31, 2013, Sound Transit shall contribute to the City a total lump sum amount of \$XXXX to provide funding assistance for the City to design and construct the South 200th Street Station Area Improvements enumerated in Exhibit “XX “ that are intended to improve the non-motorized transportation network in the station area and mitigate impacts to station area traffic in accordance with the City’s design standards for high-capacity transit facilities (SMC 15.36).

- (i) S. 204th Street: sidewalk infill on south side of street to provide continuous pedestrian connection between western driveway of Brookstone Apartments and International Boulevard. (\$410,296.00)
- (ii) Mitigations required in 2030: Sound Transit’s traffic studies indicate that growth in area background traffic will trigger the need for additional mitigating improvements by 2030. The City will be responsible for implementing mitigations required after the Project opens for revenue service, and Sound Transit shall contribute funding toward the total cost of such mitigations in proportion to the effect light rail transit patrons’ driving to/from the Station has upon area network performance, as defined in Exhibit “XXX”. Sound Transit’s funding obligation for such mitigations shall be fulfilled with the payment of \$XXXX to City.

6.3 Alternative Mitigations

The mitigation improvements listed in Exhibit “ XX “ have been identified by the City and Sound Transit to enhance the Project and mitigate its impacts. The City may, at its sole discretion, modify, delete, or add scope to those improvements that the City will design and construct with the understanding that Sound Transit’s contribution towards these improvements will not exceed the maximum amount described in 6.2(c).

In the event that the City is able to identify alternative mitigation measures that perform equally as well as, or better than, those identified in Exhibit “ XX ,” Sound Transit will agree to the transfer of a mutually agreed upon portion of the funds identified for implementing the mitigating improvements listed in Exhibit “ XX “ to the agreed-upon alternative mitigation measures.

Identified alternative mitigation improvements must conform to the following schedule of implementation milestones, unless otherwise agreed by the Parties:

- City of SeaTac must be able to demonstrate secured funding for final design of an alternative mitigating improvement by 15 June 2013
- City of SeaTac must execute contract for final design of an alternative mitigating improvement by 15 October 2013
- City of SeaTac must be able to demonstrate secured funding for construction of an alternative mitigating improvement by 15 June 2014
- City of SeaTac must complete final design of an alternative mitigating improvement and advertise for bids by 15 January 2015
- City of SeaTac must award a construction contract for an alternative mitigating improvement, or demonstrate award of a construction contract by a partner agency or municipality, by 15 March 2015 with contract duration no greater than 24 months

Sound Transit will pay City a mutually determined amount toward provision of an alternative mitigating improvement no earlier than 30 days, and no later than 180 days, following City’s award of the contract for construction of the alternative mitigating improvement.

6.4 Conditions:

- (a) The City agrees that the station area improvements provided and/or contributed to by Sound Transit as described in Sections 6.1, 6.2, and 6.3, above, will adequately mitigate the impacts related to the Project. The City will issue the permits necessary to complete the improvements described in Sections 6.2 and 6.3 upon Sound Transit’s payment of applicable permit fees and without imposing additional mitigation measures unless specifically required by the development regulations or standards referenced in Section 4.1.

- (b) The City has determined that Sound Transit's financial contributions, in conjunction with the other mitigation measures expressly set forth herein, satisfactorily mitigate the impacts of construction and operation of the Project. In accepting Sound Transit's contribution, the City agrees to implement the proposed improvements to the extent possible given the level of funding Sound Transit and other grant sources dedicate to the improvements. Sound Transit funding may be expended on any actions necessary to implement the proposed improvements, including those not expressly called out, such as right of way acquisition, drainage work, etc.
- (c) Sound Transit shall provide art enhancements within the Project that seek to maximize the overall visibility of art installations consistent with Sound Transit Art Program (STart). The parties acknowledge that any art enhancements to Light Rail Transit Facilities shall not involve modifications to structural elements. In the event that the City seeks to broaden the extent of the art enhancements, Sound Transit shall incorporate such changes provided that they: (a) meet Sound Transit's criteria for art installations; (b) gain applicable and necessary approvals from the Port of Seattle if located on Port of Seattle property; (c) are adequately developed no later than **January 31, 2013** for any elements necessary for incorporation into Project construction documents; and (d) do not increase Sound Transit's adopted total STart budget for the Project.
- (d) Storm water drainage from the Project shall be addressed as provided in the Storm Water Drainage Concurrence letter executed between the City and Sound Transit dated April 2, 2012, attached and incorporated herein as Exhibit " X ."
- (e) Sound Transit shall provide Fire/Life-Safety mitigation as provided in the concurrence letter, executed between Sound Transit and the City on [insert date] attached and incorporated herein as Exhibit " . ."
- (f) Sound Transit shall provide security mitigation as provided in the Memorandum of Understanding executed December 19, 2011 between Sound Transit, the City and the Port of Seattle, attached and incorporated herein as Exhibit " . ."
- (g) Sound Transit shall, in coordination with the City and at Sound Transit's expense, conduct an on-street parking inventory and utilization study of the block faces identified in Exhibit "XX," all located within one half-mile of the S. 200th Street Station, within one year before start and within one year after start of revenue

service to the S. 200th Street station based on a mutually agreed upon study methodology. In the event that there is a documented significant increase in on-street parking, which is attributable to the Project, over the baseline established by the first study, Sound Transit and the City will work together in good faith to identify and implement appropriate mitigation.

- (h) The Parties agree that the conditions of approval and mitigation measures identified in this Agreement are reasonable as part of the Project approvals and such mitigation shall be incorporated into the Project in full satisfaction of all development standards, except for those standards applicable to the building permits and other necessary administrative permits.
- (i) The Parties agree that the terms and conditions applicable to the real property which is the subject of that certain development agreement executed between Equitable Capital Group and the City on April 11, 2001, and all subsequent amendments thereto, shall not be applicable to the portions of such real property acquired in any form by Sound Transit.

7.0 MINOR REVISIONS TO PROJECT APPROVALS

- 7.1 The City Manager or designee is authorized to approve minor revisions to the Project that are necessary and generally consistent with this Agreement. Such minor revisions shall include (a) revisions within the scope and intent of the original Project approvals, (b) revisions within the scope of the Project Environmental Documents, (c) relocations and adjustments of the Light Rail Transit Facility within the Light Rail Transit Way, and (d) relocations and adjustments of the elements and features of the S. 200th Street Station.

8.0 FINANCIAL REIMBURSEMENTS BY SOUND TRANSIT

In addition to Sound Transit's mitigation commitments outlined in Section 6.0, Sound Transit shall reimburse the City for certain Project review costs as more specifically described in this Section and subject to the requirements and procedures described below:

8.1 Reimbursement Procedures. Unless expressly stated otherwise, the procedures and requirements of this subsection shall apply to all subjects of reimbursement under subsection 8.2.

- (a) The City shall invoice Sound Transit on a quarterly basis based on actual expenditures of staff time in excess of that typically covered by building permit and other administrative permit fees. The City shall provide Sound Transit with sufficient documentation to show

that the direct costs invoiced to Sound Transit under this Agreement are for goods and services that would not have been covered by the amount of permit fees paid by Sound Transit or its contractors. Invoices shall bear a purchase order number and be addressed to Sound Transit, Accounts Payable, 401 S. Jackson Street, Seattle, WA 98104. Within thirty (30) calendar days after Sound Transit's receipt of any complete and accurate City invoice, Sound Transit shall remit the reimbursement for the amount of valid expenditures.

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

8.2 Qualifying Subjects of Reimbursement. Sound Transit shall reimburse the City for the following three types of Project review costs

- (a) **Peer Review.** The cost of conducting peer review of the Project's noise & vibration report technical memorandum (dated June 30, 2011) and the parking demand study interim technical memorandum (dated January 14, 2011) for a total amount not to exceed twenty-six thousand dollars (\$26,000).
- (b) **Structural Review.** The cost of conducting structural review and approval of the Project's structural design but only to the extent that such review is not funded by permit fees paid to the City by Sound Transit and PROVIDED THAT, in no case shall Sound Transit pay the City more than \$150,000.00 over and above Project building permit fees for this type of review.
- (c) **Staff Time Dedicated to the Project.** In order to facilitate expedited review and approval of the Project, to obtain a higher level of service than the City would otherwise be able to provide with its existing staff, and to mitigate the direct financial impact of

the Project upon the City, Sound Transit shall reimburse the City for the direct costs incurred by the City in excess of the City's typically anticipated costs associated with reviewing plans and performing construction inspections as provided in adopted application and permit fees. Upon selection of the Project contractor by Sound Transit, the parties shall work cooperatively in good faith to determine if any modifications to this subsection 8.2(c) are necessary regarding expenditures of future City staff time. Sound Transit agrees to reimburse the City for the three different categories of staff time as described in subsection (i) through (iii) below, subject to the limitations in subsection (iv), below.

- (i) Sound Transit shall reimburse the City for the cost of City staff time dedicated to the Project during the period from November 2010 until the date the Development Agreement is executed by the parties, PROVIDED THAT, Sound Transit's total financial reimbursement to the City under this subsection (c)(i) shall not exceed One Hundred Fifty-two Thousand Dollars (\$152,000), unless otherwise mutually agreed in advance by the Parties.
- (ii) Sound Transit shall reimburse the City for that proportion of the salaries of City staff commensurate with the proportion of each staff member's time dedicated to the Project, as measured in FTEs (Full Time Equivalents) during the period from the date after the Development Agreement is executed by the parties until 120 days after the design/build contract for the Project is awarded by the Sound Transit board, PROVIDED THAT, the City shall dedicate no fewer than 2.5 FTEs to the Project during this period and FURTHER PROVIDED THAT, Sound Transit's reimbursement under this section (c)(ii) shall not exceed the cost of 3.8 FTEs regardless of the actual number of City staff dedicated to the Project.
- (iii) Sound Transit shall reimburse the City for that proportion of the salaries of City staff commensurate with the proportion of each staff member's time dedicated to the Project, as measured in FTEs (Full Time Equivalents) during the period from 121 days after the design/build contract for the Project is awarded by the Sound Transit board and the date that Project revenue service begins, PROVIDED THAT, the City shall dedicate no fewer than 3.0 FTEs to the Project during this period and FURTHER PROVIDED THAT, Sound Transit's obligation under this section (c)(iii) shall equate to no less than eighteen (18) months of salary for the applicable dedicated staff, even if Project revenue service begins sooner, and FURTHER PROVIDED THAT, the City shall hire, and Sound Transit

shall reimburse the City for additional staff dedicated to the Project if Sound Transit determines that 3.0 FTEs is not adequate and Sound Transit requests in writing that the City hire additional dedicated staff.

- (iv) Sound Transit's reimbursement to the City will be made for actual hours expended by city staff on the Project PROVIDED THAT, those hours of city staff assigned at less than 1.0 FTE each are more than are covered by the permit fees paid by Sound Transit to the City, and FURTHER PROVIDED THAT, nothing in this subsection shall be construed to allow an increase in the not-to-exceed amounts set forth in subsection (i) through (iii) above.

9.0 LIGHT RAIL TRANSIT WAY

9.1 The City hereby grants to Sound Transit, its successors and assigns, a non-exclusive use of portions of the Public Right-of-Way, the general location of which is described and depicted on Exhibit “___,” attached and incorporated herein, 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 and more fully described in the As Built Final Right-of-Way Plans. The City's Community and Economic Development Director and Sound Transit's Director of Light Rail may, from time to time, jointly revise and modify Exhibit “___” to conform to the record drawings and the Final Right-of-Way Plans as long as the revisions are, in their professional engineering judgment, within the scope and intent of Exhibit “___.” This grant shall take effect upon the filing of approved As Built Final Construction Plans and Final Right-of-Way Plans. Sound Transit expressly agrees that it will operate and maintain the Light Rail Transit System in compliance with this Agreement and all applicable City ordinances and state and federal laws.

9.2 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 Approved Building Permit Plans and included in the other related permits, and this Agreement, 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. Subsequent to construction of the Light Rail Transit Facilities authorized in accordance with the Approved Building Permit Plans and the Final Right-Of-Way Plans, Sound Transit shall not construct any additions or expansions to the Light Rail Transit System on or along the Light Rail Transit Way without the City's written consent. 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 or other authorization from the City.

- 9.3 Sound Transit understands and agrees that during the normal course of Light Rail Transit Way use, the City may engage in construction, maintenance, demolition, leasing, licensing, permitting, and similar activities that have the potential to cause interruption to the Light Rail Transit System. Sound Transit understands and agrees that such activities may be caused, from time to time, by reasons including but not limited to: (1) traffic conditions; (2) public safety; (3) Public Right-of-Way construction; (4) Public Right-of-Way repair (including resurfacing or widening); (5) change of Public Right-of-Way grade; (6) response to emergencies and natural disasters; and (7) construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, traffic control devices, tracks, communications systems, public works, public facilities or improvements, or any utilities. The City agrees to exercise its best effort to provide written notice to Sound Transit of such activities within the Light Rail Transit Way, to the extent they are permitted or controlled by the City, at least twelve hours prior to commencement of the work, unless an Emergency exists as defined herein. The City shall further exercise its best efforts to ensure that any such activities done by or for the City shall be undertaken in a manner that minimizes, to the extent possible, disruption to the construction and operation of the Light Rail Transit System.
- 9.4 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 construct and operate the Light Rail Transit System.
- 9.5 This Agreement does not authorize the provision of any services by Sound Transit other than 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.
- 9.6 Unless otherwise provided in this Agreement or in other City project approvals or agreements, Sound Transit shall own all tracks and other Light Rail Transit Facilities on the Light Rail Transit Way. Nothing in this Agreement, however, 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.

- 9.7 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:
- (a) Any other permit or authorization required for the privilege of transacting 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 to which access is not specifically granted by this Agreement.
- 9.8 This Agreement shall not be read to diminish or in any way affect the authority of the City to control and charge for use of the City's storm water utility. In the event that Sound Transit decides to use the City's storm water utility facilities, Sound Transit must obtain the necessary permits and approvals as required by the City pursuant to SMC 12.10. In the event that Sound Transit acquires real property that the Parties agree should be transferred to the City for Public Right of Way, such real property shall be transferred to the City without further compensation from the City.
- 9.9 After the City's standard maintenance bond period has expired, the City shall maintain all landscaping and storm water improvements (including but not limited to low-impact drainage) associated with the Project and located in the City's rights-of-way that do not front Sound Transit-owned parcels.

10.0 PLAN REVIEW, PERMITTING, AND CONSTRUCTION

- 10.1 Sound Transit shall obtain approval from the City for construction of the Project through submittal of the appropriate applications and Design Submittals as described in this Agreement. The City acknowledges that Sound Transit will be procuring this Project using design/build or other alternative procurement methods and further acknowledges that the Design/Build Contractor 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.
- 10.2 Upon receipt of each Design Submittal from Sound Transit, the City shall perform a review of the Design Submittal and return its unified and coordinated comments and corrections on the designs, plans, and

specifications from all relevant City departments and utilities to Sound Transit, as closely as practical, within the number of days specified below for each Design Submittal:

- (a) 50% Design Submittal - twenty (20) calendar days
- (b) 100% Design Submittal - twenty (20) calendar days
- (c) Issued for Construction Design Submittal -twenty (20) calendar days

In addition to the above-described review of each Design Submittal, the Parties contemplate that the designers and the reviewers will meet regularly to review the design progress for parts of the Project “shoulder-to-shoulder” (see Project Administration section, below). This ongoing, collaborative “shoulder-to-shoulder” review is intended to keep the City’s reviewers apprised of the latest developments in the design, seek informal feedback from the City on aspects of the design as design is progressing, and to determine whether previously identified corrections are being adequately addressed prior to the next milestone Design Submittal. The intent is to limit formal review periods to the durations listed above. 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 outlined in Section 19.

10.3 While most post-30% design work will be performed by the Design/Build Contractor, not by Sound Transit, Sound Transit retains responsibility for ensuring that the City receives prompt responses to City requests for additional documentation, plans, specifications, drawings, and explanations.

10.4 Project Administration.

- (a) The City shall assign a City staff contact for the Project ("City Coordinator"). The City Coordinator shall provide central coordination of all Design Submittal reviews and comments from all involved City departments and utilities. The City Coordinator 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 Coordinator shall participate in regularly scheduled coordinated project-level meetings. The City Coordinator 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

subject Project. The City Coordinator is identified on Exhibit “ ___.”

(b) Sound Transit will assign a Sound Transit staff contact for the Project (“DBC Coordinator”). The DBC Coordinator shall provide central coordination for Project Design Submittals and Project coordination. In addition to these tasks, the DBC Coordinator shall participate in regularly scheduled coordinated project-level meetings. The ST Coordinator is identified on Exhibit “ ___.”

- 10.5 When approving such applications for permits, the City may impose such reasonable conditions as may be required to implement this Agreement or other Project approvals. It is anticipated by the parties that Sound Transit shall submit a construction mitigation plan to the City’s Community and Economic Development Director for its review and approval, and such approval shall not be unreasonably withheld.
- 10.6 Sound Transit, its employees and agents, are authorized to enter upon the proposed Light Rail Transit Way to construct, operate and maintain the Light Rail Transit Facilities, as defined and limited in this Agreement.
- 10.7 As promptly as possible after the Light Rail Transit System begins operations to the South 200th Street Station, Sound Transit shall furnish to the City record drawings of the As Built Final Construction Plans in PDF file format. Subsequently, Sound Transit shall furnish to the City electronic AutoCAD format record drawings in Sound Transit’s system coordinate system and project datum. 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 City’s standard coordinate system for spatial data, referencing the City’s standard datum.
- 10.8 During construction of the Light Rail Transit System, Sound Transit may utilize portions of the public right-of-way for the temporary storage of construction equipment and materials subject to conditions of right-of-way permits issued pursuant to SMC 11.10. The City agrees that it is in the best interest of public safety to establish a temporary full closure of the northbound lanes of 28th Avenue South between South 188th Street and the point where 28th Avenue South begins its transition to 26th Avenue South near South 200th Street, and provide temporary two-way traffic circulation on the southbound lanes of 28th Avenue South, for the duration of the Project’s major construction activities, subject to City approval of traffic plans that maintain access for local residents and businesses and provide adequate means of access for emergency responders. The City shall not withhold permission for the temporary full closure described above without reasonable cause. The City also recognizes that the physical requirements of construction of the Project in the Station area, will likely

require the full closure of 28th Avenue South between its intersection with 26th Avenue South and the northern extent of the Alaska Airline property located on the northwest corner of the 28th Avenue South and South 204th Street intersection. Sound Transit acknowledges that general and emergency responder access to businesses along the west side of International Boulevard in this area must be maintained during construction. The Parties shall work together through the right-of-way permitting process to minimize the impacts of construction in this area, including but not limited to, the potential for use of full closure of 28th Avenue South in this area.

- 10.9 The City recognizes that the Light Rail Transit System is a public transportation improvement and as such will cooperate with Sound Transit by directing conflicting non-City, private utilities to relocate when necessary at their expense, as provided by law. Sound Transit agrees that it will coordinate with all utilities to minimize utility relocation costs and related construction, and will negotiate with non-City owned utilities on 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 such relocation to accommodate the construction of the Light Rail Transit System. The City shall cooperate with Sound Transit in the defense of any such claim. Notwithstanding the foregoing, the Parties agree that Sound Transit shall pay for any relocation or protection of City-owned utilities that the City determines is necessary due to construction or operation of the Light Rail Transit System and as required by the SMC.
- 10.10 Sound Transit, at Sound Transit's sole cost and expense, shall 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 performed by Sound Transit shall be done in a good and workmanlike manner, in conformity with all applicable engineering, safety, and other statutes, laws, ordinances, regulations, rules, codes, orders, or specifications of any public body or authority having jurisdiction.
- 10.11 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 and regulations.
- 10.12 During any work of any character by Sound Transit at locations of the Light Rail Transit Facilities, and in accordance with the Final Issued for Construction Plans, Sound Transit shall support the tracks and roadbed of the Light Rail Transit System in such a manner as is necessary for the safe operation of the Light Rail Transit System and ordinary use of the Public Right-of-Way.

- 10.13 If, during construction, the Light Rail Transit System creates, or contributes 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 Sound Transit shall pay for costs incurred by the City. The City shall provide notice of such danger to Sound Transit as soon as possible, given the nature and circumstances of any such danger.
- 10.14 Sound Transit shall develop and implement a community outreach program that includes a business mitigation plan intended to provide technical business assistance and promotional activities to businesses directly impacted by Project construction. The program will include, but not be limited to, assigned staff to implement the activities of the outreach and business mitigation plan, public meetings, written materials, one-on-one visits, 24/7 construction hotline, and “businesses are open signs.”
- 10.15 Sound Transit shall promptly repair any and all Public Right-of-Way and public property that is disturbed or damaged during the construction of its Light Rail Transit System to the same condition as existing prior to construction. In the event Sound Transit does not comply with the foregoing requirement, the City may, upon seven calendar days’ advance notice to Sound Transit, take actions to restore the Public Right-of-Way or public property at Sound Transit’s sole cost and expense.
- 10.16 Sound Transit’s design and construction of the Project is subject to a financial assistance contract between Sound Transit and the Federal Transit Administration (“FTA”). Both parties recognize that the FTA may request a change to this Agreement to comply with its funding requirements. The Parties agree to consider any such request in good faith.

11.0 PERMITS

- 11.1 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, but not limited to, 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.
- 11.2 The City shall not hinder Sound Transit’s attempts 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).

12.0 ENTRY NOTICE

- 12.1 Sound Transit, its employees and agents shall have access to the Public Right-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 this Agreement; provided, 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 unreasonably interfere with or disrupt, other than in ways approved in writing in advance by the City, the use of the Light Rail Transit Way by the City or Third Parties in and along the Light Rail Transit Way.
- 12.2 During construction, the parties shall provide each other at least 48 hours advance written notice, as provided in a construction schedule to be reviewed and approved by the parties, before initial entry upon any portion of the Public Right-of-Way for construction purposes.
- 12.3 After the completion of construction of the Project, no further construction, maintenance, or repairs shall be undertaken in the Public Right-of-Way without first obtaining all necessary permits as required by the SMC, except in cases of Emergency. In any such Emergency, Sound Transit shall apply for the necessary permit within 24 hours of actual notice of such Emergency.
- 12.4 In order to maintain safe and efficient operations of the Light Rail Transit Facilities, in consultation with the City, Sound Transit and the City shall jointly develop training protocols and standard operating procedures for the City's entry and access to Light Rail Transit Facilities.

13.0 OPERATION, MAINTENANCE, AND REPAIR IN STREETS AND RIGHTS OF WAY

- 13.1 Sound Transit shall operate, maintain, and repair its Light Rail Transit System in compliance with all federal, state, and local laws, ordinances, departmental rules and regulations and practices affecting such system, which includes, by way of example and not limitation, the obligation to operate, maintain, and repair in accordance with the applicable provisions of City Code. 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 or to property.

- 13.2 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.
- 13.3 Sound Transit shall promptly repair any and all Public Right-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 Right-of-Way must be restored to the same condition as before the disturbance or damage occurred.
- 13.4 In the event of an Emergency, or where 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 Sound Transit shall pay to the City the cost of any such action undertaken by the City. The City shall provide notice of such danger as soon as possible thereafter, taking into consideration the nature and complexity of the Emergency or other imminent danger.
- 13.5 Upon final acceptance, the City shall assume all maintenance responsibilities for all betterments and improvements to rights-of-way dedicated to the City except as provided by the SeaTac Municipal Code.

14.0 FACILITY LOCATION SIGNS

- 14.1 Sound Transit, at its sole cost, expense and risk, shall furnish, erect and thereafter maintain signs showing the location of all Sound Transit facilities. Signs shall be in conformance with applicable requirements of SMC 15.36.600.

15.0 LIABILITY, INDEMNIFICATION

- 15.1 Sound Transit hereby agrees to indemnify, defend, and hold the City harmless from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses (including, without limitation, reasonable attorneys' fees) paid by the City and arising or growing out of or in connection with or resulting from, either directly or indirectly, the construction, maintenance, operation, repair, removal, occupancy, and use of the Light Rail Transit System in the Light Rail Transit Way by Sound Transit, unless such claims arise from the sole or partial negligence, actions or inaction of the City, its employees, servants, agents, contractors,

subcontractors or persons using the Light Rail Transit System with permission of the City.

- 15.2 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 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.

16.0 INSURANCE

- 16.1 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 negligent acts or omissions of the City and its officers, 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 years after its termination, to protect the City against claims that may arise as a result of the construction, operation, or maintenance of the Light Rail Transit System in the Light Rail Transit Way. 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 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 systems comparable to the Light Rail Transit System.

- 16.3 Sound Transit shall file with the City's Risk Manager a formal letter of self-insured status, or when commercial insurance is used, Certificates of Insurance reflecting evidence of the required insurance and naming the City as an additional insured where appropriate. The coverage maintained by Sound Transit under this Agreement shall not be canceled until at least 30 days' prior written notice has been given to the City.
- 16.4 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 operating the Light Rail Transit System in the Light Rail Transit Way until the appropriate insurance coverage program is obtained.

17.0 LIENS

- 17.1 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 materialmens 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 attorneys' 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.
- 17.2 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.
- 17.3 Nothing in this Agreement shall be deemed to give, and the City hereby 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.

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, rather than in the media or through other external means.
- 18.2 The Parties agree to use their best efforts to prevent and resolve potential sources of conflict at the lowest level.
- 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 Engineering Review Manager 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 and the City's Community and Economic Development Director 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.
- 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

- 19.1 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 attorneys' 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 In determining which remedy or remedies for 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 breaching party has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.
- 20.3 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, and such failure to enforce shall not 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 Light Rail Transit Way 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 Light Rail Transit Way for the Light Rail Transit System, 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 Light Rail System.

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 and perform this Agreement and any permits that 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 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 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 Light Rail Transit Facilities 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 Light Rail Transit Facilities, 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).
- 23.2 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 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.

- 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.

Sound Transit

During Construction: Rod Kempkes, Project Manager
Sound Transit Link Light Rail
401 South Jackson
Seattle, Washington 98104-2826
206-398-5374

During Operations: Bonnie Todd, Operations Division
Executive Director
Sound Transit Link Light Rail
401 South Jackson
Seattle, Washington 98104-2826
[phone]

City of SeaTac

During Construction: Ali Shasti, Manager, Engineering Review
4800 S. 188th Street
SeaTac, WA 98188
206-973.4741

During Operations: Todd Cutts, City Manager
4800 S. 188th Street
SeaTac, WA 98188
206-973.4816

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 22.0, Termination, must be delivered in person or by certified mail, return receipt requested.

27.0 GENERAL PROVISIONS

- 27.1 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 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 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the City and Sound Transit.
- 27.4 A Memorandum of this Agreement shall be recorded against the property legally described in Exhibit “__.”
- 27.5 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.
- 27.6 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.
- 27.7 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.
- 27.8 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.
- 27.9 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 slow downs, 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.

- 27.10 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.
- 27.11 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.
- 27.12 Section headings are intended as information only, and shall not be construed with the substance of the section they caption.
- 27.13 In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.
- 27.14 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.

28.0 SEVERABILITY

- 28.1 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 hereto has executed this Agreement by having its authorized representative affix his/her name in the appropriate space below:

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

THE CITY OF SEATAC

By: _____
Joan M. Earl, Chief Executive Officer

By: _____
Todd Cutts, City Manager

Date: _____

Date: _____

Authorized by Motion No. _____

Authorized by Ordinance _____

Approved as to form:

Approved as to form:

By: _____
Stephen G. Sheehy, Legal Counsel

By: _____
Mary Mirante Bartolo, City Attorney