



City of SeaTac

Council Study Session Agenda

April 9, 2013
4:00 PM

City Hall
Council Chambers

CALL TO ORDER:

1. **Agenda Bill #3499; An Ordinance amending SeaTac Municipal Code Section 15.35.150 related to hotels in the UH-900 zone within the City Center located south of South 184th Street (10 minutes)**
By: Senior Planner Al Torrico
2. **Agenda Bill #3504; A Motion authorizing staff to apply for 2014 Community Development Block Grant for design and construction of a bocce court(s) and horse shoe pit (10 minutes)**
By: Assistant Parks and Recreation Director Lawrence Ellis
3. **Agenda Bill #3507; A Motion authorizing the City Manager to amend the contract with T.F. Sahli Construction to purchase and instal Musco lighting equipment for SeaTac Community Center skate park project (10 minutes)**
By: Assistant Parks and Recreation Director Lawrence Ellis
4. **Agenda Bill #3508; A Motion authorizing the City Manager to execute a design agreement for the South 179th Street Sidewalk Project (10 minutes)**
By: Civil Engineer 2 Toli Khlevnoy
5. **Agenda Bill #3509; A Motion authorizing an Interlocal Agreement with Highline Water District for construction of waterline replacement and pavement restoration as part of the South 168th Street Sidewalk Project (10 minutes)**
By: Civil Engineer 2 Toli Khlevnoy
6. **Agenda Bill #3510; A Motion approving the City Manager to execute a Purchase and Sale Agreement for property located at 15201 – 15215 Military Road South (15 minutes)**
By: Community and Economic Development Director Joe Scorcio / Economic Development Manager Jeff Robinson
7. **Agenda Bill #3511; A Resolution authorizing the City Manager to execute a Second Amended and Restated Development Agreement with Gateway Investment LLC (15 minutes)**
By: Community and Economic Development Director Joe Scorcio / Economic Development Manager Jeff Robinson
8. **PRESENTATIONS:**
 - **Addition of new SR 509/I-5 Corridor Completion to City Council Goals (10 minutes)**
By: Assistant City Manager Gwen Voelpel
 - **Consideration of Council Information Request regarding possible City grant program to partially fund neighborhood street lights (10 minutes)**
By: Mayor Tony Anderson / Deputy Mayor Mia Gregerson / Councilmember Barry Ladenburg
 - **Public Safety Statistics (10 minutes)**
By: Fire Chief Jim Schneider

ADJOURN:

THE COUNCIL CHAMBERS IS ACCESSIBLE TO PERSONS WITH DISABILITIES AND IS EQUIPPED WITH ASSISTIVE LISTENING DEVICES. PERSONS REQUIRING SPECIAL ACCOMMODATIONS SHOULD CONTACT THE CITY CLERK'S OFFICE BEFORE 5:00 PM THE FRIDAY PRECEDING THE COUNCIL MEETING.



City of SeaTac

Regular Council Meeting Agenda

April 9, 2013
6:00 PM

City Hall
Council Chambers

(Note: The agenda numbering is continued from the Council Study Session [CSS].)

CALL TO ORDER:
ROLL CALL:
FLAG SALUTE:

PUBLIC COMMENTS: (Speakers must sign up prior to the meeting. Individual comments shall be limited to three minutes. A representative speaking for a group of four or more persons in attendance shall be limited to ten minutes. When recognized by the Mayor or his designee, walk to the podium, state and spell your name, and give your address [optional] for the record.)

9. CONSENT AGENDA:

- **Approval of claims vouchers** (check nos. 102492 - 102542) in the amount of \$370,590.03 for the period ended March 26, 2013.
- **Approval of claims vouchers** (check nos. 102543 - 102677) in the amount of \$405,772.64 for the period ended April 5, 2013.
- **Approval of payroll vouchers** (check nos. 51339 – 51375) in the amount of \$547,391.99 for the period ended March 31, 2013.
- **Approval of payroll electronic fund transfers** (check nos. 76413 – 76594) in the amount of \$387,812.38 for the period ended March 31, 2013.
- **Approval of payroll wire transfer** (Medicare and Federal Withholding Tax) in the amount of \$75,647.53 for the period ended March 31, 2013.
- **Approval or final approval of City Council and City Manager travel related expenses for the period ended March 3, 2013.**

Approval of Council Meeting Minutes:

- **Special Council Study Session** held March 12, 2013
- **Regular Council Meeting** held March 12, 2013
- **Regular Council Meeting** held March 26, 2013

Agenda Items reviewed at the March 26, 2013 Council Study Session and recommended for placement on this Consent Agenda:

Agenda Bill #3498; An Ordinance amending the City's 2013-2014 Biennial Budget

Agenda Bill #3495; A Motion allowing the City Manager to enter into a contract with the low bidder for the replacement of the glazing in the City Hall exterior windows

Agenda Bill #3502; A Resolution amending Sections 4, 5, 6, and 8 of the Council Administrative Procedures

PUBLIC COMMENTS (related to the Consent Agenda): (Individual comments shall be limited to one minute and group comments shall be limited to three minutes.)

ACTION ITEM:

10. **Agenda Bill # 3472; A Resolution authorizing the City Manager to execute a First Amendment to the Development and Transit Way Agreement for the South Link Light Rail Project (15 minutes)**
By: Program Manager Soraya Lowry

UNFINISHED BUSINESS:

NEW BUSINESS:

CITY MANAGER'S COMMENTS:

COUNCIL COMMENTS:

EXECUTIVE SESSION:

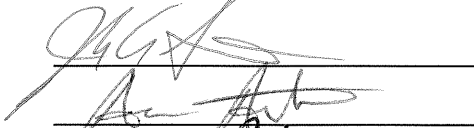
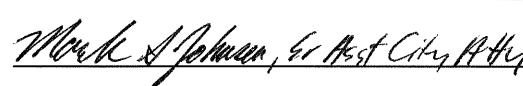
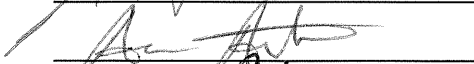

ADJOURN:

SeaTac City Council
REQUEST FOR COUNCIL ACTION

Department Prepared by: Community & Economic Development

Agenda Bill #: 3499

TITLE: An Ordinance amending Section 15.35.150 SeaTac Municipal Code (SMC) related to hotels in the UH-900 zone within the City Center located south of S. 184th Street.

<i>April 3, 2013</i>	
<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Info. Only <input type="checkbox"/> Other	
Date Council Action Requested:	<u>RCM 04/23/13</u>
Ord/Res Exhibits:	
Review Dates:	<u>PC 03/19/13; and 04/02/13; CSS 04/09/13</u>
Prepared By:	<u>Albert Torrico, Senior Planner</u>
Director:	<u></u> City Attorney: <u></u> <i>KSH</i>
Finance:	<u></u> BARS #: <u>N/A</u>
City Manager:	<u></u> Applicable Fund Name: <u>N/A</u>

SUMMARY: This Ordinance amends SeaTac Municipal Code Section 15.35.150 (101) which covers the retail/commercial uses chart for hotel/motel and associated uses in the UH-900 zone is amended as follows: *mm*

- Footnote #12 is deleted, which reads: “The maximum height allowed is thirty (30) feet”;
- Footnote #13 is deleted, which reads “The maximum number of hotel rooms may not exceed one hundred thirty (130)”;
- Footnote #14 is deleted, which reads “Conference or meeting facilities may not be expanded”.

DISCUSSION / ANALYSIS / ISSUES: Prior to 2009, conference centers were allowed in the UH-900 zone within the City Center. In September 2009, the City Council amended the SeaTac Municipal Code (SMC) to allow hotels in the UH-900 zone within the City Center, south of S. 184th Street, as a conditional use. This change was brought forward to allow greater flexibility for Cedarbrook Lodge to operate both as a conference center and hotel following their purchase of the site from Chase Bank (formerly Washington Mutual). At that time, Chase Bank did not want to wait for a conditional use permit process to be completed prior to closing. Thus, the City added specific footnotes into SMC 15.35.150 (use #101) for hotel/motel and associated uses related to height, number of rooms, and the prohibition on expanding conference space. As a result of the September 2009 action, these limitations are no longer necessary within the code.

The proposed Ordinance amends hotel/motel and associated use restrictions in the Urban High Density Residential (UH-900) zone within the City Center by removing these footnotes. The basis for this amendment is that hotels are already allowed as a conditional use within the UH-900 zone in the City Center, south of S. 184th Street, thus, potential impacts due to expansion of the facility such as height, conference space and the number of rooms would more effectively be handled through the conditional use permit process.

The Planning Commission will hold a Public Hearing on April 16, 2013 on the proposed Ordinance. The previous Public Hearing on April 2, 2013 was continued, because the Planning Commission did not have a quorum.

RECOMMENDATION(S): It is recommended that this Ordinance be adopted.

FISCAL IMPACT: None.

ALTERNATIVE(S): Do not adopt the Ordinance.

ATTACHMENTS:

ORDINANCE NO. _____

AN ORDINANCE of the City Council of the City of SeaTac, Washington, amending Section 15.35.150 (101), of the SeaTac Municipal Code related to hotels in the UH-900 zone within the City Center located south of S. 184th Street.

WHEREAS, it is appropriate to amend the City’s development regulations regarding, conditional uses within the UH 900 zone within the City Center; and

WHEREAS, the Growth Management Act requires regular review and update of development regulations which implement the City’s Comprehensive Plan; and

WHEREAS, regular review and update of the Zoning Code ensures that development regulations are responsive to the needs of the City; and

WHEREAS, the Planning Commission has reviewed the aforesaid changes to development regulations, has held a public hearing for the purpose of soliciting public comment in regard this Zoning Code change, and has recommended the amendment be adopted by the Council;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON DO ORDAIN as follows:

Section 1. Section 15.35.150 of the SeaTac Municipal Code is hereby amended to read as follows:

15.35.150 Retail/Commercial Uses

ZONES:

P – Park
UM – Urban Medium Density
UH – Urban High Density
UH-UCR – Urban High-Urban Center Residential
NB – Neighborhood Business
CB-C – Urban Center

ABC – Aviation Business Center
I – Industrial/Manufacturing
O/CM – Office/Commercial Medium
O/C/MU – Office/Commercial/Mixed Use
T – Townhouse

P – Permitted Use; C – Conditional Use Permit

USE #	LAND USE	ZONES										
		P	UM	UH	UH-UCR	NB	CB-C	ABC	I	O/CM	O/C/MU	T
RETAIL/COMMERCIAL USES												
101	Hotel/Motel and Associated Uses			C (11, 12, 13, 14)		P	P	P		P	C	
102	Forest Products					P(3)	P(3)	P(3)	C(1)	P(3)		
103	Hardware/Garden Material					P	P			P(6)	P(6)	
104	Department/Variety Store					P	P	P		P(6)	P(6)	
105	Food Store			P(8)	P(6)	P	P	P		P(6)	P(6)	
106	Agricultural Crop Sales (Farm Only)					P	P					
107	Auto/Boat Dealer						P(2)		P	C(2)		
108	Auto Supply Store					P	P(6)		P	C(6)	C(6)	
109	Gasoline/Service Station					C	P		P			
109.1	Mobile Refueling Operation	P(9)	P(9)	P(9)	P(9)	P(9)	P(10)	P(10)	P(10)	P(10)	P(9)	P(9)
110	Apparel/Accessory Store			P(7)	P(6)		P	P(2)		P(6)	P(6)	
111	Furniture Store				P(6)		P			P(6)	P(6)	
112	Fast Food/Restaurant			C(2,4)	P(4,6)		P	P	P	P(4,6)	P(4,6)	
112.1	Retail Food Shop			P(8)	P(6)	P	P	P		P(6)	P(6)	
112.2	Tavern				P(6)	P(8)	P	P		P(6)	C	
113	Drug Store			P(7)	P(6)	P	P	P		P(6)	P(6)	
114	Liquor Store						P			P	C	
115	Antique/Secondhand Store				P(6)	P	P			P(6)	P(6)	
116	Sporting Goods and Related Stores				P(6)	P	P	P		P(6)	P(6)	
117	Media Material			P(7)	P(6)	P	P	P		P(6)	P(6)	
118	Jewelry Store			P(7)	P(6)	P	P	P		P(6)	P(6)	
119	Hobby/Toy Store			P(7)	P(6)	P	P	P		P(6)	P(6)	
120	Photographic and Electronic Store				P(6)	P	P	P		P(6)	P(6)	
121	Fabric Store			P(7)	P(6)		P	P		P(6)	P(6)	
122	Florist Shop			P(7)	P(6)	P	P	P		P(6)	P(6)	
123	Pet Store				P(6)		P			P(6)	P(6)	
124	Wholesale/Bulk Store						C	C	P	C(6)	P(6)	

125	Beauty Salon			P(8)	P(6)	P	P	P		C(6)	P(6)	
125.1	Laundromat			P(7)	P	P	P			P	P(6)	
125.2	Espresso Stand			P(2)	P	P	P	P	P	P	P(6)	
125.3	Comm. Marine Supply					C	P		P			
126	Other Retail Uses			P(7)	P(6)	C	P	C		P	C	
127	Adult Entertainment						C(5)	C(5)	C(5)			

- (1) Forest product related businesses shall provide the following:
 - a. Minimum of ten (10) acres;
 - b. Access to major arterial; and
 - c. Minimum thirty (30) foot buffers around the perimeter of property (Type II landscaping).
- (2) Accessory to primary use not to exceed twenty percent (20%) of primary use.
- (3) Temporary forest product sales related to holidays. Merchandise limited to Christmas trees, wreaths, herbs and associated decorations.
- (4) No fast food restaurants with drive-through facilities allowed.
- (5) See SMC 15.29.010.
- (6) Permitted as part of a mixed use development, as described in SMC 15.35.610.
- (7) Small, resident-oriented uses only, as part of a residential mixed use project.
- (8) Small, resident-oriented uses only.
- (9) Permitted only to refuel heavy equipment at a construction site, subject to the criteria under SMC 15.13.103.
- (10) Subject to the criteria under SMC 15.13.102.
- (11) Only allowed on UH zoned properties south of S. 184th Street.
- ~~(12) The maximum height allowed is thirty (30) feet.~~
- ~~(13) The maximum number of hotel rooms may not exceed one hundred thirty (130).~~
- ~~(14) Conference or meeting facilities may not be expanded.~~

Section 2 The City Clerk is directed to forward a copy of this Ordinance to the Washington State Department of Commerce within ten (10) days after adoption, and to the King County Assessor.

Section 3. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 4. The Ordinance shall be effective five (5) days after passage and publication.

ADOPTED this ____ day of _____, 2013, and signed in authentication thereof on this ____ day of _____, 2013.

CITY OF SEATAC

Tony Anderson, Mayor

ATTEST:

Kristina Gregg, City Clerk

Approved as to Form:



Mary Mirante Bartolo, City Attorney

[Effective Date _____]

[City Center Retail/Commercial Use Chart Ordinance]

SeaTac City Council

REQUEST FOR COUNCIL ACTION

Department Prepared by: Parks and Recreation

Agenda Bill #: 3504

TITLE: A Motion authorizing staff to apply for the 2014 Community Development Block Grant for design and construction of a bocce court(s) and horse shoe pit.

March 21, 2013	
<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Info. Only <input type="checkbox"/> Other	
Date Council Action Requested:	RCM 04/23/13
Ord/Res Exhibits:	
Review Dates:	CSS 04/09/13
Prepared By:	Lawrence Ellis, Assistant Parks and Recreation Director <i>LE</i>
Director:	<i>K3 Jun</i>
City Attorney:	<i>Mark A. Johnson, Sr Asst City Attorney</i>
Finance:	<i>[Signature]</i>
BARS #:	None
City Manager:	<i>[Signature]</i>
Applicable Fund Name:	None

MR

SUMMARY: This Motion authorizes the City Manager to apply for the 2014 Community Development Block Grant (CDBG) to design and construct bocce court(s) and horse shoe pit at the SeaTac Community Center for the senior program.

DISCUSSION / ANALYSIS / ISSUES: Adding a bocce court(s) and horse shoe pit has been discussed among the Senior Citizen Advisory Committee members the past several years. The past four years the Parks and Recreation Department has been very successful in securing funds to design and construct a neighborhood park and a skate park (both at SeaTac Community Center) and to renovate Sunset soccer field utilizing the King County Community Development Block Grant program.

The proposed project will design and construct a bocce court(s) and horse shoe pit west of the sensory garden near the entrance to the senior wing at the SeaTac Community Center. This location will be an ideal for the many seniors to walk to the site and play. Nevertheless, the site will need earthwork to level the grounds.

The size of the bocce court will be between 76' – 90', depending on design and space available (official size is 87'6" x 13') and the playing surface material will be determined during the design phase of the project. The horse shoe pit will be 48' in length by 6' in width. The maintenance for both amenities will be very minimal with little or no impact to the current park maintenance staff work load.

The inclusion of bocce court(s) and horse shoe pit will add another free recreation activity for the community and provide the seniors outdoor exercise opportunities.

The design and construction of the proposed project is not budgeted and this project will not proceed without CDBG grant funding and no city funding will be requested for this project. The estimated cost for design and construction is undetermined at this time. If the grant funding is approved, the City Council will be asked to formally accept the grant and award contracts for design and construction of the expansion project.

To meet all grant requirements, a pre-application has been submitted (due April 5, 2013) with the grant application deadline May 31, 2013. Approval of this Motion is required for the City to formally apply for this grant funding. If this Motion to apply is not approved, staff will withdraw the pre-application.

RECOMMENDATION(S): It is recommended that the Motion be carried.

FISCAL IMPACT: Applying for this grant has no fiscal impact. This is not a matching grant and the project will not move forward without this grant.

ALTERNATIVE(S): Do not carry this Motion. This would discontinue the City's application for the grant funding.

ATTACHMENTS: None.

SeaTac City Council
REQUEST FOR COUNCIL ACTION

Department Prepared by: Parks and Recreation

Agenda Bill #: 3507

TITLE: A Motion authorizing the City Manager to amend the Contract with T.F. Sahli Construction to purchase and installation of Musco lighting equipment for SeaTac Community Center skate park project.

April 4, 2013	
___ Ordinance ___ Resolution <u>X</u> Motion ___ Info. Only ___ Other	
Date Council Action Requested:	<u>RCM 04/23/2013</u>
Ord/Res Exhibits:	_____
Review Dates:	<u>CSS 04/09/2013</u>
Prepared By:	<u>Lawrence Ellis, Assistant Parks and Recreation Director</u> <i>LE</i>
Director:	<u><i>K. S. [Signature]</i></u> City Attorney: <u><i>Mark A. Johnson, Sr. Asst. City Atty</i></u>
Finance:	<u><i>[Signature]</i></u> BARS #: <u>301.000.04.594.76.63.194</u>
City Manager:	<u><i>T. [Signature]</i></u> Applicable Fund Name: <u>Capital Improvements Fund</u>

ML

SUMMARY: This Motion authorizes the City Manager to amend the Contract with T.F. Sahli Construction to purchase and install Musco lighting equipment for the SeaTac Community Center skate park project.

DISCUSSION / ANALYSIS / ISSUES: On September 25, 2012, the City Council approved the Contract with T.F. Sahli Construction for an amount of \$202,399.80 to construct the skate park at SeaTac Community Center.

Amending the Contract allows the contractor to purchase and install lights for the skate park and basketball court (which is adjacent to the skate park), at a cost of \$38,211 (includes sales tax). They will purchase two 50' galvanized poles, lighting control cabinet, 5 factory-aimed luminaries and other small equipment plus installation. This will bring the total project cost to \$240,610.80. This amendment will keep the project within the awarded grant amount of \$278,900.

RECOMMENDATION(S): It is recommended that the City Council move to authorize the City Manager to approve the contract amendment with T.F. Sahli Construction in the amount \$38,211.

FISCAL IMPACT: This project is 100% funded by the King County Community Development Block Grant program, so there is no additional cost to the city other than administration of the grant and oversight of this capital project.

ALTERNATIVE(S):

1. Do not approve this contract amendment.

ATTACHMENTS:

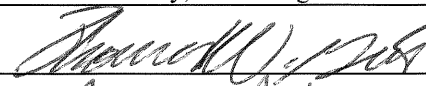
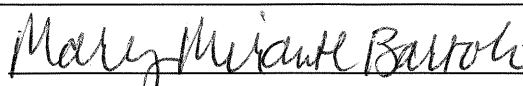
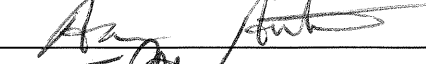

1. None.

SeaTac City Council
REQUEST FOR COUNCIL ACTION

Department Prepared by: Public Works

Agenda Bill #: 3508

TITLE: A Motion authorizing the City Manager to execute a design agreement for the South 179th Street Sidewalk Project.

March 28, 2013	
__ Ordinance __ Resolution <u>X</u> Motion __ Info. Only __ Other	
Date Council Action Requested:	<u>04/23/2013 RCM</u>
Ord/Res Exhibits:	
Review Dates:	<u>04/09/2013 CSS</u>
Prepared By:	<u>Toli Khlevnoy, Civil Engineer 2</u>
Director:	<u></u> City Attorney: <u></u>
Finance:	<u></u> BARS #: <u>307.000.19.595.61.63.186</u>
City Manager:	<u></u> Applicable Fund Name: <u>Transportation CIP (307)</u>

MK
SA

SUMMARY: This Motion authorizes the City Manager to execute a design agreement for the South 179th Street Sidewalk Project.

DISCUSSION / ANALYSIS / ISSUES: The South 179th Street Sidewalk Project is the fifth project under the City's Neighborhood Sidewalk Program. This project is scheduled to construct sidewalks on both sides of South 179th Street from 42nd Avenue South to Military Road South. Design services requested for this project include preparation of the detailed engineering drawings, specifications, and estimates required to bid and construct the project.

A statement of qualifications was requested from firms selected from the MRSC Consultant Roster in January, 2013. The following firms submitted statements of qualifications: KPG; PACE; Parametrix; Lochner; and AECOM. The firms were evaluated based on their staff qualifications, experience with similar projects, project understanding, and available resources to complete the project on schedule. Parametrix was selected as the most qualified firm due to their extensive experience on similar projects. The scope of work includes surveying, engineering design, cost estimating, possible right-of-way or easement acquisition, public outreach, environmental services, geotechnical investigation, and coordination with affected utilities. A detailed scope of work is attached. The negotiated scope and fee for Parametrix, Inc. is reasonable for the level of effort and work anticipated. The City of SeaTac's standard agreement form will be used. It is anticipated that the project will be constructed in 2014.

RECOMMENDATION(S): It is recommended the Motion be carried.

FISCAL IMPACT: The amount to be paid is not to exceed \$229,532.69. The Transportation CIP Fund (307) includes \$1,415,000 for this project in the 2013-2014 biennial budget.

ALTERNATIVE(S): 1) The Council may request the project be eliminated or delayed. 2) Council may request staff to negotiate with another firm. If this is done, Parametrix, Inc. would then be eliminated from further consideration.

ATTACHMENTS: Scope of Services; Fee Summary; Vicinity Map.

SCOPE OF WORK

City of Seatac

South 179th Street Sidewalk Project ST-830

INTRODUCTION

The City of SeaTac has retained Parametrix to provide engineering design services for the construction of sidewalks on South 179th Street. Project limits are from 42nd Avenue South to Military Road South. Work will include preliminary and final design of sidewalks, drainage facilities, utility relocations, and other work associated with the sidewalk construction.

PHASE 01 – PRELIMINARY AND FINAL DESIGN

Task 01 – Project Management

Objective

Parametrix will provide continuous tracking of the project schedule and budget, project quality assurance and control, and status of deliverables to ensure that the project is executed as expected by the City.

Approach

The project manager will set up internal processes, files and documents to establish, track and manage the project schedule, budget, personnel and subconsultants. Written correspondence will be generated as needed to document project management issues.

Monthly invoices and progress reports will be developed, in addition to an earned value report, summarizing the work performed in the previous month.

Assumptions

The project is locally funded. Coordination and correspondence with WSDOT Local Programs for federal funding or other state funding agencies is not required.

This project phase is anticipated to last 12 months.

Deliverables

- Contractual documents for signature by the City.
- Miscellaneous correspondence to document project management issues.
- Monthly progress reports, invoices and earned value tables.
- Project schedule.

SCOPE OF WORK (CONTINUED)

Task 02 – QA/QC

Objective

Perform internal review to ensure that: a) design concepts are sound and cost effective; and b) the design concepts have been incorporated and documents are accurate and consistent.

Approach

The project manager will task an internal senior engineer or other technical lead to review the following deliverables:

- a. Preliminary and Final Stormwater Technical Information Report
- b. 30%, 60%, 90% and Bid Document Submittals

Assumptions

Internal review will be performed by independent senior staff not involved in production of the deliverables.

Deliverables

None. Review comments will be for internal use. Documentation will be made available to City staff upon request.

Task 03 – Survey

Objective

Provide topographic mapping and prepare an AutoCAD Civil 3D format base map identifying existing conditions and improvements to support design efforts.

Limits

Parametrix will map the following limits, the right-of-way of S 179th St. lying between the easterly right-of-way of 42nd Ave S and the westerly right-of-way of Military Road, including 100 feet north and south of abutting roads 43rd Ave S, 46th Ave S, and 48th Ave S.

Approach

Parametrix surveyors will establish horizontal and vertical control along the proposed corridor. GPS and conventional survey methods will be used to map existing conditions. Mapping will include all visible improvements and ground conditions within the above described limits. These improvements include but are not limited to crown of road, edge of pavement, traffic striping and channelization, gas and water valves (including measure-downs to top of nut), fire hydrants, water meters, storm and sanitary sewer

SCOPE OF WORK (CONTINUED)

structures including pipe size, type and invert elevations, poles, guy anchors, signs, fences and significant trees 6" and larger. Vegetation such as hedges and landscaping will be mapped by limits and includes approximate height for use in site distance calculations, where applicable.

If found, street monuments and property corners will be tied and incorporated into the base map for use in both alignment and right-of-way limits.

Ground and pavement shots will be gathered at sufficient intervals to generate 1 foot contours.

For those streets that intersect S 179th St. mapping will continue around the curve returns and extend an additional 100 feet north and south from the right-of-way. In addition to the intersecting streets, any pertinent utility that connects or is associated with structures within the proposed corridor will be mapped and measured.

Parametrix will contact and coordinate with Applied Professional Services to mark conductible underground utilities within the survey limits. See attached proposal. Parametrix will survey underground utilities based on surface evidence and paint marks. Mapping information will be verified against record drawings provided by private utilities. No further coordination with private utilities will be accomplished with this task.

Assumptions

Right of way will be based on plat or other publically available record data. No title reports will be obtained, and no boundary survey will be performed.

Right of entry will not be required. Parametrix will prepare a flier to residents indicating the purpose and dates of the survey, including information about how to contact the City with concerns. The City will be responsible for distribution of the flier.

Deliverables

Civil 3D drawing file of the right of way and topographic survey. Drawing file will include a Triangular Irregular Network (TIN).

Task 04 – 30 Percent Design

Objective

Define the project footprint and scope of impacts to public and private utilities, private property, and other stakeholders. Outcomes include identification of a preferred curb/sidewalk and roadway alignment, including vertical profile; preliminary review of stormwater mitigation requirements; impacts to property owners; improvements to any utilities, including horizontal plan and vertical profile of new facilities; obstructions to stopping sight distances.

SCOPE OF WORK (CONTINUED)

Approach

Roadway and Curb/Sidewalk Alignment

One roadway cross section will be developed in coordination with the City, and then laid out horizontally along the corridor. The DRAFT preliminary plan will include:

- A plan view (roll plot at 1 inch = 20 feet) of the proposed improvements overlaid upon the base map depicting curb/gutter, sidewalk, new or replaced roadway pavement sections, and channelization.
- Existing and proposed vertical profile at crown of proposed roadway centerline.
- Locations, sizes and types of existing or new stormwater structures, pipes or other proposed facilities.
- Locations of any right-of-way needs (if any) or other impacts to private property owners (i.e. permanent slope easement, removal of trees on private property). Encroachments into the right of way will not be individually described at this stage of design but will be readily seen in the base map during review of the alternatives.
- Relocation or impacts to private utilities.
- Locations of walls where required to limit impacts to private property.
- Intersection sight triangles.

On the roll plot, Parametrix will create a table listing key design criteria, references, and existing and proposed values for the alignment.

Parametrix will submit the DRAFT preliminary plan to the City for review, and then will meet with the City to discuss changes. A FINAL preliminary plan will be developed to incorporate requested changes and then delivered to the City for approval and acceptance.

Assumptions

The King County Surface Water Design Manual 2009, City of SeaTac Addendum to King County Surface Water Design Manual effective February 15, 2010, and City of SeaTac Soil Amendment Standards apply to this project.

The 2005 Low Impact Development Technical Guidance Manual, as amended in the SeaTac Development Standards, shall be used as the supplemental guide for the use of LID techniques.

The 2007 King County Road Design and Construction Standards will be used for the design of this project.

Illumination will not be evaluated.

Comments to the DRAFT preliminary plan may require refinement of a preferred alignment but will not result in development of a new alignment, unless additional budget and scope have been authorized by the City.

SCOPE OF WORK (CONTINUED)

Electronic plans will be provided to Highline Water District at the completion of this phase in order to ensure water line improvement design is consistent with the roadway plans.

Deliverables

- FINAL Preliminary Plan in roll plot for one City-preferred alignment
- Electronic plans (for Highline Water District's use, see Task 07 Utility Coordination).

Task 05 – 60 Percent Design

Objective

The purpose of this task will be to develop a 60% design level plan set according to the description below.

Approach

Stormwater Technical Information Report

Parametrix will prepare a Preliminary Stormwater Technical Information Report (TIR), following the guidelines of the King County Surface Water Design Manual and as amended by the City of SeaTac. The TIR will be developed in conjunction with the 60-percent roadway and curb/sidewalk alignments and will include:

- A level 1 downstream analysis.
- A table of new and replaced impervious surface areas based on proposed typical cross sections.
- Stormwater facility sizing analysis

Parametrix will submit the Preliminary TIR to City of SeaTac for review. Comments on the Preliminary TIR from SeaTac will be incorporated into a "draft" Final TIR, which will be submitted with the 90% Design (Task 05). The Final TIR will also incorporate the City's comments on the 90% design.

Plans and Estimate

Parametrix will submit electronic .pdf plans at the 60% design level to the City for review and comment. Following City review of the 60% plans, Parametrix will then meet with City staff to discuss any revisions prior to proceeding with additional submittals. The following items will be electronically submitted to the City for the 60% submittal:

- Cover Sheet (1 sheet, 11" x 17", no scale)
- Legend/Control/General Notes (1 sheet, 11" x 17", no scale)
- Roadway Sections (1 sheet, 11" x 17", no scale) Using recommendations provided by the geotechnical engineer, the preferred roadway section from Task 04 will be fully developed, including utility and pavement restoration sections for all areas within the project limits.

SCOPE OF WORK (CONTINUED)

- Demolition/TESC Plans (3 sheets, 11" x 17", 1" = 40', in Plan/Plan format) Plan will indicate removal or relocation of fences, trees, vegetation, mailboxes, utilities, encroachments or other improvements within the right-of-way. Temporary erosion control measures will be defined.
- Roadway Alignment Plan and Profile (6 sheets, 11" x 17", 1" = 40', in Plan/Profile format) Plans will indicate the horizontal location of the various roadway elements, including curb, sidewalk, planter strip or low impact development feature (if used), driveways, and cut/fill lines, etc. Intersection layouts will include curb return radii, location, and type of pedestrian ramps, etc. The extent and nature of improvements on private properties will be shown where necessary to interface with the proposed roadway improvements. Examples include structural earth retaining walls, slopes, or replaced private sidewalks.
- Survey Control Sheets (3 sheets, 11" x 17", 1" = 40', in Plan/Plan format) Survey control will indicate the horizontal and vertical datums, control points, monumentation, and equations to properly field survey the construction centerline.
- Channelization/Signing/Mailbox Plan (3 sheets, 11" x 17", 1" = 40', in Plan/Plan format) Channelization design will show proposed striping overlaid onto existing striping. Existing and proposed signage will be depicted; however, no sign schedule will be developed for this set of plans. No mailboxes will be shown at this design level.
- Storm Plan and Profile (7 sheets, 11" x 17", 1" = 40', in Plan/Profile format). Using information developed in Task 04, plan sheets will be developed to include profiles of proposed storm facilities; existing utilities identified during the survey; and connections to the existing stormwater system. Proposed water line improvements may be shown, if available from Highline Water District.
- Driveway Profiles (3 sheets, in Profile format). Driveways which require special consideration due to grading challenges will have profiles indicated.
- Retaining Wall Profiles (3 sheets, in Profile format). Retaining walls, if needed will be shown from top of wall face to bottom of wall face.
- Landscape Restoration Plan (1 sheet) –Plan for restoring residential landscape features due to project construction impacts will be indicated, consisting of a Restoration Schedule table and planting details.
- Cross Sections (2 sheets, in Profile format) – Roadway cross sections will be shown every 50 feet.
- Other Details (as necessary, assuming 2 sheets)

SCOPE OF WORK (CONTINUED)

- Opinion of Probable Cost (60% Design Level). Based on available design information, a listed of anticipated bid items and associated costs for construction will be developed.

Assumptions

Contact with Highline Water District will be made under Task 07 Utility Coordination in order to obtain alignment and profile information for the proposed water line. If unavailable, the plans will be submitted without this information.

Deliverables

- Preliminary TIR
- 60% Submittal (electronic): Up to 36 plan sheets and an opinion of probable cost.
- Meeting minutes.
- Technical Information Report.

Task 06 – Public Outreach

Objective

Assist the City in soliciting public involvement for the project. This will consist of one open house, with primary stakeholders including residential property owners and inhabitants along S 179th. The open house will be a walk-in event for citizens to review the proposed layout. Feedback from this meeting will be used to refine design elements where the project interfaces with property owners. Feedback will also direct the City and Parametrix in choosing location (clustered or individual) and types of mailboxes along the corridor.

Approach

The City will provide a meeting location and assemble a list of names and addresses of specific attendees that require invitation. Electronic advertisement, and well as posting and mailing any paper invitations, will be by the City.

Parametrix will provide two roll plots of the 60% design, one with an aerial background and another without, of the proposed alignment. Parametrix will also provide two typical roadway cross sections: one with dimensions and another with rendering. The project manager will attend open house and assist in answering questions. No formal presentation with slides or other graphics is anticipated.

SCOPE OF WORK (CONTINUED)

Assumptions

The Open House will be in City of SeaTac at the Council Chambers, 4800 S 188th Street, SeaTac, WA 98188, and will not exceed 3 hours.

Feedback from property owners may require refinement of up to 10 driveways or other locations along private property but will not result in revisions to the primary alignment or additional sheets to the project.

Deliverables

- Two (2) color roll plots (1" = 20') depicting 60% design improvements along the corridor.
- One (1) 22- by 34-inch typical roadway cross section with dimensions.
- One (1) 22- by 34-inch color rendering of the roadway cross section.
- Meeting minutes or sketches to describe any design changes prior to 90 percent submittal. City of SeaTac will provide concurrence or direction on all changes prior to incorporation into the 90 percent submittal.

Task 07 – Utility Coordination

Objective

Contact utility companies whose facilities lie within the corridor and coordinate modifications as needed to accommodate the sidewalk project. All communication will be coordinated with the City.

Approach

Prior to meeting with utility companies, Parametrix will contact Highline Water District (hereinafter referred to as "Highline") and their consultant designing the new water line along South 179th Street. The proposed water line plan and profile will be imported into the 60% stormwater plan and profile developed in Task 05. No meetings are proposed at this stage.

Parametrix will invite utility companies to a utility coordination meeting and present the 60% design plans, including the water line plan and profile provided by Highline's consultant. Individual utility conflict plans will not be developed; however, Parametrix will annotate potential areas for utility conflicts on the stormwater plan/profile. Annotation will be made using hand-written, heavy-weight marker. Parametrix will locate up to five (5) pothole locations. Potholing and any associated traffic control will be performed by the utility.

Upon receipt of the pothole information from the utility company, Parametrix will identify the pothole information on the 60% plans and identify utility conflicts to the City.

SCOPE OF WORK (CONTINUED)

Assumptions

The water main replacement project by Highline Water District (hereinafter “Highline”) will be combined under this sidewalk project, but with a separate bid schedule. All plans, specifications and legal documents for the water line will be developed by Highline’s consultant.

Electronic plans for the water line design will be compatible with AutoCAD Civil 3D.

The utility company will provide pothole and underground facility depths to Parametrix within one month of identification of the pothole locations. Pothole locations will not be surveyed. Utility companies will provide hand-sketches of the pothole locations, as measured from objects readily identified in the field.

Modifications to the design as a result of utility conflicts will be considered outside the limits of this scope and budget and must be authorized under Task 12.

The utility companies to be affected are not known at this time.

A total of three Parametrix staff will attend each utility coordination meeting, which is anticipated to last up to 3 hours each. Meetings will occur at City Hall in the City of SeaTac.

Deliverables

- Copies of the 60% plan set with hand-written annotations for the coordination meeting.
- Meeting minutes with City concurrence on any action items.

Task 08 – Environmental

Objective

Assist the City in obtaining environmental compliance for this project.

Approach

The project is funded entirely with local funds and does not appear to affect any critical areas. A SEPA checklist will be filled out and submitted to the City for review after development of the 60% plan set.

Assumptions

The City of SeaTac will serve as lead agency for SEPA, and it is assumed that the SEPA threshold determination will be a Determination of Non-Significance.

City staff will coordinate and manage all SEPA-related activities after submittal of the SEPA checklist.

Deliverables

- SEPA checklist.

SCOPE OF WORK (CONTINUED)

Task 09 – 90 Percent Design

Objective

Incorporate comments from the 60% review submittal and develop a 90% design level plan set with specifications according to the description below.

Approach

Stormwater Technical Information Report

Using the Preliminary TIR, Parametrix will prepare a Final Stormwater Technical Information Report (TIR) in accordance with the King County Surface Water Design Manual standards. The report will include:

- Final stormwater facility selection and analysis
- Conveyance system analysis

Parametrix will submit the Final TIR to the City of SeaTac for review and approval. Comments on the Preliminary TIR from SeaTac will be incorporated into a “draft” Final TIR, which is to be submitted with the 90% Design. City comments will be incorporated in to a Final TIR at the 100% submittal.

Plans, Specifications and Estimate

Work for the 90% submittal will incorporate the City’s comments from the 60% submittal, expand the plans with notes and details where required, and coordinate with the plans with information obtained from Task 07 Utility Coordination. Specifications will be developed based on applicable amendments and general or APWA special provisions to the WSDOT Standard Specifications.

Parametrix will submit electronic .pdf plans and specifications at the 90% design level to the City for review and comment. Following City review of the 90% plans, Parametrix will then meet with City staff to discuss any revisions prior to proceeding with additional submittals. The following items will be electronically submitted to the City for the 90% submittal:

- Revised and expanded information on the plan sheets from the 60% submittal, with additional detail for items such as: driveways, signs, mailboxes and restoration schedules; stormwater and temporary erosion control details; structural earth wall and landscape block details; utility coordination information.
- Specifications, including front end legal documents, specification amendments, appendices, and King County Roadway Design and Construction Standards referenced on the plans.
- Opinion of Probable Cost (90% Design Level)

SCOPE OF WORK (CONTINUED)

Assumptions

The project will have no federal or state grant funding and special funding provisions will not apply to the contract documents.

The City will provide standard legal documents as adopted by the City for reference and inclusion in the specifications.

No traffic control plans will be prepared. The Special Provisions will outline basic requirements for maintenance of traffic and allowable lane closures.

Deliverables

- 90% Submittal (electronic): Up to 36 plan sheets, specifications and an opinion of probable cost.
- “Draft” Final TIR
- Responses to review comments on the 60% submittal.

Task 10 – Bid Documents

Objective

This task will develop final plans and specifications necessary for bidding and construction.

Approach

Parametrix will incorporate the City’s comments from the 90% submittal, and then electronically submit the plans, specifications and opinion of probable cost to the City as a 100% submittal. This submittal will allow the City to confirm that all comments have been incorporated before the final bid documents are submitted.

Work for the final bid document submittal will incorporate any remaining City comments from the 100% submittal and include approval signatures from both the City and Parametrix.

Assumptions

No meetings are anticipated for this task.

The City is responsible for obtaining all permitting necessary to build the project. The City will be responsible for production and issuance of the bid sets.

Deliverables

- 100% Submittal (electronic): Up to 36 plan sheets, specifications and an opinion of probable cost in .pdf format.
- Final Stormwater TIR

SCOPE OF WORK (CONTINUED)

- Responses to review comments on the 100% submittal.
- Bid Documents: Up to 36 plan sheets, specifications and an opinion of probable cost. The deliverables will be transmitted electronically as TIFF and .pdf files. Original paper copies will be retained in Parametrix files.

Task 11 – Geotechnical Investigation

Objective

Determine the condition and characterization of existing pavements, soil and groundwater for purposes of designing a new roadway pavement section and associated stormwater facilities.

Approach

PanGEO Inc., the geotechnical services firm for this project, will characterize soils and groundwater for purposes of designing a new pavement section and determining soil infiltration rates for stormwater treatment. See attached proposal.

Assumptions

The City or geotechnical engineer will coordinate and provide traffic control as necessary.

Deliverables

- Draft and final Geotechnical Report, in electronic format.

Task 12 – Management Reserve Fund

Due to the complexity and character of the project, the City may require additional services from the Design Firm for unanticipated and/or out of scope work items which could include, but are not limited to, changes/additions to environmental documents, geotechnical investigations, right of way acquisitions (provided by Certified Land Services), roadway alignments, community and developer involvement, streetscape design or other unanticipated tasks beyond those identified in the above scope of work. Parametrix shall not proceed with the work under this task until the City reviewed the proposal for the additional work, has further authorized the work and issued the Design Firm a notice to proceed with the work.

Assumptions

To be determined with each City authorization of funds from this task.

Deliverables

- To be determined with each City authorization of funds from this task.

Client: City of SeaTac
 Project: S 179th Street Sidewalk Project
 Project No: 214-2078-xxx

PARAMETRIX LABOR COSTS

Phase	Task	Description	Labor Dollars
01		Preliminary and Final Design	\$189,932.89
01	01	Project Management	\$11,213.45
01	02	QA/QC	\$14,141.04
01	03	Survey	\$12,449.74
01	04	30 Percent Design	\$11,538.30
01	05	60 Percent Design	\$45,952.21
01	06	Public Outreach	\$4,054.41
01	07	Utility Coordination	\$6,211.68
01	08	Environmental	\$2,095.46
01	09	90 Percent Design	\$58,238.83
01	10	Bid Documents	\$24,037.77
01	11	Geotechnical Investigation - See Subconsultants	\$0.00
01	12	Management Reserve Fund - See Direct Expenses	\$0.00

Labor Totals: \$189,932.89

Escalation Amt: \$226.22

SUBCONSULTANTS

<u>Subconsultant Name</u>	<u>Amount</u>
PanGEO, Inc	\$10,890.50
Applied Professional Services Inc	\$1,242.00
Subconsultant Total:	\$12,132.50

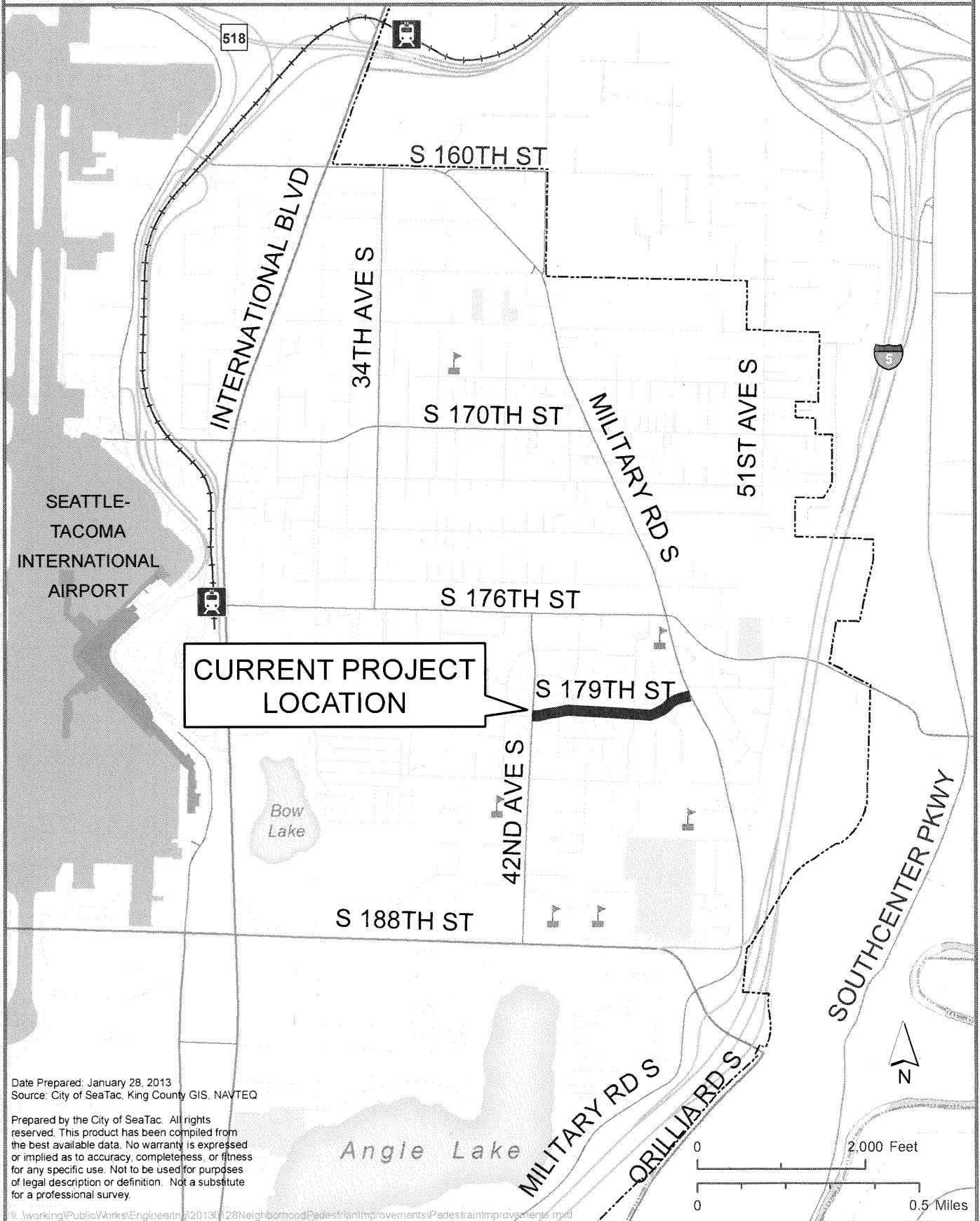
DIRECT EXPENSES:

<u>Description</u>	<u>Amount</u>
B & W 8.5 x 11	\$570.70
B & W 11 x 17	\$494.00
Plotter Bond	\$554.00
Mileage	\$248.60
WA Survey Equipment	\$378.00
Wa Survey Vehicle	\$222.00
Management Reserve Fund	\$25,000.00
Expense Total:	\$27,467.30

Project Total: \$229,532.69

South 179th Street Sidewalk Project

City of SeaTac



Date Prepared: January 28, 2013
Source: City of SeaTac, King County GIS, NAVTEQ

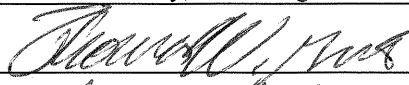
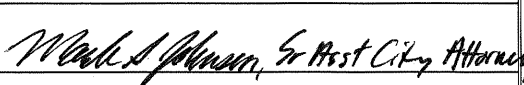


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SeaTac City Council
REQUEST FOR COUNCIL ACTION

Department Prepared by: Public Works

Agenda Bill #: 3509

TITLE: A Motion authorizing an Interlocal Agreement with Highline Water District for construction of waterline replacement and pavement restoration as part of the South 168th Street Sidewalk Project.

March 29, 2013	
__ Ordinance __ Resolution <u>X</u> Motion __ Info. Only __ Other	
Date Council Action Requested:	<u>04/23/2013 RCM</u>
Ord/Res Exhibits:	
Review Dates:	<u>04/09/2013 CSS</u>
Prepared By:	<u>Toli Khlevnoy, Civil Engineer 2</u>
Director:	<u></u>
City Attorney:	<u> Sr. Asst. City Attorney</u>
Finance:	<u></u> BARS #: <u>307.000.11.595.61.63.185</u>
City Manager:	<u></u> Applicable Fund Name: <u>Transportation CIP (307)</u>

mk
KS

SUMMARY: This Motion would authorize the City Manager to execute an Interlocal Agreement, substantially in the form attached, with Highline Water District for construction of approximately 1,850 linear feet of waterline in conjunction with the South 168th Street Sidewalk Project.

DISCUSSION / ANALYSIS / ISSUES: Highline Water District desires to replace an existing waterline on South 168th Street from 34th Avenue South to Military Road South. Combining the District's waterline replacement with the City's sidewalk construction project will minimize disruption to the neighborhood and traveling public and reduce the overall construction cost by sharing items such as traffic control, erosion control, and construction surveying. The District will reimburse the City for 100% of the actual water line costs incurred, as well as some pavement restoration costs within the limits of the waterline replacement. A 10% markup for construction management by the City will be added to the amount reimbursed by the District. Detailed Engineer's Estimates for the waterline work and pavement restoration are attached as Exhibit C to the ILA.

RECOMMENDATION(S): It is recommended that the Motion be carried.

FISCAL IMPACT: This motion has no financial impact to the City. The full cost of construction and oversight of the District's work, estimated at \$365,121.35 will be reimbursed by Highline Water District.

ALTERNATIVE(S): Do not enter into this Interlocal Agreement. Highline Water District would then construct its improvements at a later time by its own means; however this would result in additional disruption to the neighborhood and require reconstruction of sections of sidewalk and roadway pavement.

ATTACHMENTS: Interlocal Agreement, Vicinity Map

INTERLOCAL AGREEMENT BETWEEN THE CITY OF SEATAC AND HIGHLINE WATER DISTRICT FOR CONSTRUCTION OF WATER LINE AND PAVEMENT RESTORATION ON SOUTH 168th STREET

THIS AGREEMENT ("Agreement") is entered into between the **City of SeaTac**, a Washington Municipal Corporation, located and doing business at 4800 South 188th Street, SeaTac, Washington 98188 ("CITY") and **Highline Water District**, a Washington Municipal Corporation, located and doing business at 23828 30th Avenue South, Kent, Washington 98032 ("DISTRICT"); (individually a "Party" and collectively the "Parties").

RECITALS

- A. The CITY is constructing roadway improvements to South 168th Street between 34TH Avenue South and Military Road South within the City of SeaTac, Washington ("PROJECT").
- B. The DISTRICT has a Franchise with the CITY to operate and maintain water distribution facilities within the CITY's right-of-way in the vicinity of the PROJECT.
- C. The DISTRICT desires to upgrade and replace its water distribution facilities ("DISTRICT WORK") between 34th Avenue South and Military Road South which, in accordance with CITY development standards, will require restoration of a portion of the roadway pavement ("PAVEMENT RESTORATION").
- D. The CITY is willing to include the installation of the DISTRICT WORK as part of the Project conditioned on the District reimbursing the CITY for the cost to administer and install the DISTRICT WORK as well as a proportional share of the PAVEMENT RESTORATION.
- E. The Parties can achieve cost savings and benefits in the public's interest by combining construction of PROJECT and DISTRICT WORK.

AGREEMENT

Section 1. General: The CITY, as agent acting for and on behalf of the DISTRICT, agrees to perform the DISTRICT WORK, in accordance with and as described in the Scope of Work marked **Exhibit A** and Plans and Specifications marked **Exhibit B** attached hereto, which by this reference are made part of this Agreement.

Section 2. Construction Plans: Plans, Specifications and cost estimates for the DISTRICT WORK have been prepared by the DISTRICT generally in accordance with the 2012 State of Washington Standard Specifications for Road, Bridge and Municipal Construction, DISTRICT Standard Specifications as applicable, and adopted design standards ("Plans and Specifications"). The DISTRICT hereby approves the Scope of Work for the DISTRICT WORK as described in **Exhibit A** attached hereto and incorporated herein by this reference ("Scope of Work").

Section 3. Bidding and Construction: The CITY is hereby designated the DISTRICT's construction agent for the DISTRICT WORK. The CITY will incorporate the DISTRICT's Plans and Specifications into the Project as a separate additive schedule to the PROJECT contract in such a manner as to allow, to the greatest extent possible, identification of cost allocations between the respective work for the Parties. The CITY shall thereafter advertise the resulting Project for competitive bid. Following the CITY's receipt of bids for the Project work, the CITY shall furnish the DISTRICT with the bid, bid prices, and the list of contractors and subcontractors for the DISTRICT WORK for the DISTRICT's approval. DISTRICT shall review the bid documents and notify CITY in writing within ten (10) business days of the receipt of the bid whether the DISTRICT approves or rejects the bid(s) for the DISTRICT WORK. The DISTRICT has the right to reject the bid if the bid exceeds the engineer's estimate for the DISTRICT WORK by 25% as shown on **Exhibit C** ("Cost of Work" or "Engineer's Estimate"). The CITY shall not proceed with the DISTRICT WORK if the above conditions are met and the CITY has received written notification from the DISTRICT that the DISTRICT rejects the bid(s). Bid award shall be made to the lowest responsible bidder for the total project, subject to applicable laws and regulations. However, if the DISTRICT rejects the bid for the DISTRICT WORK, the DISTRICT may elect not to proceed with the DISTRICT WORK, or may select its own contractor to do the DISTRICT WORK deemed necessary. If the DISTRICT elects to proceed with the DISTRICT WORK, the DISTRICT shall require its contractor to coordinate all DISTRICT WORK within the Project work area with the CITY contractor and with any contractors or work crews from other utilities and to not unreasonably interfere with or delay the CITY'S contractor or the work by other utilities.

Once the Project contract is awarded, the CITY will administer and manage the contract. As construction agent, the CITY will perform all engineering, survey and field inspections and shall make all payments to the Contractor. The CITY will keep the DISTRICT advised as to the progress of the Project. The CITY, as construction agent, shall have final judgment, after consulting with the DISTRICT, with regards to decisions related to the work of the Contractor.

Section 4. Authority to Construct: Subject to the provisions in Section 3 herein, the DISTRICT hereby authorizes the CITY to proceed with construction in accordance with **Exhibits A, B and C** for the purpose intended by this Agreement, and as further described in Section 8.

Section 5. Inspection by District: The DISTRICT shall furnish an inspector on the Project. Any costs for such inspection will be borne solely by the DISTRICT. All contact between the DISTRICT's inspector and the CITY's Contractor shall be through the CITY's representatives.

Section 6. Acceptance: The CITY shall conduct a field review of each constructed facility with representatives of the DISTRICT and shall further require all punchlist items to be corrected to the satisfaction of the DISTRICT and the CITY before final acceptance by the CITY. The DISTRICT agrees, upon satisfactory completion of the work involved as determined by the DISTRICT, to deliver a Letter of Acceptance of the DISTRICT WORK to the CITY. The DISTRICT's acceptance of the DISTRICT WORK shall not constitute acceptance of any unauthorized or defective work or materials, nor be a waiver of any manufacturer's, supplier's or contractors' warranties. Final acceptance of the Project shall be by the CITY after inspection by all agencies involved.

Section 7. Payment: The DISTRICT, in consideration of the faithful performance of the work to be done by the CITY, agrees to reimburse the CITY for the actual direct construction cost of all work specified in **Exhibit C** plus an additional ten percent (10%) of the final construction cost to cover Construction Management costs (e.g., project management, construction administration, inspection). Payment shall be made by the DISTRICT to the CITY within sixty (60) calendar days of the DISTRICT's acceptance of the DISTRICT WORK as referenced in Section 6, upon the request of the CITY, to cover actual direct costs incurred by the CITY. Costs shall include the DISTRICT's portion of the Contractor's construction costs, sales tax, and the CITY's Construction Management cost as included in the final construction cost.

Section 8. Extra Work: If unforeseen causes require an increase in the DISTRICT's cost obligation of twenty-five percent (25%) or more from the cost included in **Exhibit C**, this Agreement shall be modified and amended by supplemental agreement covering the increased cost for the DISTRICT WORK. In the event it is determined that any "substantial change" from the description of the work contained in the Agreement is required, the CITY shall obtain written approval from the DISTRICT before undertaking such additional or changed work. "Substantial change" is defined as any changes requiring an increase in the DISTRICT's financial obligation (per **Exhibit C**) greater than twenty-five percent (25%). The CITY shall provide prior written notice to the DISTRICT for all changes to the DISTRICT's portion of the work regardless of the financial obligation.

Section 9. Emergency Repairs: Prior to CITY acceptance of Contractor's work, if there is a need for emergency repair and the CITY's Contractor is unable to perform such repair in a timely manner, the DISTRICT shall have the right to enter upon the CITY's right-of-way and complete said emergency repair. Emergency repairs are defined as work performed by CITY or DISTRICT forces to stabilize, remove immediate hazards or dangers by cutting and capping water mains, and restoring immediate utility services to customers in the area. Upon completion of any emergency repairs by the CITY or the DISTRICT, the CITY and the DISTRICT shall cooperatively determine each Party's financial responsibility.

Section 10. Ownership of Completed Lines: The CITY agrees that the waterline and appurtenances become the property of the DISTRICT on the date the CITY receives full payment for the DISTRICT WORK or the CITY grants final acceptance of the DISTRICT work, whichever is later. The CITY shall forward and assign to the DISTRICT any guarantee or warranty furnished as a normal trade practice in connection with the purchase of any equipment, materials, or items used in the construction of the Project. The CITY shall submit redline drawings to the DISTRICT upon completion of the Project for DISTRICT review and approval. The CITY's Contractor shall warrant the workmanship and materials utilized in the Improvements to be free of defects for a period of one (1) year from the date of transfer; provided the DISTRICT shall retain any rights, claims or demands the DISTRICT may have against the CITY's contractor relating to the DISTRICT's work under applicable statutes of limitation.

Section 11. Legal Relations: The CITY and the DISTRICT agree to defend, save, keep, and hold harmless the other, its officers, agents, employees, and volunteers from and against any and all damages, costs or expenses in law or equity that may any time arise out of or

related to damages to property or personal injury received by reason of, or in the course of, or which may be occasioned by any willful or negligent act or omission of the Either Party arising out of the activities which are the subject of this Agreement.

The CITY shall require the contractor constructing the Project to have the DISTRICT, its elected and appointed officers, agents and employees named as an insured on all policies of insurance to be maintained by Contractor(s) under the terms of any Project contract(s), with the CITY's Contractor building the Project required to maintain Commercial General Liability Insurance, Commercial Automobile Insurance and Workers Compensation. The Contractor shall provide the CITY with either a certified copy of all policies with endorsements attached or a Certificate of Insurance with endorsements attached as are necessary to comply with the contract specifications. The CITY shall provide the DISTRICT with copies of all such policies and documents upon receipt of same by the CITY.

The CITY shall require the contractor building the Project to indemnify, defend, and save harmless the DISTRICT and its elected and appointed officers, agents, or employees from any claim, damage, action, liability of proceeding brought or filed against the DISTRICT or its officers, agents or employees alleging damage or injury arising out of the contractor's participation in the Project. The Contractor shall also be required to waive the Contractor's immunity under Washington's Industrial Insurance Act, RCW Title 51, as to the DISTRICT solely for the purposes of the indemnification.

Section 12. Resolution of Disputes and Governing Law: This Agreement shall be governed and construed in accordance with the laws of the State of Washington. If the Parties are unable to settle any dispute, difference or claim arising from the Parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court located in Kent, King County, Washington, unless the Parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the Parties' performance of this Agreement, each Party shall pay all of its own legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law, provided, however, nothing in this paragraph shall be construed to limit the CITY's or DISTRICT's right to indemnification under Section 11 of this Agreement.

Section 13. Written Notice: Any notice under this Agreement will be in writing and shall be delivered by mail or hand delivery (copies may be emailed) to the parties as specified below:

If to the DISTRICT: Highline Water District
23828 30th Avenue South
P.O. Box 3867
Kent, WA 98032-3867
Attn: Jeremy DelMar
Email: jdelmar@highlinewater.org

If to the CITY: City of SeaTac
4800 South 188th Street
SeaTac, WA 98188
Attn: Toli Khlevnoy, Project Manager
Email: tkhlevnoy@ci.seatac.wa.us

Either party may change the above addresses to which notices are sent by giving notice of such change to the other party in accordance with the provisions of this Section.

Section 14. Assignment: Any assignment of this Agreement by either Party without the prior written consent of the non-assigning Party shall be void.

Section 15. Modification: No waiver, alteration, or modification of any of the provisions for the Agreement shall be binding unless in writing and signed by a duly authorized representative of the CITY and the DISTRICT.

Section 16. Entire Agreement: The written provisions and terms of this Agreement together with any attached Exhibits, shall supersede all prior verbal statements of any officer or other representative of either Party, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. This document, including all Exhibits, is the entire Agreement between the Parties. Should any language in any of the Exhibits to the Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail.

Section 17. Effective Date: This Agreement shall be effective as to all Parties on the last date signed below ("Effective Date").

IN WITNESS WHEREOF, this Agreement is executed by the Parties by their authorized officers indicated below

EXECUTED, this _____ day of _____, 2013.

CITY OF SEATAC

HIGHLINE WATER DISTRICT

Todd Cutts
City Manager

Matt Everett
General Manager

Date Signed _____

Date Signed _____

Approved as to form:

Approved as to form:

Mary E. Mirante-Bartolo
City Attorney

Highline Water District Attorney

EXHIBIT A
SCOPE OF WORK

CITY PROJECT

The scope of work for the City's Project is to construct new sidewalk, curb and gutter, and storm drainage improvements along the north and south side of S 168th St between 34th Ave S and Military Road S. The Project will also include removal and replacement of existing HMA roadway, temporary erosion and sedimentation control, surface restoration, and other work as necessary to build a new and complete roadway.

DISTRICT WORK

The scope of the District Work generally consists the installation of approximately 1,850 LF of linear feet of 6-inch and 8-inch diameter ductile iron water main along S 168th St between 34th Ave S and 40th Ave S, as described in the Plans and Specifications prepared by Roth Hill, LLC, Work shall also include all fittings, valves, hydrants, services and other water system appurtenances necessary for a complete water system. The District will abandon the existing water main in place and the City shall bear all costs associated with abandonment and/or removal of the existing AC water main in locations to accommodate the new storm drainage pipe as necessary.

PAVEMENT RESTORATION

Pavement Restoration work for the project will generally consist of removal and/or pulverizing the existing HMA surface, grading and reshaping the existing road bed, and placing 2-inches of a new HMA road surface. The Pavement Restoration work will be designed, paid for and administered by the City at their direction. The District has agreed to reimburse the City for the Pavement Restoration that is outside the limits of the City work and deemed the responsibility of the District based on the Bid items and quantities found in **Table C-2 – Engineer's Estimate for Highline Water District's Pavement Restoration**. The City and the District agreed to the set quantities established in the City's Bid schedule found in Table C-2 and the District's reimbursement will be based on the actual unit prices of the Contractor's Bid for the noted Bid items. The District would be responsible for actual quantities and actual unit prices of the Contractor's bid for the bid items found in **Table C-1 – Engineer's Estimate for Highline Water District Work**.

CONSTRUCTION WORK SCHEDULE

The estimated start date for construction of the Project, including District Work, and Pavement Restoration, is June 17, 2013. The anticipated duration is 100 working days.

EXHIBIT B

PLANS AND SPECIFICATIONS

Plans and Specifications are available for review at City Hall in the City Clerk's Office.

EXHIBIT C

COST OF WORK

Table C-1: Engineer's Estimate for Highline Water District's Work (Schedule B)

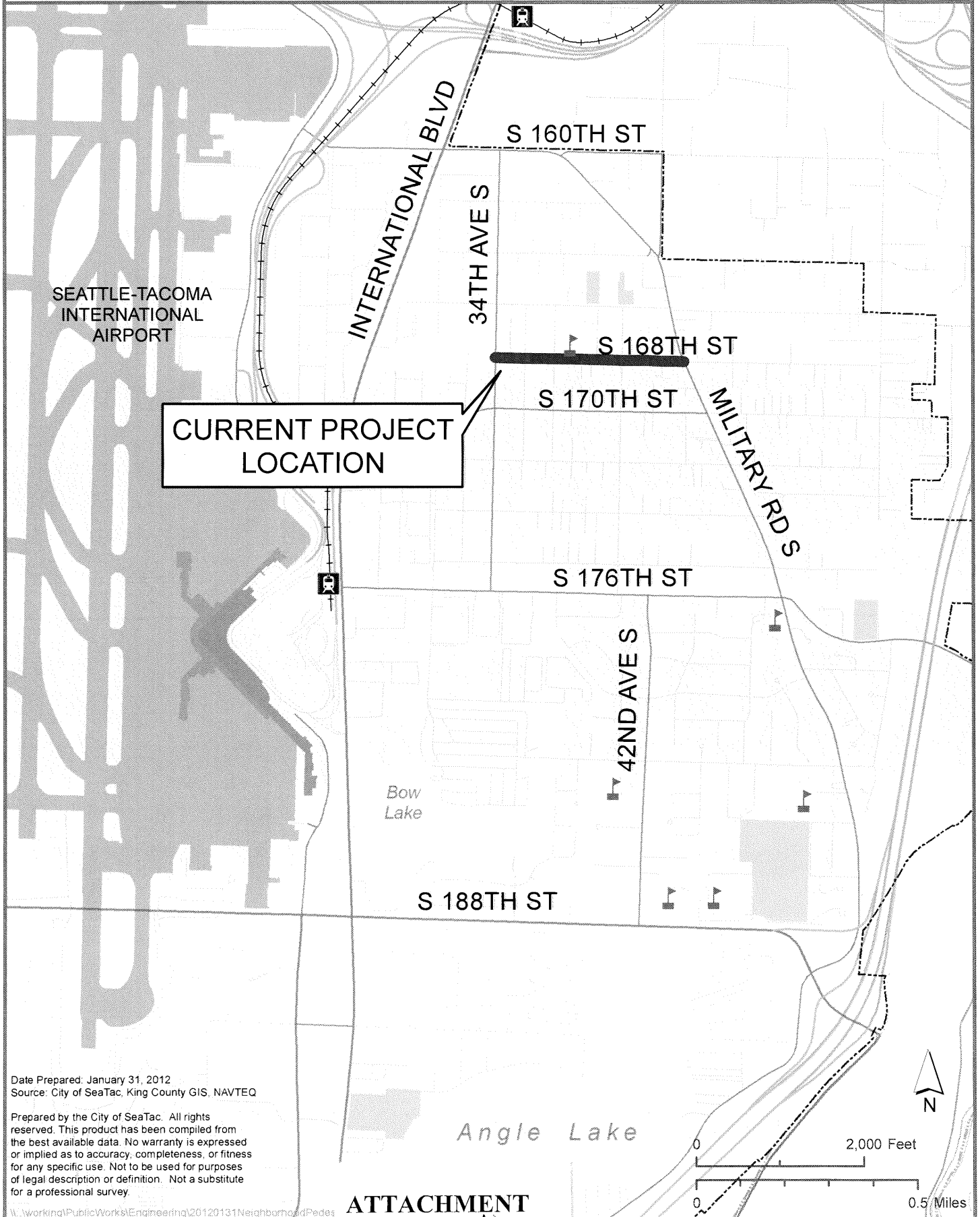
SCHEDULE B Water Improvements					
Bid Item	Description	Approx. Quantity	Unit	Unit Cost	Total Cost
1B	Mobilization	1	LS	\$ 20,800.00	\$ 20,800.00
2B	Trench Safety Systems	1	LS	\$ 2,500.00	\$ 2,500.00
3B	Temporary Traffic Control Devices	1	LS	\$ 3,000.00	\$ 3,000.00
4B	Flaggers and Spotters	320	HR	\$ 45.00	\$ 14,400.00
5B	Cut in and/or Connect to Existing System	9	EA	\$ 2,500.00	\$ 22,500.00
6B	Furnish and Install 6-Inch Class 52 D.I. Pipe	100	LF	\$ 40.00	\$ 4,000.00
7B	Furnish and Install 8-Inch Class 52 D.I. Pipe	1750	LF	\$ 48.00	\$ 84,000.00
8B	6-Inch Gate Valve and Valve Box	2	EA	\$ 950.00	\$ 1,900.00
9B	8-Inch Gate Valve and Valve Box	14	EA	\$ 1,100.00	\$ 15,400.00
10B	12-Inch Gate Valve and Valve Box	2	EA	\$ 1,800.00	\$ 3,600.00
11B	2-Inch Combination Air Valve Assembly	1	EA	\$ 2,500.00	\$ 2,500.00
12B	Fire Hydrant Assembly	5	EA	\$ 3,000.00	\$ 15,000.00
13B	Service Connections, 5/8-Inch to 1-Inch	18	EA	\$ 1,250.00	\$ 22,500.00
14B	Additional Water Main Fittings and Megalug Joints	2500	LB	\$ 3.00	\$ 7,500.00
15B	Select Bank Run Gravel Backfill	850	TON	\$ 20.00	\$ 17,000.00
16B	Crushed Surfacing Base Course	700	TON	\$ 25.00	\$ 17,500.00
17B	Surveying for Water Main	1	LS	\$ 5,000.00	\$ 5,000.00
18B	Surface Restoration	1	LS	\$ 1,200.00	\$ 1,200.00
19B	Resolution of Utility Conflicts	1	FA	\$ 20,000.00	\$ 20,000.00
Subtotal					\$280,300.00
9.5% WSST					\$26,628.50
Total Engineer's Estimate of Probable Construction Cost					\$306,928.50
10% Construction Management Fee (City of SeaTac)					\$30,692.85
ESTIMATE OF CONSTRUCTION COST FOR WATER MAIN REPLACEMENT					\$337,621.35

**Table C-2: Engineer's Estimate for Highline Water District's Pavement Restoration
(Bid Items from Schedule A to be reimbursed to the City for District's portion of the Restoration Cost)**

SCHEDULE A					
Bid Item	Description	Negotiated Quantity	Unit	Unit Cost	Total Cost
21	Removing Asphalt Concrete Pavement	130	SY	\$ 20.00	2,600.00
22	Pulverize Asphalt Concrete Pavement	1440	SY	\$ 5.00	7,200.00
33	HMA CL 1/2" PG 64-22	190	TON	\$ 80.00	15,200.00
Subtotal					25,000.00
10% Construction Management Fee (City of SeaTac)					2,500.00
ESTIMATE OF CONSTRUCTION COST FOR DISTRICT'S PAVEMENT RESTORATION					\$27,500.00

ESTIMATE OF GRAND TOTAL	\$365,121.35
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South 168th Street Sidewalk Project



CURRENT PROJECT LOCATION

Date Prepared: January 31, 2012
Source: City of SeaTac, King County GIS, NAVTEQ

Prepared by the City of SeaTac. All rights reserved. This product has been compiled from the best available data. No warranty is expressed or implied as to accuracy, completeness, or fitness for any specific use. Not to be used for purposes of legal description or definition. Not a substitute for a professional survey.

U:\working\PublicWorks\Engineering\2012\0131\NeighborhoodPedes

ATTACHMENT #2



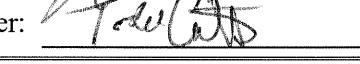
SeaTac City Council

REQUEST FOR COUNCIL ACTION

Department Prepared by: Community & Economic Development

Agenda Bill #: 3510

TITLE: A Motion authorizing the City Manager to execute a Purchase and Sale Agreement for property located at 15201 -15215 Military Road South.

April 3, 2013	
<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Info. Only <input type="checkbox"/> Other	
Date Council Action Requested:	<u>RCM 04-23-13</u>
Ord/Res Exhibits:	_____
Review Dates:	<u>CSS 04-9-13</u>
Prepared By:	<u>Jeff Robinson, Economic Development Manager</u>
Director:	<u></u>
City Attorney:	<u>Mark A. Johnson, Sr. Asst. City Atty.</u>
Finance:	<u></u>
BARS #:	<u>308.000.13.594.58.61.006</u>
City Manager:	<u></u>
Applicable Fund Name:	<u>Light Rail Stations Areas CIP</u>

MK
SA

SUMMARY: This Motion authorizes the City Manager to execute a Purchase and Sale Agreement (PSA) with the Trustees of real estate located at 15201 -15215 Military Road South, which is located in the South 154th Street Station Area and commonly referred to as the “Pancake Chef” property.

DISCUSSION / ANALYSIS / ISSUES: The acquisition of this property adds to the current land assemblage that includes the SeaTac Center, and increases the City’s ability to guide the future transit-oriented redevelopment of this portion of the South 154th Street Station Area. This parcel is one of the key pieces to the overall redevelopment strategy for the area fronting International Boulevard between South 154th and 152nd Streets. This has been confirmed by numerous developers by virtue of its location on the corner of 152nd and Military Road and, according to input from the development sector, will make the City’s current investment in the SeaTac Center more valuable for future redevelopment. The property will potentially provide for the construction of necessary public improvements that may include roadways, pedestrian paths, and open space. Through this assemblage the resulting redevelopment of the two sites will be more fully integrated and complimentary to one another than if accomplished in a piecemeal fashion. To execute this PSA the City will make a \$10,000 refundable earnest money deposit that will be applied to the purchase price if the City exercises the option to complete the transaction. The City has a one-year contingency period to complete all aspects of the required due diligence including environmental assessments, appraisals, surveys and other investigations as deemed warranted. If there are environmental mitigations necessitated that are not covered by the seller’s existing insurance policies the purchase price will be decreased from \$1.5 million to \$1.25 million. Within one-year from the execution of the PSA and upon completion of all due diligence activities the City Council will be briefed and at that time can decide to waive all contingencies and exercise the option to purchase or inform the sellers that the agreement will be terminated.

RECOMMENDATION(S): It is recommended that the Motion be carried.

FISCAL IMPACT: The budget authority for \$1 million of this \$1.5 million acquisition is currently allocated in the biennial “Light Rail Station Areas Capital Improvement Program” budget under the 308 Fund. Additional resources for the acquisition can be generated through the “Community Relief Fund”, 105, or from other sources generated from sale of surplus City-owned property or other revenues.

ALTERNATIVE(S): Do not carry this Motion.

ATTACHMENTS: 1. Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement"), made as of this ___ day of _____, 2013 by and between the City of SeaTac, a Washington Municipal Corporation ("Buyer"), and Imogene Franklin Hubbard, Individually and as Trustee of The Imogene Franklin Hubbard Revocable Trust Dated September 20, 1997, Boyd Franklin Kneeland, individually, and Barbara Smith, Trustee Of The Margaret Franklin Saety Revocable Trust Dated January 5, 1997, as Amended August 26, 2005, (collectively, the "Seller").

For and in consideration of the mutual covenants herein contained, and the sufficiency of which is unconditionally acknowledged by Buyer and Seller, the parties agree as follows:

1. SALE AND PURCHASE

1.1. Property Being Purchased. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the real property and buildings commonly known as 15201 through 15215 Military Road S, SeaTac, Washington 98188, Tax Parcel Number 0043000020, which is legally described in Exhibit A (the "Property"), subject to Buyer's written waiver of the Contingency set forth in Section 3 below.

2. PURCHASE PRICE, EARNEST MONEY, AND SELLER FINANCING**2.1. Purchase Price.**

(a). The purchase price for the Property shall be One Million Five Hundred Thousand and No/100s Dollars (\$1,500,000.00) ("Purchase Price") or as adjusted pursuant to Subsection (b) below.

(b). Seller agrees to reduce Purchase Price by an amount not to exceed \$250,000, to reimburse Buyer, in part or in whole, for the actual costs of investigation or remediation of the Property in the event the Property is found to contain any substance defined or classified as a hazardous substance or hazardous waste by any local, state or federal statute or regulation, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund amendments and Reauthorization Act of 1986 ("CERCLA") and the Washington State Model Toxics Control Act ("MTCA") ("Hazardous Substances"), in excess of limitations imposed by such statute or regulation, but only to the extent these costs are not paid by Seller's Insurers. The specific cost of remediation will be determined in the manner set forth in Section 3.2 below.

(c). The Purchase Price, as determined in accordance with the provisions of Subsections (a) and (b) above, shall be paid in cash at Closing.

2.2. Earnest Money Deposit. Upon acceptance of this Agreement, Buyer shall deposit with Chicago Title Company ("Title Company"), a promissory note in the form and content of Exhibit B attached hereto in the amount of Ten Thousand and No/100 Dollars (\$10,000.00) (the "Earnest Money Note"). Buyer shall, within three (3) business days of Buyer's

waiver of the Contingency under Section 3.1, redeem the Earnest Money Note with cash paid to Title Company which shall release the funds to the Seller. Hereafter, the term "Earnest Money" shall be used to refer, when appropriate, to the Earnest Money Note, and, when presented for payment, to the principal thereof. Upon waiver of the Contingency under Section 3.1 and Buyer converting the Earnest Money Note to cash, the Earnest Money shall become nonrefundable except in the event of Seller's default. The Earnest Money shall be applicable to the Purchase Price.

2.3. Transaction in Lieu of Condemnation. The parties agree that the Buyer's purchase of the Property is in lieu of the Buyer initiating eminent domain proceedings.

3. CONDITIONS PRECEDENT

3.1. Contingency Period. Buyer shall have one year from the date of this Agreement, or longer if this time period is extended by a written agreement of the parties (the "Feasibility Period"), to either terminate this Agreement, at Buyer's own and sole discretion, or waive the Contingency as more specifically described below in Section 3.2. If Buyer chooses to terminate this Agreement within the one year period, this Agreement shall terminate, the Earnest Money Note shall become null and void and the Earnest Money Note shall be returned to Buyer. Further, in the event of termination, Buyer shall have no obligation to pay any money or perform any of the obligations set forth in this Agreement. Buyer shall receive from escrow any funds paid prior to termination pursuant to this Agreement, and neither party shall have any further rights or obligations whatsoever arising out of or in connection with this Agreement.

3.2. Feasibility Contingency. Buyer may complete whatever investigation, studies or analyses it deems appropriate and necessary, including an investigation and environmental analysis to determine the presence and scope of any Hazardous Substances on the Property and/or remediation necessary to remove or mitigate such Hazardous Substances in accordance with applicable local, state, or federal statutes or regulations, including the review of all documents provided by Seller pursuant to Section 7 (Seller's Documents) to determine if in the Buyer's sole discretion it is feasible to own, operate and develop the Property in a manner and upon terms and conditions satisfactory to the Buyer. The cost of remediation shall be determined by bids requested and received by Buyer pursuant to Washington public bid laws. Seller is aware that the documents relating to any study or assessment may be considered a public record subject to a public record request pursuant to chapter 42.56 RCW.

3.3. Contingency Removal: Effect of No Notice. The Feasibility Contingency set forth in Section 3.2 above shall be deemed to be automatically waived unless Buyer delivers written notice to Seller of Buyer's intent to not waive such Contingency and terminate this Agreement prior to the expiration of the one-year time period or longer period of time if extended pursuant to Section 3.1 above.

3.4. Consultant Cost During the Feasibility Period. Buyer shall pay all legal and other consultant costs associated with Buyer's investigation of the Property during the Feasibility Period. Buyer shall restore the Property to the extent any damage to the Property is incurred during Buyer's investigation of the Property.

3.5. Closing Contingent on Buyer's Acquisition of Neighboring Property. Notwithstanding the waiver of the Contingency in Section 3.1 above, Buyer's obligation to buy, and Seller's obligation to sell, under this Agreement is contingent on Buyer's acquisition of the property located to the east of the Property owned by MP Triangle, LLC, King County Parcel Numbers 004300-0100 and 004300-0093.

4. REPRESENTATIONS AND WARRANTIES

4.1. Seller's Warranties. Seller represents and warrants to Buyer that the following facts are true as of the date of Seller's execution hereof and as of Closing:

(a). Ownership. Seller, or a limited liability company controlled by Seller, is the owner of the Property and has the full right, power, and authority to sell, convey and transfer the Property to Buyer as provided herein, and to perform Seller's obligations hereunder.

(b). Encumbrances. Seller's execution, delivery and consummation of this Agreement shall not result in any default or violation of any agreement or law by which Seller is bound or which will result in any lien, charge or encumbrance on the Property.

(c). There is no pending or, to Seller's best knowledge, threatened judicial, municipal or administrative proceedings with respect to Seller, the Property, the transaction contemplated by this Agreement or in any manner affecting the Property or any portion thereof or in which Seller is or will be a party by reason of Seller's ownership of the Property or any portion thereof.

(d). Continuation of Warranties. The Seller's warranties as set forth in this Section 4.1 shall survive Closing and for one year thereafter and are in addition to the warranties contained within the Statutory Warranty Deed contemplated by this Agreement. Except for the warranties set forth in Section 4 and/or contained within the documentation provided pursuant to Section 7 below, Seller makes no representations or warranties whatsoever about the Property.

4.2. Seller's Obligation. Seller further, after execution of this Agreement and prior to Closing, shall at its own expense:

(a). Promptly notify Buyer upon learning of any fact or event that would make any of the representations or warranties of Seller contained in this Agreement untrue or misleading in any material respect or that would cause Seller to be in violation of any of its covenants or other obligations hereunder.

(b). Promptly notify Buyer upon receiving notice of any claim or pending litigation affecting the Property, or notice of any event, transaction, or occurrence before Closing that would materially adversely affect the Property or any part thereof.

(c). Not convey, mortgage, grant a deed of trust, or contract to do the foregoing or otherwise allow or consent to convey, abandon, relinquish, cloud or encumber title to the Property or any interest therein or part thereof without Buyer's consent.

(d). Maintain the Property in its current condition and repair and make all repairs, maintenance and replacements of the improvements and any personal property and otherwise operating the Property and maintain its business records in the same manner as before the making of this Agreement, the same as though Seller were retaining the Property.

(e). Maintain all casualty, liability and hazard insurance currently in force with respect to the Property through the Closing without diminution in coverage.

4.3. PROPERTY CONDITION; AS IS, WHERE IS. BUYER ACKNOWLEDGES AND AGREES THAT BUYER IS EXPERIENCED IN THE ACQUISITION, DEVELOPMENT, OWNERSHIP AND OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT, IF AND AT SUCH TIME BUYER CHOOSES TO WAIVE THE ABOVE DESCRIBED CONTINGENCY, BUYER WILL HAVE SATISFIED BUYER'S CONTINGENCIES AND PERFORMED ALL DUE DILIGENCE IN THE EXAMINATION OF THE PROPERTY TO BUYER'S SATISFACTION. BUYER ACKNOWLEDGES AND AGREES THAT BUYER IS RELYING ON BUYER'S (OR BUYER'S REPRESENTATIVES') DUE DILIGENCE OF THE PROPERTY AND NOT UPON ANY STATEMENTS (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE BY SELLER OR ANY OF SELLER'S REPRESENTATIVES OTHER THAN THOSE SET FORTH IN SECTION 4 ABOVE OR CONTAINED WITHIN THE DOCUMENTATION PROVIDED PURSUANT TO SECTION 7 BELOW. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, IF BUYER WAIVES THE CONTINGENCY SET FORTH IN SECTION 3 AND PROCEEDS TO CLOSING, BUYER HEREBY AGREES TO ACCEPT THE PROPERTY ON THE CLOSING DATE IN ITS "AS IS, WHERE IS" CONDITION, WITH ALL FAULTS, AND WITHOUT REPRESENTATION(S) AND/OR WARRANTY(IES) BY SELLER OF ANY KIND, EXPRESS OR IMPLIED, OR ANY ARISING BY OPERATION OF LAW, EXCEPT ONLY THE WARRANTIES SET FORTH IN SECTION 4 OR CONTAINED WITHIN THE DOCUMENTATION PROVIDED PURSUANT TO SECTION 7 BELOW.

4.4. NO WARRANTY FOR HAZARDOUS SUBSTANCES. SELLER IS AWARE THAT THERE MAY BE CONTAMINATION PRESENT ON THE PROPERTY, ALTHOUGH NO FINAL REPORTS HAVE BEEN PROVIDED TO SELLER AND SELLER HAS NOT YET CONDUCTED ITS OWN INVESTIGATION OF THE PROPERTY. AT THE TIME OF CLOSING, BUYER WILL HAVE CONDUCTED, OR HAD THE OPPORTUNITY TO CONDUCT BUYER'S OWN ENVIRONMENTAL ASSESSMENT OF THE PROPERTY AND UPON WAIVER OF FEASIBILITY CONTINGENCY PURSUANT TO SECTION 3 ABOVE, BUYER SHALL BE DEEMED TO HAVE DETERMINED THAT THE PROPERTY IS ACCEPTABLE TO BUYER. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, SELLER MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE PROPERTY OR THE CONDITION OF THE PROPERTY AND BUYER IS TO RELY SOLELY ON THE INFORMATION OBTAINED BY BUYER PURSUANT TO ITS INVESTIGATION PURSUANT TO SECTION 3 ABOVE.

4.5. **ADDITIONAL TERMS – HAZARDOUS SUBSTANCES.** UNLESS THIS AGREEMENT IS TERMINATED AT BUYERS OWN AND SOLE DISCRETION AS PROVIDED IN SECTION 3 ABOVE, BASED UPON THE INFORMATION OBTAINED PURSUANT TO BUYER'S INVESTIGATION UNDER SECTION 3, BUYER SHALL AGREE, PRIOR TO CLOSING, TO TERMS PERTAINING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY INCLUDING, BUT NOT LIMITED TO, AN AGREEMENT TO, RELEASE AND DISCHARGE SELLER BASED UPON THE PRESENCE OR ALLEGED PRESENCE OF HAZARDOUS SUBSTANCES OR CONTAMINATION AT, BELOW, OR EMANATING FROM THE PROPERTY, AND AN AGREEMENT TO INDEMNIFY, DEFEND, AND HOLD HARMLESS SELLER AND SELLER'S UNDERLYING MEMBERS AND PREDECESSOR'S IN INTEREST FROM AND AGAINST ALL CLAIMS OR COSTS RESULTING FROM THE PRESENCE OF HAZARDOUS SUBSTANCES ON THE PROPERTY. Assignment of Insurance Proceeds. At Closing, Seller will assign to Buyer any rights Seller may have under any applicable insurance policy(ies) including the rights to the proceeds to the extent that such policy(ies) and proceeds are assignable by Seller at no cost or expense to Seller.

4.6. Assignment and Buyer's Release, and Waiver of Claims. Seller hereby irrevocably assigns to Buyer, effective as of Closing, any and all claims Seller may have against any third party or other party with respect to any Hazardous Substances located within or originating from the Property. The claims assigned hereunder include all claims arising under state or federal statutes or under common law. Seller agrees to cooperate with Buyer in good faith regarding such claims by providing Buyer with relevant documents and fact witnesses within Seller's control, if any, and Buyer agrees to reimburse Seller for reasonable out-of-pocket costs Seller incurs in providing documents and fact witnesses requested by Buyer.

5. POSSESSION AND INTERIM ACTIONS

5.1. Possession and Prior Entry. Possession of the Property shall be delivered at Closing. Subject to the rights of the tenants on the Property, Buyer shall have the right during the Feasibility Period to go upon the Property for the purpose of inspecting and making any tests or studies Buyer deems appropriate, all at Buyer's expense. Buyer agrees to do so in a commercially reasonable and workmanlike manner and shall restore the Property to substantially the same condition as it was on the date of this Agreement. Buyer shall hold Seller harmless from any damages to Property or any liability caused by such activities of Buyer (including attorney's fees and costs). Further, if Buyer causes any damage or change to the Property, which does not leave it substantially in its pre-existing condition, and this sale fails to close, Buyer will reimburse Seller upon demand for any such damage or any cost to Seller related thereto. Buyer shall not permit any liens to be filed against the Property or improvements thereon by any person or entity performing such services. If any such liens are filed, Buyer shall have ten (10) days from the date notice is received of such filing in which to either remove such liens or to provide a bond indemnifying Seller from and removing said lien as allowed in RCW 60.04.161.

6. TITLE

6.1. Policies and Condition of Title. Seller will deliver to Buyer a standard coverage preliminary commitment for title insurance, including all legible supporting documents ("Title

Report") from Chicago Title Insurance Company of Bellevue, Washington within ten (10) days of execution of this Agreement.

6.2. Buyer's Review. Buyer shall have thirty (30) days after receipt of the Title Report to give notice to Seller specifying those exceptions listed on the Title Report which are unacceptable to Buyer. All exceptions to which Buyer does not so object by such date shall conclusively be deemed to have been accepted by Buyer and to constitute "Permitted Exceptions."

6.3. Seller's Response. Seller shall have ten (10) days after receipt of Buyer's notice specifying objectionable exceptions, to give notice to Buyer that Seller shall remove the exceptions to which Buyer objects. If Seller does not agree to remove all of the objectionable exceptions, and the Buyer fails to waive its objection to such exception by giving written notice to Seller within ten (10) days after the expiration of such ten (10) day period (in which case such exception shall be deemed to constitute a "Permitted Exception"), this Agreement shall automatically be terminated.

6.4. Supplemental Reports. In the event the Title Report is supplemented to add new exceptions affecting the title to the Property not previously listed as exceptions in the Title Report, as theretofore amended, Seller shall deliver to Buyer a copy of such supplemental report and a copy of all instruments relating to the additional exceptions. Buyer shall give notice of Buyer's objection to any such additional exception within twenty (20) days from its receipt of such amendment or such additional exception shall conclusively be deemed to have been accepted by Buyer to constitute a "Permitted Exception." If Buyer objects to any such additional exception within such twenty (20) day period and Seller does not, within ten (10) days of receipt of Buyer's notice, agree to remove such exception, then, unless Buyer waives its objection to such exception by giving written notice to Seller within ten (10) days after the expiration of the 10-day period (in which case such exception shall be deemed to constitute a "Permitted Exception"), this Agreement shall automatically be terminated.

6.5. Statutory Warranty Deed. Seller shall convey title by Statutory Warranty Deed, subject only to the Permitted Exceptions.

6.6. Insurable Title. If title cannot be made insurable, subject only to the Permitted Exceptions, for reasons other than Seller's removal of monetary encumbrances voluntarily or involuntarily placed on the Property by or through Seller, Buyer shall have the option to accept the title and title insurance subject to the additional items or, at Buyer's election, terminate this Agreement. If Buyer elects to terminate the Agreement, the Closing Agent shall promptly refund the Earnest Money or Earnest Money Note, whether or not such Earnest Money is deemed "refundable" or "non-refundable" to Buyer as Buyer's sole remedy. Seller shall be responsible for any title insurance cancellation fee.

7. SELLER'S DOCUMENTS

7.1. Seller's Documents. Seller has delivered, or will deliver to Buyer within ten (10) days of execution of this Agreement, full and complete copies of any of the following documents that are in actual possession of the Seller: (a) all documents and correspondence (except to the

extent such correspondence is deemed to be privileged) relating to any insurance policies associated with the Property; (b) a current rent roll, all current leases, occupancy agreements, Property management agreements or other contracts affecting the Property; (c) the most current survey of the Property; (d) plans, studies, specifications, records, and documents pertaining to current or proposed development, occupancy and use of the Property, including any materials relating to applications or submittals for the Property made by Seller to any governmental agency within the last ten (10) years; (e) copies of any material correspondence or demands and a written description of any oral demands from any third party or governmental entity which might reasonably be deemed to affect Buyer's potential lease or redevelopment of the Property; and (f) all documents and information related to the environmental condition of the Property and related to the permits and approvals for the Property and its use, including zoning and land use matters (all of which items referred to in this clause, together with subsequent additions to or revisions of such documents being collectively referred to as the "Seller's Documents"). At Closing, Seller shall assign all the Seller's Documents to Buyer to the extent such Seller's Documents can be assigned by Seller without cost or expense to Seller. For the purposes of this Section 7.1, "actual possession of Seller" shall mean the documents and information in the possession of John F. Sherwood, Sr.

8. CLOSING

8.1. Closing Date/Escrow. Closing of the purchase and sale of the Property subject of this Agreement shall occur through an escrow (the "Escrow") with Chicago Title Insurance Company of Bellevue, Washington within thirty (30) days of the waiver or satisfaction of the Feasibility Contingency ("Closing Date"). Buyer and Seller shall deposit with Title Company all funds, documents and instruments required hereby for delivery to the other. The deed shall be in the form of a statutory warranty deed referred to in Section 6.5 ("Deed"). When used herein, "Closing" shall mean the date the Deed from Seller to Buyer is recorded and Seller is entitled to the use of Buyer's funds outlined in Section 2.

8.2. Costs and Prorations. Seller shall pay the cost of standard coverage on the policy of title insurance required hereby, all real property excise taxes due and one-half of the other Closing expenses, including Escrow fees and any recording fees (except the cost of recording the Deed). Buyer shall pay the additional premium for extended coverage, if requested, any endorsements requested by Buyer, the remaining one-half of Closing expenses and the cost of recording the Deed. All real and personal property taxes shall be prorated between Seller and Buyer as of Closing. The real property taxes shall be prorated using the most recent tax information available. Title Company shall be responsible for reporting the Closing to the Internal Revenue Service pursuant to Section 6045 of the Internal Revenue Code.

8.3. Escrow Instructions. This Agreement is intended by the parties to set forth the Escrow instructions to Title Company. Nonetheless, Seller and Buyer agree to execute and deliver to Title Company any additional instructions requested by Title Company for the purpose of consummating this transaction provided that any such additional instructions are not inconsistent herewith.

8.4. F.I.R.P.T.A. The parties agree to comply in all respects with Internal Revenue Code Section 1445 and the regulations issued thereunder.

9. REMEDIES

9.1. Seller's Remedies. If the transaction fails to close due to default by Buyer, Seller's sole and exclusive remedy shall be to terminate this Agreement and retain the Earnest Money. The amount of the Earnest Money has been agreed upon by the parties to be reasonable compensation and the exclusive remedy for Buyer's default, since the precise amount of such compensation would be difficult to determine. The parties acknowledge and agree that this provision has been specifically negotiated.

9.2. Buyer's Remedies. If the transaction fails to close due to default by Seller, Buyer's sole remedy under this Agreement shall be to either: (a) specifically enforce this Agreement or (b) terminate this Agreement and receive a refund of the Earnest Money.

10. TAX EFFECT

No party has made or is making any representations to the other concerning any of the tax effects of the transactions provided for in this Agreement. No party shall be liable for or in any way responsible to any other party because of any tax effect resulting from the transactions provided for in this Agreement.

11. MISCELLANEOUS

11.1. Notices. Any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when delivered by facsimile, personally delivered, delivered by private courier service (such as Federal Express), or three days after being deposited in the United States Mail in registered or certified form, return receipt requested, addressed as follows:

To Buyer: City of SeaTac

Attention: _____
Phone: _____
Facsimile: _____
e-mail: _____

With a copy to: _____

Attention: _____
Phone: _____
Facsimile: _____
e-mail: _____

To Seller: Imogene Franklin Hubbard, Boyd Franklin Kneeland and
Barbara Smith
c/o John F. Sherwood, Sr.
Peterson Russell Kelly PLLC
1850 Skyline Tower
10900 NE 4th Street
Bellevue, Washington 98004
Phone: (425) 990-4035
Facsimile: (425) 451-0714
jsherwood@prklaw.com

With a copy to: John Sherwood Jr
Peterson Russell Kelly PLLC
1850 Skyline Tower
10900 NE 4th Street
Bellevue, Washington 98004
Phone: (425) 990-4029
Facsimile: (425) 451-0714
jsherwoodjr@prklaw.com

or to such other single address and person as either party may communicate to the other by like written notice.

11.2. Entire Agreement. This Agreement, and the corresponding exhibits, contain the entire understanding between the parties and supersede any prior understandings and agreements between them respecting the subject matter hereof. There are no other representations, agreements, arrangements or understandings, oral or written, between and among the parties hereto or any of them, relating to the subject matter of this Agreement. No amendment of or supplement to this Agreement shall be valid or effective unless made in writing and executed by the parties hereto.

11.3. Construction. The section headings throughout this Agreement are for convenience and reference only and the words contained in them shall not be held to expand, modify, amplify or aid in the interpretation, construction or meaning of this Agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identification of the person or persons, firm or firms, corporation or corporations may require. Any reference herein to "days" means consecutive calendar days. If the last day of any time period or any other specified date occurs on a day when the recording office of the county in which the Property is located is closed, such time period or date shall be extended to the next day such recording office is open. All parties hereto have been represented by legal counsel in this transaction and accordingly hereby waive the general rule of construction that an agreement shall be construed against its drafter.

11.4. Attorneys' Fees. In the event that any suit or other proceeding is instituted by either party to this Agreement arising out of or pertaining to this Agreement, including but not limited to filing suit or requesting an arbitration, mediation, or other alternative dispute

resolution process (collectively, "Proceedings"), and appeals and collateral actions relative to such a suit or Proceeding, the substantially prevailing party as determined by the court in the Proceeding shall be entitled to recover its reasonable attorneys' fees and all costs and expenses incurred relative to such suit or Proceeding from the substantially non-prevailing party, in addition to such other relief as may be awarded.

11.5. Binding. This Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

11.6. Agency Disclosure. Matt Anderson and Heartland, LLC represents the Buyer in this transaction and will be compensated by Buyer pursuant to a separate agreement. Seller is not represented by a broker in this matter. Except as disclosed above, each of the parties to this Agreement represents to the others that it has not employed any broker in connection with this matter, and that no parties hereto shall be liable for any brokerage fees or similar commissions as may be claimed or incurred by the other, and each party hereto shall hold the other party harmless from any such claims, including costs and attorneys' fees, should it become necessary for such party to defend an action for commissions based upon representations of the other party.

11.7. 1031 Exchanges. Seller reserves the right to convert this transaction to a tax deferred exchange fulfilling the requirements of Section 1031 of the Internal Revenue Code, including assignment of this Agreement to a facilitator. Buyer agrees to cooperate and to sign any necessary documents in order for Seller to accomplish an exchange to the extent Buyer can lawfully so act and provided that Buyer shall not be obligated to incur any additional costs or obligations by doing so.

11.8. Survival. All warranties, representations, covenants, obligations and agreements contained in or arising out of this Agreement shall survive the Closing and the transfer and conveyance of the Property hereunder and any and all performance hereunder. All warranties and representations shall be effective regardless of any investigation made or which could have been made.

11.9. Business Day. Should the Feasibility Period, Closing Date, or any other deadline lapse on a weekend or holiday, then such period or other deadline shall automatically extend to the next business day.

11.10. Counterparts. This Agreement may be executed in any number of counterparts and all counterparts shall be deemed to constitute a single agreement. The execution and delivery of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts. The signature to this Agreement may be executed on separate pages and when attached to this Agreement shall constitute one complete document.

11.11. Condemnation. If prior to Closing any portion of the Property is the subject of a condemnation or an eminent domain action or threatened therewith (other than by the Buyer), Buyer may elect to either (a) terminate this Agreement and recover the Earnest Money paid as of the date of such termination by delivering written notice to Seller within the sooner of fifteen (15) days of Buyer's receipt of notice of title to the part so condemned vests in the condemner or the Closing Date or (b) consummate Closing and receive an assignment of all condemnation

proceeds related to Seller's interest in the Property. If Buyer fails to provide any notice hereunder, Buyer shall automatically be deemed to have elected to complete the purchase of the Property subject to (b) contained herein.

11.12. Acceptance of Agreement. This Agreement, or any counteroffer to this Agreement may be revoked by the party making the offer or counter-offer in writing at any time prior to delivery of a fully executed Agreement (including any counter-offer).

11.13. Invalidity of Provisions. In the event any provision of this Agreement is deemed invalid it shall not limit the party's right to enforce the remaining provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

11.14. Assignment. Except as permitted elsewhere under this Agreement, Buyer may not assign this Agreement or Buyer's rights hereunder, without Seller's prior written consent, which shall not be unreasonably withheld.

11.15. Exhibits. The following exhibits are made a part of this Agreement and are incorporated herein by this reference:

- Exhibit A-Property Legal Description
- Exhibit B-Earnest Money Note


BUYER:

City of SeaTac, a Washington Municipal Corporation

By: _____
Printed Name: _____
Its: _____
Date: _____

SELLER:

By: _____
Printed Name: Imogene Franklin Hubbard,
Individually and as Trustee of The Imogene
Franklin Hubbard Revocable Trust Dated
September 20, 1997
Date: _____

By: 
Printed Name: Boyd Franklin Kneeland
Date: _____

By: _____
Printed Name: Barbara Smith, Trustee Of The
Margaret Franklin Saety Revocable Trust
Dated January 5, 1997, as Amended August
26, 2005
Date: _____

proceeds related to Seller's interest in the Property. If Buyer fails to provide any notice hereunder, Buyer shall automatically be deemed to have elected to complete the purchase of the Property subject to (b) contained herein.

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 Date: _____

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By: _____
 Printed Name: Imogene Franklin Hubbard,
 Individually and as Trustee of The Imogene
 Franklin Hubbard Revocable Trust Dated
 September 20, 1997
 Date: _____

By: _____
 Printed Name: Boyd Franklin Kneeland
 Date: _____

By: 
 Printed Name: Barbara Smith, Trustee Of The
 Margaret Franklin Saety Revocable Trust
 Dated January 5, 1997, as Amended August
 26, 2005
 Date: 3-7-13

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11.13. Invalidity of Provisions. In the event any provision of this Agreement is deemed invalid it shall not limit the party's right to enforce the remaining provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

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BUYER:

City of SeaTac, a Washington Municipal Corporation

By: _____
 Printed Name: _____
 Its: _____
 Date: _____

SELLER:

By: Imogene Franklin Hubbard
 Printed Name: Imogene Franklin Hubbard,
 Individually and as Trustee of The Imogene
 Franklin Hubbard Revocable Trust Dated
 September 20, 1997
 Date: 3/19/13

By: _____
 Printed Name: Boyd Franklin Kneeland
 Date: _____

By: _____
 Printed Name: Barbara Smith, Trustee Of The
 Margaret Franklin Saety Revocable Trust
 Dated January 5, 1997, as Amended August
 26, 2005
 Date: _____

EXHIBIT A

Property Legal Description

The real property located at 15201 through 15215 Military Road South, SeaTac, located in King County, State of Washington and legally described as follows:

The south 50 feet of Lot 5; EXCEPT the west 90 feet thereof; and the North 2 feet of the east 175.8 feet of Lot 6; and Lot(s) 5; EXCEPT the west 144 feet thereof; AND EXCEPT the south 50 feet thereof;

TOGETHER WITH a permanent and perpetual easement for ingress and egress over non-exclusive parking on the North 52 feet of Lot 6, all in Block 1, THIRD ADDITION TO ADAMS' HOME TRACTS, according to the plat thereof recorded in Volume 15 of Plats, page(s) 17 records of King County, Washington.

Situate in the County of King, State of Washington.

EXHIBIT B

Earnest Money Note

EARNEST MONEY NOTE

\$10,000.00

_____, 2013
Seattle, Washington

FOR VALUE RECEIVED, the City of SeaTac, a municipal corporation ("Maker"), hereby promises to pay _____ c/o Chicago Title Insurance Company, Bellevue, Washington (collectively "Holder") the sum of -TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00) which shall become payable in accordance with Section ~~2.22.2~~ of that Purchase and Sale Agreement executed by Maker and Holder on _____, 2013.

Maker promises to pay promptly to the Holder on demand all costs and other expenses (including, without limitation, reasonable attorneys' fees) paid or incurred by the Holder in collecting or compromising this Note or enforcing or in exercising any of its rights, remedies, powers, or privileges created by, connected with, or provided for in this Note, regardless of whether or not a lawsuit is filed, and regardless of whether in connection with a lawsuit of original jurisdiction or any appeal, including without limitation, any costs and expenses incurred by the Holder in connection with any bankruptcy or insolvency proceedings in respect to the Maker.

This Note shall be governed by and construed in accordance with the laws of the State of Washington.

MAKER ACKNOWLEDGES THAT ORAL AGREEMENTS TO LOAN MONEY, EXTEND CREDIT, OR FORBEAR FROM COLLECTION OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

DATED this ____ day of _____ 2013.

MAKER:

City of SeaTac

By: _____

Printed Name: _____


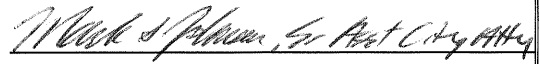


Its: _____

SeaTac City Council REQUEST FOR COUNCIL ACTION

Department Prepared by: Community & Economic Development

Agenda Bill #: 3511

TITLE: A Resolution to execute a Second Amended and Restated Development Agreement with Gateway Investment LLC.

April 4, 2013	
__ Ordinance <input checked="" type="checkbox"/> Resolution __ Motion __ Info. Only __ Other	
Date Council Action Requested:	<u>RCM 04-23-13</u>
Ord/Res Exhibits:	<u>Exhibit A: Proposed Second Amended and Restated Development Agreement</u>
Review Dates:	<u>CSS 04-09-13</u>
Prepared By:	<u>Jeff Robinson, Economic Development Manager</u>
Director:	<u></u>
City Attorney:	<u></u>
Finance:	<u></u>
BARS #:	<u>Revenue to Fund #308</u>
City Manager:	<u></u>
Applicable Fund Name:	<u>Light Rail Stations Areas CIP</u>

MRC
[Handwritten initials]

SUMMARY: This Resolution authorizes the City Manager to execute a Second Amended and Restated Development Agreement with Gateway Investment LLC.

DISCUSSION / ANALYSIS / ISSUES: Gateway LLC originally entered into a Development Agreement (DA) in 1998 that allowed for the continuation and expansion of a legal non-conforming land use. The DA included a requirement to develop either a 140-room hotel or another commercial structure with a minimum of 100,000 sq ft. Subsequently, the DA was amended in 2007 to extend the deadline for the construction of the required improvements. Under the 2007 DA, such development was required to be completed no later than June 1, 2011 or a "Delay Fee" of \$500K was due to the City and payable no later than June 1, 2016, at which time the legal non-conforming use would be discontinued. The public benefits accruing to the City as part of the original and amended DA included the granting of easements and land dedications to facilitate certain road improvements. These public benefits continue as a component of the new proposed amendment.

The City's priorities have changed since the adoption of the current agreement. The City's goals now indicate that development in the South 154th and South 200th Street Station areas are higher priorities than the development of the Airport Station Area. Gateway has agreed to arrange for its affiliate to either: transfer to the City certain real property it owns in the South 154th Street Station area of the City; and/or transfer funds to the City to assist in accomplishing its objectives in the South 154th Street Station Area.

The City would agree to amend the Restated Development Agreement to remove the requirements for the construction of commercial property and allow the legal non-conforming use to continue as-is for one of the following considerations, at the City's option:

1. The receipt of \$800,000 and the real property located within the South 154th Street Station Area; or,
2. A total of \$1.1 million cash transfer to the City.

RECOMMENDATION(S): It is recommended that the Resolution be passed.

FISCAL IMPACT: The City would receive either: an \$800,000 cash payment and real property assessed at or above \$300,000; or, a cash payment of \$1.1 million.

ALTERNATIVE(S): Do not pass this Resolution.

ATTACHMENTS: 1. Restated Development Agreement Dated November 30, 2007

RESOLUTION NO. _____

A RESOLUTION of the City Council of the City of SeaTac, Washington approving and authorizing entry into a Second Amended and Restated Development Agreement with Gateway Investment, LLC.

WHEREAS, RCW 36.70B.170 through .200 and SMC 15.05.057 authorize the City to enter into Development Agreements with persons or entities having ownership or control of real property within the City; and

WHEREAS, Gateway Investment, LLC currently has a Development Agreement with the City; and

WHEREAS, Gateway Investment, LLC has requested an Amendment to the aforesaid Development Agreement and representatives of Gateway Investment and the City have conducted negotiations toward such an Amendment; and

WHEREAS, notice was published and mailed to surrounding owners pursuant to SMC 16.07.030, and the Council having held a public hearing; and

WHEREAS, the Council finds that the proposed Amended and Restated Development Agreement satisfies the criteria of SMC 15.22.055 and remains generally consistent with current City development regulations and that the departures therefrom are offset by benefits to be received by the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON HEREBY RESOLVES as follows:

Section 1. The City Manager is authorized to execute, on behalf of the City, a Second Amended and Restated Development Agreement, generally in the form attached to this Resolution, as Exhibit "A".

Section 2. The City Clerk shall cause the fully executed Second Amended and Restated Development Agreement to be filed with the King County Recorder.

PASSED this _____ day of _____ 2013 and signed in authentication thereof on this _____ day of _____, 2013.

CITY OF SEATAC

Tony Anderson, Mayor

ATTEST:

Kristina Gregg, City Clerk

Approved as to Form:



Mary Mirante Bartolo, City Attorney

**SECOND AMENDED AND RESTATED
DEVELOPMENT AGREEMENT**

THIS SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT (hereinafter referred to as the "Restatement") is entered into effective the ____ day of April, 2013 by and between the CITY OF SEATAC, a Washington municipal corporation (hereinafter referred to as the "City"), and GATEWAY INVESTMENT LLC, a Washington limited liability company (hereinafter referred to as "Gateway") to clarify the remaining obligations of the City and Gateway under certain agreements between them. The term "Parties" refers to the City and Gateway.

WHEREAS Gateway owns certain real property located in the City, which is legally described on Attachment A (the "Real Property"); and

WHEREAS the City and Gateway entered into a certain Development Agreement relating to the portions of the Real Property on May 26, 1998 (the "Original Agreement"); and

WHEREAS Gateway subsequently acquired the other portions of the Real Property, and the City and Gateway entered into a certain Amendment to Gateway Development Agreement effective June 1, 2001 (the "Amendment");

WHEREAS the City and Gateway subsequently amended and restated the Development Agreement by entering into a restated Development Agreement dated November 30, 2007 (the "Restated Development Agreement");

WHEREAS the City's priorities have changed since the adoption of the Original Agreement and the City wishes to encourage development in the South 154th Street Station area as a higher priority than development of the Gateway property;

WHEREAS Gateway has agreed to arrange for its affiliate to transfer to the City certain real property it owns in the South 154th Street Station area of the City, as well as cash assist the City to accomplish its objectives in that area, in consideration for which the City has agreed to amend the Restated Development Agreement to remove certain requirements from the Restated Development Agreement; and

WHEREAS Gateway and the City have agreed to enter into the Restatement to entirely replace and supersede the Restated Development Agreement.

NOW, THEREFORE, for good and sufficient consideration, the mutual promises and covenants contained in this Agreement, the City and Gateway agree as follows:

1. Transfers to the City. Gateway shall cause its affiliate to deliver to the City:

A. Within three (3) business days of the date of this Agreement, Eight Hundred Thousand Dollars (\$800,000) in immediately available US funds; and

EXHIBIT A

B. On or before May 1, 2014 (the “Transfer Date”) a deed in substantially similar form as attached as Attachment C, transferring title to that certain real property commonly known as 15211 International Boulevard, SeaTac, Washington (the “Transferred Property”) to the City; provided, however, that if the City notifies Gateway in writing, prior to April 1, 2014 of the City’s election to forego receipt of the Transferred Property, then in lieu of the Transferred Property, Gateway shall cause its affiliate to deliver to the City on or before the Transfer Date Three Hundred Thousand Dollars (\$300,000) in immediately available US funds within 60 days of such notification.

2. Commercial Parking. The City agrees that: Gateway has the right to operate a commercial parking business on the Real Property as it is presently conducted as a legal, nonconforming use, and will have the right to continue to do so, regardless of the zoning that is presently or may in the future be applicable to the Real Property. The parking operations may involve: surface parking only; a combination of some parking on grade and some on one upper level of structured parking; or a combination of surface parking and multi-level structured parking, including underground parking, anywhere on the property, provided that: (a) the structured parking does not exceed one hundred seventy thousand (170,000) square feet, or the number of square feet allowed by City codes at the time the structure is constructed; (b) its location does not impair development of a new street on the Real Property at a location selected by Gateway between 171st Street (Point A on the map attached as Attachment B) and the current intersection of 170th Street and 31st Avenue South (Point B on Attachment B); and (c) the structured parking shall not be located closer than one hundred feet (100’) to International Boulevard or such lesser distance as may be allowed by City codes at the time the structure is constructed, without prior City approval regarding design and use of the structure; provided, however, that this limitation shall not apply to underground parking.

3. Consent Decree. Gateway is currently conducting a remediation of certain environmental conditions on a portion of the Real Property, and shall continue to diligently comply with the terms of the Consent Decree entered in King County Superior Court (No. 00-2-02909-8KNT) on February 4, 2000 (the “Consent Decree”).

4. Development Standards. The City agrees that Gateway’s current improvements and landscaping have been approved by the City.

5. 30th Street Easement. If requested by the City at such time as the City constructs a public right-of-way across the southerly terminus of 29th Avenue South and the easterly terminus of South 171st Street, as indicated on Attachment B, Gateway shall grant a similar and connecting forty-eight (48)-foot wide easement over, across and under Lot 8 of Bowmont Terrace Addition and a twenty-four (24)-foot easement over, across and under the westerly portions of lots 8, 9 and 10 of Bowmont Terrace Block 1, as indicated on Attachment B. If the City requests the easement, it shall pay to Gateway one-half (½) of the value of the vacated right-of-way as determined by appraisal, during the right-of-way vacation process, to be the value of the easements.

6. Left Turns. As part of its improvements to South 170th Street, the City shall provide channelization or similar improvements as needed to facilitate vehicular left turns from the Real Property onto westbound South 170th Street. However, the Parties acknowledge that

future improvements to the Sea-Tac International Airport, and/or construction of transportation facilities such as the Regional Transit Authority's light rail system may result in loss of the ability to permit such left turns.

7. Widening of 32nd Avenue. To achieve the desired right-of-way width for 32nd Avenue (Main Street), the City desires that Gateway dedicate to the City fifteen (15) feet of frontage along the eastern boundary of the Real Property as indicated on Attachment B. Gateway agrees to dedicate a fifteen (15)-foot strip of such property to the City at such time as the City is fully prepared to commence development and construction of 32nd Avenue, provided that the City shall construct at its own expense, as part of the improvements, a retaining wall upon the expanded City right-of-way to assure lateral support of the right-of-way above the Gateway property. The City shall reimburse Gateway for the appraised value of the right-of-way at the time of dedication. Further, Gateway agrees that it will place no permanent structures closer than thirty (30) feet to the western boundary of the existing right-of-way for 32nd Avenue.

8. Assignees. This Restatement shall be binding upon and inure to the benefit of the successors and assigns of each Party hereto. The Parties acknowledge that Gateway shall have the right to assign or transfer all or any portion of the interests, rights, and obligations under this Restatement to other parties acquiring an interest or estate in the Real Property. Consent by the City shall not be required for any transfer of rights pursuant to this Restatement.

Any conveyance of the Real Property or transfer or assignment of rights pursuant to this Restatement by Gateway shall release Gateway from any further obligations, duties or liabilities under this Restatement to the extent such obligations, duties or liabilities are assumed by the assignee. Gateway agrees that, in the event of a proposed sale, gift, transfer, segregation, assignment, or devise of the Real Property, Gateway shall disclose the existence of this Restatement to the interested party.

9. Disputes. This agreement shall be governed by the laws of the State of Washington and venue shall be King County, Washington. Either party may institute and prosecute a proceeding for specific performance of this Agreement, or for any other remedy provided by law, and the prevailing party shall be entitled to all expenses, costs of litigation, and reasonable attorneys' fees, as may be determined by the Court.

10. Exercise of Eminent Domain. Nothing herein shall prohibit exercise of condemnation rights otherwise available to the City.

11. Notices. All communications, notices and demands of any kind which a party under this Agreement is required or desires to give to any other party shall be in writing and be either (1) delivered personally, (2) sent by facsimile or electronic transmission with a receipt of delivery retained, or (3) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

If to the City:

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

If to Owner:

Gateway Investment LLC
2003 Western, Suite 500
Seattle, WA 98121
Attention: Managers

Notice by hand delivery or facsimile shall be effective upon receipt. Facsimile or electronic transmission shall be effective upon receipt. If deposited in the mail, notice shall be deemed received 48 hours after deposit. Any party at any time by notice to the other party may designate a different address or person to which such notice shall be given.

12. Entire Agreement; Amendments. This Restatement constitutes the entire agreement of the Parties relating to the Real Property. This Restatement may be amended by written consent of both Parties and by approval of the City Council by Resolution. However, minor modifications of this Restatement and the Project which are consistent with the objectives of this Restatement and do not vary its material terms may be authorized by the City Manager.

EFFECTIVE AS OF THE DATE FIRST SET FORTH ABOVE:

CITY OF SEATAC

By: _____
City Manager

Approved as to Form:

City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 2013, before me personally appeared _____, to me known to be the City Manager of the City of SeaTac that executed the within and foregoing agreement, and acknowledged the said agreement to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that [he/she] was authorized to execute the said agreement.

In witness whereof I have hereunder set my hand and affixed my official seal the day and year first above written.

Print name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

GATEWAY INVESTMENT LLC

By: _____
Roger McCracken
Manager

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 2013, before me personally appeared _____, to me known to be the Manager of Gateway Investment LLC that executed the within and foregoing agreement, and acknowledged the said agreement to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that [he/she] was authorized to execute the said agreement.

In witness whereof I have hereunder set my hand and affixed my official seal the day and year first above written.

Print name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

LEGAL DESCRIPTIONS

ATTACHMENT A

PARCEL A

Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13 and 14, Tagas addition, according to the plat thereof recorded in volume 44 of plats, page(s) 86, in King County, Washington

Together with those portions of the vacated alley adjoining said Lots 10, 11, 12, 13 and 14, which attached thereto by operation of law pursuant to order of vacation entered November 2, 1953 in volume 53 of commissioner's records, page 291; and

Together with that portion of vacated 29th Avenue South adjoining, which attached to said lots by operation of law, pursuant to City of SeaTac ordinance number 98-1031, recorded under recording number 9812082659.

PARCEL B

Lots 1 through 10, inclusive, block 1, Bowmont Terrace, according to the plat thereof recorded in volume 55 of plats, page(s) 16, in King County, Washington;

Together with that portion of vacated 31st Avenue South adjoining, which attached to lots 2 through 6, inclusive, by operation of law, pursuant to City of SeaTac ordinance number 02-1003.

Together with that portion of vacated 31st Avenue South adjoining, which attached to lots 6, 7, 8, 9 and 10 by operation of law, pursuant to City of SeaTac ordinance 06-1020.

PARCEL C

Lots 1, 2, 3, 4, 5, 6, 7, 8, 15, 16, 17, 18 and 19, block 2, Bowmont Terrace, according to the plat thereof recorded in volume 55 of plats, page(s) 16, in King County, Washington;

Together with that portion of vacated 31st Avenue South adjoining, which attached to lots 1, 16, 17, 18 and 19 by operation of law, pursuant to City of SeaTac ordinance number 02-1003; and

Together with that portion of vacated 31st Place South adjoining, which attached to lots 3, 4, 5, 6 and 7 by operation of law, pursuant to City of SeaTac ordinance number 02-1003;

Together with those portions of vacated south 172nd Street, vacated 31st Avenue South and vacated 31st Place South adjoining, which attached to lots 7, 8, 15 and 16 by operation of law, pursuant to City of SeaTac ordinance number 06-1020.

PARCEL D

Lots 1, 3, 4, 5, and 6, block 3, Bowmont Terrace, according to the plat thereof recorded in volume 55 of plats, page(s) 16, in King County, Washington;

Together with that portion of vacated 31st Place South adjoining, which attached to lots 1, 3, 4 and 5 by operation of law, pursuant to City of SeaTac ordinance number 02-1003; and

Together with those portions of vacated south 172nd Street and vacated 31st Place South adjoining, which attached to lots 5 and 6 by operation of law, pursuant to City of SeaTac ordinance number 06-1020.

PARCEL E

Lot 9 of Tagas addition, according to the plat thereof recorded in volume 44 of plats, page(s) 86, in King County, Washington;

Together with that portion of the vacated alley adjoining which attached thereto by operation of law pursuant order of vacation entered November 2, 1953 in volume 53 of commissioner's records, page 291; and

Together with that portion of vacated 29th Avenue South adjoining, which attached to said lots by operation of law, pursuant to City of SeaTac ordinance number 98-1031, recorded under recording number 9812082659.

AND

That portion of Tract "A" in said Tagas addition, lying southerly of a line beginning on the easterly line of said Tract "A" at a point 3.62 feet southwesterly of the most easterly corner of said tract as measured along the easterly line;
Running thence north 88°59'20" west to the westerly line of said Tract "A" and the terminus of said line;

Except that portion thereof described as follows:

Beginning at the northwest corner of said Tract "A", thence southerly, along the westerly line of Tract "A", a distance of 15.09 feet to the true point of beginning; thence continuing southerly, along the westerly line of Tract "A", a distance of 34 feet; thence northeasterly to a point on the southerly line of that certain tract of land described as Parcel "A" in the Quit Claim Deed recorded under recording number 9105231261, which point is 40 feet easterly of the true point of beginning; thence westerly, along the said southerly line of the above-described tract of land, a distance of 40 feet to the true point of beginning of this exception; and

Except that portion thereof conveyed to the City of SeaTac, a municipal corporation, by deed recorded under recording number 9506160558;

Together with that portion of the vacated alley adjoining which would attach by operation of law.

And together with that portion of vacated 29th Avenue South adjoining which would attach thereto by operation of law as provided for in City of SeaTac ordinance number 98-1031 recorded under recording number 9812082659.

PARCEL F

Lots 9 through 14 in block 2 of Bowmont Terrace, according to the plat thereof recorded in volume 55 of plats, page 16, in King County, Washington.

Together with those portions of vacated 31st Avenue South, vacated 31st Place South and vacated South 172nd Street adjoining, which attached thereto by operation of law, pursuant to City of SeaTac ordinance number 06-1020.

PARCEL G

Lots 1 through 4 in block 4 of Bowmont Terrace, according to the plat thereof recorded in volume 55 of plats, page 16, in King County, Washington.

Together with those portions of vacated 31st Place South and vacated South 172nd Street adjoining, which attached thereto by operation of law, pursuant to City of SeaTac ordinance number 06-1020.

PARCEL H

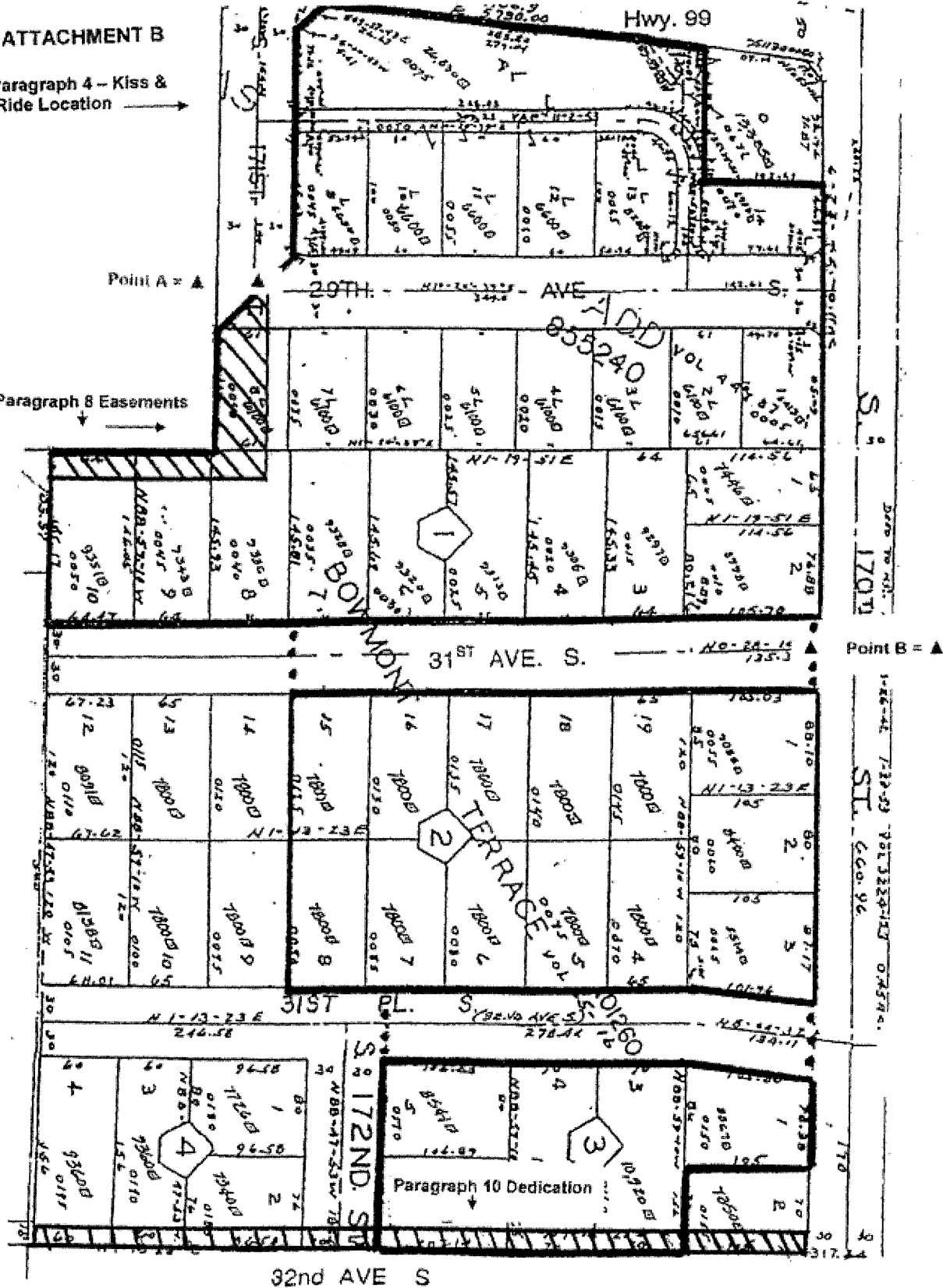
Lot 2 in block 3 of Bowmont Terrace, according to the plat thereof recorded in volume 55 of plats, page 16, in King County, Washington.

ATTACHMENT B

Paragraph 4 - Kiss & Ride Location →

Point A = ▲

Paragraph 8 Easements ← →



Point B = ▲

ATTACHMENT C

DEED

When recorded return to:

STATUTORY WARRANTY DEED

THE GRANTOR(S)

for and in consideration of

in hand paid, conveys, and warrants to

the following described real estate, situated in the County of _____, State of Washington:

Abbreviated Legal: (Required if full legal not inserted above.)

Tax Parcel Number(s):

Dated:

STATE OF
COUNTY OF

ss.

I certify that I know or have satisfactory evidence that

(is/are) the person(s) who appeared

before me, and said person(s) acknowledged that

signed this instrument and acknowledged it to be

free and voluntary act for the uses and purposes mentioned in this instrument..

Dated:

Notary name printed or typed:
Notary Public in and for the State of
Residing at
My appointment expires:

EXHIBIT "A"

PARCEL A:

THAT PORTION OF LOTS 4 AND 5, BLOCK 2, ADAMS HOME TRACTS NO. 3, ACCORDING TO PLAT RECORDED IN VOLUME 15 OF PLATS, PAGE 17, RECORDS OF KING COUNTY, WASHINGTON, LYING WEST OF PRIMARY STATE HIGHWAY NO. 1 AND SOUTH OF A LINE DRAWN PARALLEL TO AND A DISTANCE OF 65 FEET SOUTHERLY FROM THE SOUTH LINE OF SOUTH 152ND STREET.

PARCEL B:

THAT PORTION OF LOT 5, BLOCK 2, THIRD ADDITON TO ADAMS HOME TRACTS, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 15 OF PLATS, PAGE 17, IN KING COUNTY, WASHINGTON, LYING WESTERLY OF THE WESTERLY LINE OF STATE HIGHWAY NO. 1 AND NORTH OF A LINE 65 SOUTH (AS MEASURED AT RIGHT ANGLES) OF AND PARALLEL WITH THE SOUTH LINE OF SOUTH 152ND STREET.

RESTATED DEVELOPMENT AGREEMENT

THIS RESTATED DEVELOPMENT AGREEMENT (hereinafter referred to as the "Restatement") is entered into effective the 30th day of November, 2007 by and between the CITY OF SEATAC, a Washington municipal corporation (hereinafter referred to as the "City"), and GATEWAY INVESTMENT LLC, a Washington limited liability company (hereinafter referred to as "Gateway") to clarify the remaining obligations of the City and Gateway under certain agreements between them. The term "Parties" refers to the City and Gateway.

WHEREAS Gateway owns certain real property located in the City, which is legally described on Attachment A (the "Real Property"); and

WHEREAS the City and Gateway entered into a certain Development Agreement relating to the portions of the Real Property on May 26, 1998 (the "Original Agreement"); and

WHEREAS Gateway subsequently acquired the other portions of the Real Property, and the City and Gateway entered into a certain Amendment to Gateway Development Agreement effective June 1, 2001 (the "Amendment"); and

WHEREAS a number of the provisions in the Agreement and the Amendment have either been accomplished or are no longer relevant; and

WHEREAS the Parties wish to enter into this Restatement to clarify their remaining obligations to each other; and

WHEREAS the Original Agreement provides that minor modifications to it which are consistent with its objectives and do not vary its terms may be authorized by the City Manager and the Parties agree that the terms of this Restatement are consistent with and do not vary the material terms of the Original Agreement or the Amendment,

NOW, THEREFORE, for good and sufficient consideration, the mutual promises and covenants contained in this Agreement, the City and Gateway agree as follows:

1. Commercial Parking. The City agrees that: subject only to the revocation provisions of Section 5 of this Restatement, Gateway has the right to operate a commercial parking business on the Real Property as it is presently conducted as a legal, nonconforming use, and will have the right to continue to do so, regardless of the zoning that is presently or may in the future be applicable to the Real Property. The parking operations may involve: surface parking only; a combination of some parking on grade and some on one upper level of structured parking; or a combination of surface parking and multi-level structured parking, including underground parking, anywhere on the property, provided that: the structured parking does not exceed one hundred seventy thousand (170,000) square feet; its location does not impair development of a new street on the Real Property at a location selected by Gateway between 171st Street (Point A on the map attached as Attachment B) and the current intersection of 170th Street and 31st Avenue South (Point B on Attachment B); and the structured parking shall not be located closer than one hundred feet (100') to International Boulevard without prior City

ATTACHMENT # 1

approval regarding design and use of the structure; provided, however, that this limitation shall not apply to underground parking.

2. Consent Decree. Gateway is currently conducting a remediation of certain environmental conditions on a portion of the Real Property, and shall continue to diligently comply with the terms of the Consent Decree entered in King County Superior Court (No. 00-2-02909-8KNT) on February 4, 2000 (the "Consent Decree").

3. Hotel/Commercial Building.

a. Gateway shall apply for all required permits to construct a hotel containing not less than one hundred forty (140) rooms or another permitted commercial structure containing not less than one hundred thousand (100,000) square feet gross floor area (the "Hotel/Commercial Building") on the Real Property, within one hundred eighty (180) days following the occurrence of all of the following events (the "Hotel/Commercial Conditions"):

- i. completion of the environmental remediation required by the Consent Decree;
- ii. dismissal of the action in which the Consent Decree was entered, with the consent of the Washington State Department of Ecology;
- iii. six (6) years have elapsed since the dismissal of action in which the Consent Decree was entered; and
- iv. financing can reasonably be obtained for the improvements described in this Section.

b. Gateway shall obtain all of the permits described in Paragraph 3.a within twelve (12) months after submittal of the applications, unless delay is caused by the City, and shall complete construction of the Hotel/Commercial Building within twenty-four (24) months following issuance of the required permits. The Hotel/Commercial Building may be located anywhere on the Real Property in Gateway's discretion.

4. Mixed-Use Building.

a. Gateway shall apply for all required permits to construct a fifty thousand (50,000) square foot mixed-use building, including at least two of the following components: retail, office, hotel and multi-family/townhouse residential (the "Mixed-Use Building") on the Real Property (and Gateway shall use its best efforts to include a residential use component), within one hundred eighty (180) days following the occurrence of all of the following events (the "Mixed-Use Conditions"):

- i. the Hotel/Commercial Conditions have occurred; and
- ii. both of the following have occurred:

(a) construction by the City of 32nd Avenue South (Main Street) connecting to South 188th and International Boulevard or connecting to International Boulevard at a point south of 176th Street; and

(b) construction, at no expense to Gateway, of a pedestrian bridge that connects a SeaTac Airport terminal or passenger facility to either of the following as the east terminus of the pedestrian bridge: a location on the Real Property, if Gateway approves; or to an unimproved portion of the South 171st Street right-of-way on which a "Kiss and Ride" facility is operated. If the City decides that the bridge should be located on the Gateway Property, Gateway agrees to allow such use of its property without cost to the City, provided that the area taken does not exceed 2,500 square feet, and/or to design and provide an entry point for the bridge integrated into Gateway's future structure at that location. Further, the City agrees that the "kiss-and ride" facility shown on Attachment B shall be located entirely within the current or future unimproved right-of-way of S. 171st Street and any adjacent City-owned property or easements, so as not to impair traffic flow capacity on S. 171st Street; and

iii. completion of either of the following as the west terminus of the pedestrian bridge described in Paragraph 4.a.ii(b):

(a) construction and start of operation of the SeaTac International Airport Transportation Center (Intermodal Center); or

(b) construction and start of operation of light rail service between SeaTac International Airport and downtown Seattle.

b. Within thirty (30) months (extended if issuance of permits is delayed by the City so they are not issued within twelve (12) months of application) following the occurrence of the Mixed-Use Conditions and following the issuance of the permits described in Paragraph 4.a, Gateway shall complete construction of the Mixed-Use Building.

c. At the City's request, at any time following the occurrence of the Mixed-Use Conditions described in Paragraph 4.a above, Gateway shall construct at its own expense a new street connecting South 171st Street (Point A on Attachment B) and the current intersection of South 170th Street and 31st Avenue S (Point B on Attachment B). The City shall reimburse Gateway for the full appraised value of the land on which the street is constructed.

5. Revocation. In the event that Gateway does not comply with the provisions of Paragraphs 3 and 4 by the time periods specified in those paragraphs, the City may revoke Gateway's right to continue commercial parking as the main activity on the Real Property. In the event that revocation occurs, Gateway shall be required to reconstruct the surface parking lot and the parking structure to meet all zoning and building codes and standards in effect as of May 26, 1998, and eliminate all variances or deviations permitted by this Agreement. A suitable commercial structure for some permitted use must be constructed if commercial parking is to continue following such revocation. Once Gateway completes the development described in Paragraphs 3 and 4, the right to continue surface parking will no longer be subject to revocation.

6. Delay Fee. In the event Gateway does not construct the Hotel/Commercial Building on or before June 1, 2011, or does not construct the Mixed-Use Building within thirty (30) months following the occurrence of the Mixed-Use Conditions, Gateway shall pay the City a delay fee of Five Hundred Thousand Dollars (\$500,000), increased by the amount of any increases in the Consumer Price Index applicable to the Seattle-Tacoma-Bremerton area for the period between June 1, 2011 and the date the payment is made (the "Delay Fee"), and the Delay Fee will be due on the earlier of: June 1, 2016; or six (6) years following the dismissal of the action in which the Consent Decree was entered. The payment of the Delay Fee shall not impair the City's right to exercise its rights of revocation of Gateway's right to continue commercial parking as the main activity on the Real Property, in accordance with Paragraph 5.

7. Development Standards. The City agrees that Gateway's current improvements and landscaping have been approved by the City. Future development on the site, including the buildings developed in accordance with Paragraphs 3 and 4, shall be subject to development standards in effect as of March 26, 1998, except that the Mixed Use Building construction shall be in compliance with land use and building code requirements in effect as of June 1, 2001, or at Gateway's option, in effect as of the date of permit application.

8. 30th Street Easement. If requested by the City at such time as the City constructs a public right-of-way across the southerly terminous of 29th Avenue South and the easterly terminous of South 171st Street, as indicated on Attachment B, Gateway shall grant a similar and connecting forty-eight (48)-foot wide easement over, across and under Lot 8 of Bowmont Terrace Addition and a twenty-four (24)-foot easement over, across and under the westerly portions of lots 8, 9 and 10 of Bowmont Terrace Block 1, as indicated on Attachment B. If the City requests the easement, it shall pay to Gateway one-half (½) of the value of the vacated right-of-way as determined by appraisal, during the right-of-way vacation process, to be the value of the easements. The easements shall revert to SeaTac at such time as Gateway's obligation to construct the Mixed Use Building arises, in accordance with Section 4.

9. Left Turns. As part of its improvements to South 170th Street, the City shall provide channelization or similar improvements as needed to facilitate vehicular left turns from the Real Property onto westbound South 170th Street. However, the Parties acknowledge that future improvements to the Sea-Tac International Airport, and/or construction of transportation facilities such as the Regional Transit Authority's light rail system may result in loss of the ability to permit such left turns.

10. Widening of 32nd Avenue. To achieve the desired right-of-way width for 32nd Avenue (Main Street), the City desires that Gateway dedicate to the City fifteen (15) feet of frontage along the eastern boundary of the Real Property as indicated on Attachment B. Gateway agrees to dedicate a fifteen (15)-foot strip of such property to the City at such time as the City is fully prepared to commence development and construction of 32nd Avenue, provided that the City shall construct at its own expense, as part of the improvements, a retaining wall upon the expanded City right-of-way to assure lateral support of the right-of-way above the Gateway property. The City shall reimburse Gateway for the appraised value of the right-of-way at the time of dedication. Further, Gateway agrees that it will place no permanent structures closer than thirty (30) feet to the western boundary of the existing right-of-way for 32nd Avenue.

11. Assignees. This Restatement shall be binding upon and inure to the benefit of the successors and assigns of each Party hereto. The Parties acknowledge that Gateway shall have the right to assign or transfer all or any portion of the interests, rights and obligations under this Restatement to other parties acquiring an interest or estate in the Real Property. Consent by the City shall not be required for any transfer of rights pursuant to this Restatement.

Any conveyance of the Real Property or transfer or assignment of rights pursuant to this Restatement by Gateway shall release Gateway from any further obligations, duties or liabilities under this Restatement to the extent such obligations, duties or liabilities are assumed by the assignee. Gateway agrees that, in the event of a proposed sale, gift, transfer, segregation, assignment or devise of the Real Property, Gateway shall disclose the existence of this Restatement to the interested party.

12. Disputes. This agreement shall be governed by the laws of the State of Washington and venue shall be King County, Washington. Either party may institute and prosecute a proceeding for specific performance of this Agreement, or for any other remedy provided by law, and the prevailing party shall be entitled to all expenses, costs of litigation, and reasonable attorneys' fees, as may be determined by the Court.

13. Exercise of Eminent Domain. Nothing herein shall prohibit exercise of condemnation rights otherwise available to the City.

14. Notices. All communications, notices and demands of any kind which a party under this Agreement is required or desires to give to any other party shall be in writing and be either (1) delivered personally, (2) sent by facsimile or electronic transmission with a receipt of delivery retained, or (3) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

If to the City:	City of SeaTac 4800 S. 188 th Street SeaTac, WA 98188 Attention: City Manager
-----------------	---

If to Owner:	Gateway Investment LLC 2003 Western, Suite 500 Seattle, WA 98121 Attention: Managers
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Notice by hand delivery or facsimile shall be effective upon receipt. Facsimile or electronic transmission shall be effective upon receipt. If deposited in the mail, notice shall be deemed received 48 hours after deposit. Any party at any time by notice to the other party may designate a different address or person to which such notice shall be given.

15. Entire Agreement; Amendments. This Restatement constitutes the entire agreement of the Parties relating to the Real Property. This Restatement may be amended by written consent of both Parties and by approval of the City Council by Resolution. However, minor modifications of this Restatement and the Project which are consistent with the objectives of this Restatement and do not vary its material terms may be authorized by the City Manager.

IT IS SO AGREED:

CITY OF SEATAC

GATEWAY INVESTMENT LLC

By: [Signature]
City Manager

By: [Signature]
Roger McCracken
Manager

Date 11/30/07

Date: 11/30/07

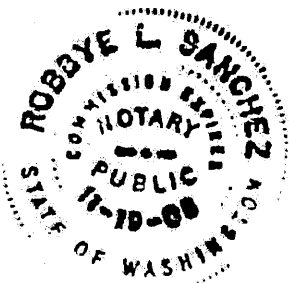
Approved as to Form:

[Signature] Senior Asst City Attorney
City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 30th day of November, 2007, before me personally appeared Craig R. Ward, to me known to be the City Manager of the City of SeaTac that executed the within and foregoing agreement, and acknowledged the said agreement to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that [he/she] was authorized to execute the said agreement.

In witness whereof I have hereunder set my hand and affixed my official seal the day and year first above written.



[Signature]
Print name: Robby L. Sanchez
NOTARY PUBLIC in and for the State of
Washington, residing at ~~Seattle~~ Seattle
My commission expires 11/19/08

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 30th day of November, 2007, before me personally appeared Roger McCracken, to me known to be the Manager of Gateway Investment LLC that executed the within and foregoing agreement, and acknowledged the said agreement to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that [he/she] was authorized to execute the said agreement.

In witness whereof I have hereunder set my hand and affixed my official seal the day and year first above written.



Robbye L. Sanchez
Print name: Robbye L. Sanchez
NOTARY PUBLIC in and for the State of
Washington, residing at Seattle
My commission expires 11/19/08

LEGAL DESCRIPTIONS

ATTACHMENT A

PARCEL A

Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13 and 14, Tagas addition, according to the plat thereof recorded in volume 44 of plats, page(s) 86, in King County, Washington

Together with those portions of the vacated alley adjoining said Lots 10, 11, 12, 13 and 14, which attached thereto by operation of law pursuant to order of vacation entered November 2, 1953 in volume 53 of commissioner's records, page 291; and

Together with that portion of vacated 29th Avenue South adjoining, which attached to said lots by operation of law, pursuant to City of SeaTac ordinance number 98-1031, recorded under recording number 9812082659.

PARCEL B

Lots 1 through 10, inclusive, block 1, Bowmont Terrace, according to the plat thereof recorded in volume 55 of plats, page(s) 16, in King County, Washington;

Together with that portion of vacated 31st Avenue South adjoining, which attached to lots 2 through 6, inclusive, by operation of law, pursuant to City of SeaTac ordinance number 02-1003.

Together with that portion of vacated 31st Avenue South adjoining, which attached to lots 6, 7, 8, 9 and 10 by operation of law, pursuant to City of SeaTac ordinance 06-1020.

PARCEL C

Lots 1, 2, 3, 4, 5, 6, 7, 8, 15, 16, 17, 18 and 19, block 2, Bowmont Terrace, according to the plat thereof recorded in volume 55 of plats, page(s) 16, in King County, Washington;

Together with that portion of vacated 31st Avenue South adjoining, which attached to lots 1, 16, 17, 18 and 19 by operation of law, pursuant to City of SeaTac ordinance number 02-1003; and

Together with that portion of vacated 31st Place South adjoining, which attached to lots 3, 4, 5, 6 and 7 by operation of law, pursuant to City of SeaTac ordinance number 02-1003;

Together with those portions of vacated south 172nd Street, vacated 31st Avenue South and vacated 31st Place South adjoining, which attached to lots 7, 8, 15 and 16 by operation of law, pursuant to City of SeaTac ordinance number 06-1020.

PARCEL D

Lots 1, 3, 4, 5, and 6, block 3, Bowmont Terrace, according to the plat thereof recorded in volume 55 of plats, page(s) 16, in King County, Washington;

Together with that portion of vacated 31st Place South adjoining, which attached to lots 1, 3, 4 and 5 by operation of law, pursuant to City of SeaTac ordinance number 02-1003; and

Together with those portions of vacated south 172nd Street and vacated 31st Place South adjoining, which attached to lots 5 and 6 by operation of law, pursuant to City of SeaTac ordinance number 06-1020.

PARCEL E

Lot 9 of Tagas addition, according to the plat thereof recorded in volume 44 of plats, page(s) 86, in King County, Washington;

Together with that portion of the vacated alley adjoining which attached thereto by operation of law pursuant order of vacation entered November 2, 1953 in volume 53 of commissioner's records, page 291; and

Together with that portion of vacated 29th Avenue South adjoining, which attached to said lots by operation of law, pursuant to City of SeaTac ordinance number 98-1031, recorded under recording number 9812082659.

AND

That portion of Tract "A" in said Tagas addition, lying southerly of a line beginning on the easterly line of said Tract "A" at a point 3.62 feet southwesterly of the most easterly corner of said tract as measured along the easterly line;

Running thence north 88°59'20" west to the westerly line of said Tract "A" and the terminus of said line;

Except that portion thereof described as follows:

Beginning at the northwest corner of said Tract "A", thence southerly, along the westerly line of Tract "A", a distance of 15.09 feet to the true point of beginning; thence continuing southerly, along the westerly line of Tract "A", a distance of 34 feet; thence northeasterly to a point on the southerly line of that certain tract of land described as Parcel "A" in the Quit Claim Deed recorded under recording number 9105231261, which point is 40 feet easterly of the true point of beginning; thence westerly, along the said southerly line of the above-described tract of land, a distance of 40 feet to the true point of beginning of this exception; and

Except that portion thereof conveyed to the City of SeaTac, a municipal corporation, by deed recorded under recording number 9506160558;

Together with that portion of the vacated alley adjoining which would attach by operation of law.

And together with that portion of vacated 29th Avenue South adjoining which would attach thereto by operation of law as provided for in City of SeaTac ordinance number 98-1031 recorded under recording number 9812082659.

PARCEL F

Lots 9 through 14 in block 2 of Bowmont Terrace, according to the plat thereof recorded in volume 55 of plats, page 16, in King County, Washington.

Together with those portions of vacated 31st Avenue South, vacated 31st Place South and vacated South 172nd Street adjoining, which attached thereto by operation of law, pursuant to City of SeaTac ordinance number 06-1020.

PARCEL G

Lots 1 through 4 in block 4 of Bowmont Terrace, according to the plat thereof recorded in volume 55 of plats, page 16, in King County, Washington.

Together with those portions of vacated 31st Place South and vacated South 172nd Street adjoining, which attached thereto by operation of law, pursuant to City of SeaTac ordinance number 06-1020.

PARCEL H

Lot 2 in block 3 of Bowmont Terrace, according to the plat thereof recorded in volume 55 of plats, page 16, in King County, Washington.

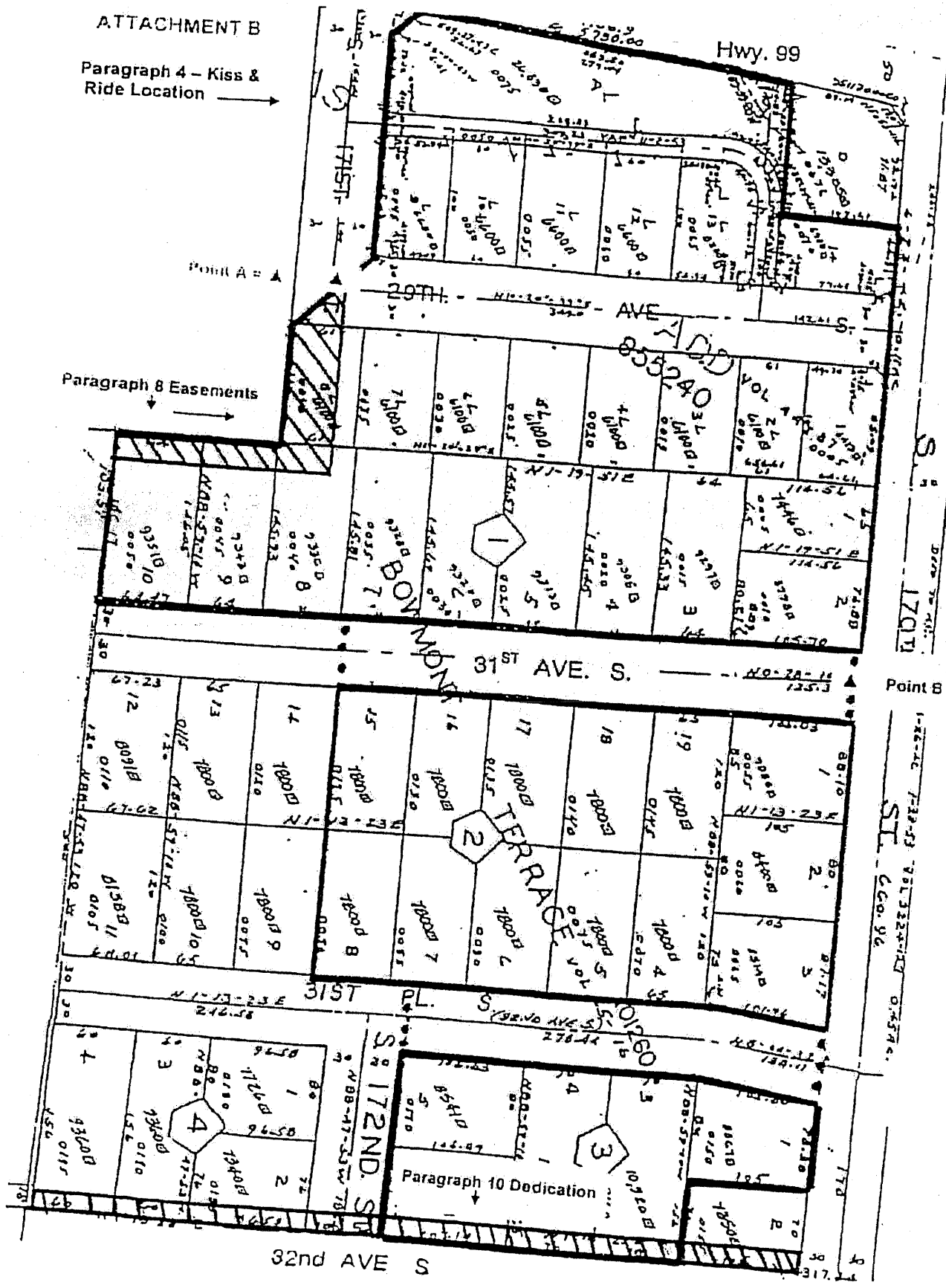
ATTACHMENT B

Paragraph 4 - Kiss & Ride Location

Point A = ▲

Paragraph 8 Easements

Point B = ▲



1-26-42 7-32-53 VOL 322-117 0-55-4-0
 ST. GEO. YL

8. PRESENTATIONS:

- **Addition of new SR 509/I-5 Corridor Completion to City Council Goals (10 minutes)**

By: Assistant City Manager Gwen Voelpel

- **Consideration of Council Information Request regarding possible City grant program to partially fund neighborhood street lights (10 minutes)**

By: Mayor Tony Anderson / Deputy Mayor Mia Gregerson / Councilmember Barry Ladenburg

- **Public Safety Statistics (10 minutes)**

By: Fire Chief Jim Schneider

Council Information Request Form

Date of Request: April 1, 2013

Desired Response Date: April 9, 2013

Requestor: Mayor Tony Anderson, Deputy Mayor Mia Gregerson, Councilmember Barry Ladenburg

Question/Request: Request that City staff research the possibility of administering a grant program for neighborhoods interested in the City providing partial funding for street lights. Staff should consider an annual City grant program with a \$5,000 budget, a contribution cap of \$5,000/project, with a matching ratio of 4 (neighborhood contribution) to 1 (City contribution). Residents would be responsible for contacting and entering into an agreement with the responsible utility.

Preliminary Response

To be completed by City Manager:

Tracking ID: AA01-040213

Date Received: April 1, 2013

Estimated Response Date: April 9, 2013

Estimated Time Needed to Complete:

Type:

- Minor: less than 1 hour (doesn't require a request form)
- Significant: 1-2 hours
- Major: More than 2 hours. Council approval date:

Date sent:

Final Response

Response Date:

Actual Time Taken to Complete:

Response:

**PAYROLL/CLAIMS VOUCHERS WERE SENT
ELECTRONICALLY TO THE CITY COUNCIL**

**A HARD COPY OF THE VOUCHERS
CAN BE VIEWED IN THE CITY CLERK'S OFFICE**

**PAYROLL/CLAIMS VOUCHERS ARE ALSO
AVAILABLE ON OUR CITY WEBSITE**

www.ci.seatac.wa.us

**Pre-approval or final approval of City Council and
City Manager travel related expenses.**

Consent Agenda Date: 4.09.13

Travel Pre-Approval Requests: n/a

Travel Expense Approval:

NLC Conference, March 9-13, 2013, Washington DC

Pre-approved on January 22, 2013

\$2,570

Name: Barry Ladenburg	City Mastercard	Personal Reimbursement
Lodging	1057.98	
Meals *(one of the receipts is for 3 cmbrs)	*142.03	30.93
Transportation	80.00	24.00
Registration	125.00	
Total	\$1405.01	\$54.93

City of SeaTac

Special Council Study Session Minutes Synopsis

March 12, 2013
4:00 PM

City Hall
Council Chambers

CALL TO ORDER: The SeaTac City Special Council Study Session (SCSS) was called to order by Presiding Officer Councilmember (CM) Terry Anderson at 4:15 p.m.

COUNCIL PRESENT: Mayor Anthony (Tony) Anderson (participated via skype), Deputy Mayor (DM) Mia Gregerson (participated via skype), Councilmembers (CMs) Barry Ladenburg (participated via skype)(arrived at 4:24 pm), Rick Forschler, Terry Anderson, Dave Bush, and Pam Fernald.

STAFF PRESENT: City Manager Todd Cutts (participated via skype), City Attorney Mary Mirante Bartolo, City Clerk Kristina Gregg, Assistant City Manager (ACM) Gwen Voelpel, Municipal Court Judge Elizabeth Cordi-Bejarno, Economic Development (ED) Manager Jeff Robinson, Community and Economic Development (CED) Director Joe Scoreio, Senior Planner Al Torrico, Information Systems (IS) Manager Bart Perman, Court Administrator Paulette Revoir, Resource Conservation – Neighborhood Programs Coordinator Trudy Olson, Executive Assistant Lesa Ellis, Administrative Assistant Zenetta Young, Police Chief Jim Graddon, Fire Chief Jim Schneider, Assistant Fire Chief Brian Wiwel, and Police Captain Annette Louie

Mayor Tony Anderson stated there was an expectation that amendments to the City Council Administrative Procedures would be discussed at this meeting, he felt the discussion would be more effective with all CMs physically present in the Council Chambers. Therefore, the discussion is scheduled for the next Council Study Session (CSS).

Agenda Bill #3501; A Motion authorizing the City Manager to execute an extension with the Andover Company to provide property leasing and representation at the SeaTac Center

Summary: This Motion allows for the continuance of full-service commercial brokerage and leasing services at the SeaTac Center by the Andover Company. The Andover Company is compensated through a percentage of the value of the lease for their services. Services include, but are not limited to: Property Tours, Transaction Facilitation, Marketing Coordination and Development of Marketing Materials, Market Analysis, Project Coordination, and Administrative Support.

The SeaTac Center is now 100% occupied. The Andover Company has been the leasing agent since shortly after acquiring the property. When the City acquired the center, there was approximately 30% vacancy. Andover Company has have done a great job for the City. This motion extends the contract through December 31, 2014.

Council consensus: Refer this to the 03/26/13 RCM Consent Agenda

PRESENTATIONS:

•Law Week 2013; “Realizing the Dream, Equality For All”

Municipal Court Judge Cordi-Bejarano announced that National Law Day is Wednesday, May 1. Municipal Court will center Law Week events around Law Day the week of April 29 - May 3. The theme for this years' Law Week is “Realizing the Dream, Equality For All”. Law Week events include the reading of a proclamation at the April 23 Regular Council Meeting (RCM) by local students asking the Mayor to declare April 29 as Law Week, recognition of one 6th grade student as winner of the Law Week art contest and one 10th grade student as winner of the Law Week essay contest. Several movie screenings and mock trials have also been scheduled. On Tuesday, April 30 Municipal Court will be hosting a human trafficking symposium. Court will also be hosting a gender equity forum, to discuss current topics on gender equality. Flyers for all of these events should be ready for the next Council Meeting.

CM Ladenburg arrived at this point in the meeting

•Distracted Driving Campaign

Police Captain Louie presented information regarding the Distracted Driving Campaign SeaTac Police will be conducting in conjunction with King County (KC). The campaign is aimed at educating drivers on the dangers of using their cell phones while driving. Observations will be conducted for approximately two weeks. The goal is to identify 200 cell phone abusers and send them letters notifying them of the violation. The letter will provide educational information on the dangers of cell phone use and alternatives will be provided. They will be asked to complete a survey on a pre-printed post cards. The observations will take place in various locations throughout SeaTac.

PRESENTATIONS (Continued):

Distracted Driving Campaign (Continued):

KC will cover the postage for the mailings. Observations are planned to start on March 13, 2013. KC Medical Services will compile all of the statistics on all the returns.

Chief Graddon stated that because the City has been so engaged with the Traffic Safety Committee and is willing to take on these types of programs, the City receives grant funding for so many programs.

Council discussion ensued regarding the Distracted Driving Campaign.

●Public Safety Statistics

Assistant Fire Chief Wiwel presented statistics for the past month. Calls year to date are even with last year. Training division activities include annual Self Contained Breathing Apparatus, Fire ground survival and rapid intervention crew training. Mr. Wiwel detailed training the department has conducted recently. He also detailed a technical rope rescue for a vehicle over an embankment. This is an example of how the training can pay off for unusual events. He stated that the Fire Department will participate in the egg hunt on Saturday, March 30, 2013.

ADJOURNED: Presiding Officer CM T. Anderson adjourned the SCSS at 4:50 pm.

City of SeaTac

Regular Council Meeting Minutes

March 12, 2013
6:00 PM

City Hall
Council Chambers

CALL TO ORDER: The SeaTac City Council Regular Meeting was called to order by Presiding Officer Councilmember (CM) Terry Anderson at 6:01 p.m.

COUNCIL PRESENT: Mayor Anthony (Tony) Anderson (participated via skype), Deputy Mayor (DM) Mia Gregerson (participated via skype), CMs Barry Ladenburg (participated via skype), Rick Forschler, Terry Anderson, Dave Bush, and Pam Fernald.

STAFF PRESENT: City Manager Todd Cutts (participated via skype), City Attorney Mary Mirante Bartolo, City Clerk Kristina Gregg, Assistant City Manager (ACM) Gwen Voelpel, Community and Economic Development (CED) Director Joe Scorcio, Fire Chief Jim Schneider, and Administrative Assistant Zenetta Young.

FLAG SALUTE: Earl Gipson led the Council, audience and staff in the Pledge of Allegiance.

PUBLIC COMMENTS: Richard Gerlitz commented on abandoned property located at 3058 South 146th street. He stated that he hasn't received a response from Code Compliance Officer Barbara Canfield. He urged Council to enforce the existing code to remove an unattractive nuisance of this type.

Earl Gipson commented on Agenda Bill #3496 (GreenRubino Contract), stating that it includes \$36,000 for public relations. Without an itemized invoice it is difficult to determine what this funding will be used for.

John Thompson requested that Council hand out presentations to audience members as well and for Council to speak directly into their microphones for those with trouble hearing.

Vickie Lockwood requested that Council mention in the introduction that Council meetings are available for viewing on the City's website as well as SeaTV.

PRESENTATION:

● **Introduction of New Employee: Community and Economic Development (CED) Director Joe Scorcio**
ACM Voelpel introduced Mr. Scorcio.

CM Cutts welcomed Mr. Scorcio to the City and explained the rigorous application process he went through and that Joe brings a great amount of experience.

CONSENT AGENDA:

● **Approval of claims vouchers** (check nos. 102174 - 102285) in the amount of \$286,283.07 for the period ended March 5, 2013.

● **Approval of payroll vouchers** (check nos. 51274 – 51308) in the amount of \$451,193.74 for the period ended February 28, 2013.

● **Approval of payroll electronic fund transfers** (check nos. 76055 – 76235) in the amount of \$370,403.84 for the period ended February 28, 2013.

● **Approval of payroll wire transfer** (Medicare and Federal Withholding Tax) in the amount of \$75,292.85 for the period ended February 28, 2013.

Agenda Items reviewed at the February 26, 2013 Council Study Session and recommended for placement on this Consent Agenda:

Agenda Bill #3497; A Motion authorizing the City Manager to enter into an Interlocal Agreement for services between the eighteen (18) King County Consortium cities for planning, funding, and implementation of a Joint Human Services Application and Funding Program

Agenda Bill #3496; A Motion authorizing the City Manager to execute a contract with GreenRubino to implement the Economic Development Marketing Action Plan and Public Relations Plan for 2013

Agenda Bill #3493; A Motion accepting the work for the installation of the Community Center gym rooftop heating units

CONSENT AGENDA (Continued):

MOVED BY GREGERSON, SECONDED BY FERNALD TO ACCEPT THE CONSENT AGENDA AS PRESENTED,

PUBLIC COMMENTS (related to the Consent Agenda): There were no public comments.

*MOTION CARRIED UNANIMOUSLY

UNFINISHED BUSINESS: There was no Unfinished Business.

NEW BUSINESS: There was no New Business.

CITY MANAGER'S COMMENTS: There was no comments.

COUNCIL COMMENTS: Mayor A. Anderson, DM Gregerson, and CM Ladenburg all commented on their attendance at the National League of Cities (NLC) Conference.

CM Fernald stated that on February 28, a meeting was held with police services about crime in the north end of SeaTac, with approximately 65 in attendance.

CM Bush commented on the YMCA Partners with Youth program, stating that it is a great program within the City.

ADJOURNED:

MOVED BY MAYOR A. ANDERSON, SECONDED BY CM FERNALD TO ADJOURN THE REGULAR MEETING OF THE SEATAC CITY COUNCIL AT 6:33 P.M.

MOTION CARRIED UNANIMOUSLY.

Terry Anderson, Councilmember
Presiding Officer

Zenetta Young, Administrative Assistant

City of SeaTac

Regular Council Meeting Minutes

March 26, 2013
6:00 PM

City Hall
Council Chambers

CALL TO ORDER: The SeaTac City Council Regular Meeting was called to order by Mayor Anthony (Tony) Anderson at 6:13 p.m.

COUNCIL PRESENT: Mayor Anthony (Tony) Anderson, Deputy Mayor (DM) Mia Gregerson, Councilmembers (CMs) Barry Ladenburg, Rick Forschler, Terry Anderson, Dave Bush, and Pam Fernald.

STAFF PRESENT: City Manager Todd Cutts, City Attorney Mary Mirante Bartolo, City Clerk Kristina Gregg, Assistant City Manager (ACM) Gwen Voelpel, Judge Elizabeth Cordi-Bejarano, Municipal Court Administrator Paulette Revoir, Program Manager Soraya Lowry, Community & Economic Development (CED) Director Joe Scorcio, Economic Development (ED) Manager Jeff Robinson, and Police Chief Jim Graddon.

FLAG SALUTE: Police Chief Graddon led the Council, audience and staff in the Pledge of Allegiance.

PUBLIC COMMENTS: Eric Helland and Earl Gipson spoke in disagreement of the Riverton Heights Phase Two Design and Site Planning Report presentation that was made at the March 26 Council Study Session (CSS). They stated their opinion that items presented in the report did not match what the citizens committee agreed to.

Richard Gerlitz reiterated his comments from the March 12, 2013 Regular Council Meeting (RCM) about code enforcement issues at an abandoned property adjacent to his property (3058 South 146th Street). City Manager Cutts clarified that there is an open Code Enforcement case on this property.

Dick Jordan thanked the City for cleaning up the code enforcement issue at South 152nd Street and International Boulevard (IB). It was cleaned up two days after he spoke at a Council meeting. He also urged Council to reconsider funding the 4th of July fireworks.

PRESENTATIONS:

●King County (KC) Sheriff's Office Update

KC Sheriff John Urquhart introduced himself stating that he was sworn in on November 28. He previously worked in SeaTac and understands the City's contracting needs.

He also stated that the City has some great candidates for filling the Police Chief position.

Upon questions posed by Council, Sheriff Urquhart provided the following responses: (1) depending on the situation, other special teams or even the military may be called in due to their expertise or to provide training opportunities; and (2) per law, notification must be sent out for level 2 and 3 sex offenders.

●Childcare Resources

Family Call Center Manager Angelica Alvarez stated that their vision is that every child has a great start in school and in life. Their mission is: Child Care Resources leads efforts to promote equity for children, community stability, and school readiness by helping families access and choose high quality child and after school care, partnering with providers and caregivers to offer excellent care, and advocating for child care solutions that strengthen communities.

Ms. Alvarez stated that their goal is to serve 28 families. So far in 2013, they have served 13 SeaTac clients.

She detailed some of the programs they provide to the families and providers and shared a story about a family that Childcare Resources supported.

She thanked the City for its support.

●State of the Court Report

Judge Cordi-Bejarano introduced Court Administrator Revoir. Judge Cordi-Bejarano reviewed the SeaTac Municipal Court's mission: The SeaTac Municipal Court is dedicated to serving the public by providing a safe forum, accessible to all individuals, for the fair, impartial and efficient administration of justice. The Court is committed to preserving the constitutional rights of individuals while upholding the law. The SeaTac Municipal Court is devoted to providing information to the community on issues relating to the judicial branch, constitutional rights, and the law through its community outreach programs.

Judge Cordi-Bejarano detailed statistics for case filings and warrant walk-ins.

PRESENTATIONS (Continued):

State of the Court Report (Continued):

She detailed improvements made in 2012, including payments by telephone after hours and on-line, increased community outreach, and interpreter program.

She reviewed the probation services stating that on average, 110 probation cases are active. There are jail alternatives which are funded by the defendants, including Day Reporting, Community Work, and Electronic Home Monitoring. 217 jail days were saved using alternative sentencing.

Judge Cordi-Bejarano reviewed planned improvements for 2013, including increased access to justice, one public defense firm to handle both in-court and in-custody hearings, Law Week, Lead Clerk, internship program, facilities improvements, equipment improvements, and Court Leadership Team. Jury Summons are also handled in a more efficient way saving the City \$1,302 annually.

She encouraged everyone to join the Court to celebrate Law Week April 29 – May 3.

This presentation was brought forward from the March 26, 2013 CSS agenda.

•Public Safety Statistics

Police Chief Graddon provided an update on a recent homicide, stating that an arrest was made in California and they are working to extradite the suspect back to Washington.

He reviewed burglary statistics: November – 17, December – 30, January - 36, and February - 18. He stated that he feels the decrease is due to directed patrol missions.

He thanked ED Manager Robinson for a referral to the new Holiday Inn General Manager (GM). He met with the GM and the Police Department will be partnering with them to help with Crime Prevention Through Environmental Design (CPTED) during a major renovation.

Chief Graddon also stated that there have been many commercial burglaries around laundry rooms recently. Police were summoned to an apartment complex and made contact with a person of interest. They found a backpack with a blow torch. They were unable to make an arrest because they couldn't associate the person of interest with the tool, however, the number of thefts have decreased since then.

He also discussed a recent collaboration between the Police Department, City Attorney's Office, and Municipal Court where they worked together on a domestic violence (DV) case for a positive outcome.

Council discussion ensued on reporting suspicious activity. Chief Graddon urged everyone to call 911 in the event that something seems suspicious. The Police Department will determine whether it is an emergency or not.

CONSENT AGENDA:

•Approval of claims vouchers (check nos. 102286 - 102491) in the amount of \$446,593.42 for the period ended March 20, 2013.

•Approval of payroll vouchers (check nos. 51309 – 51338) in the amount of \$193,019.74 for the period ended March 15, 2013.

•Approval of payroll electronic fund transfers (check nos. 76236 – 76412) in the amount of \$379,159.25 for the period ended March 15, 2013.

•Approval of payroll wire transfer (Medicare and Federal Withholding Tax) in the amount of \$74,985.51 for the period ended March 15, 2013.

•Approval or final approval of City Council and City Manager travel related expenses for the period ended March 21, 2013.

Approval of Council Meeting Minutes:

•City Council Retreat held February 23, 2013

•Council Study Session held February 26, 2013

•Regular Council Meeting held February 26, 2013

•Special Council Meeting held March 12, 2013

Agenda Items reviewed at the March 12, 2013 Special Council Study Session (SCSS) and recommended for placement on this Consent Agenda:

Agenda Bill #3501; Motion authorizing the City Manager to execute a fourteen month extension with Andover Company to provide property leasing and representation at SeaTac Center

CONSENT AGENDA (Continued):

MOVED BY T. ANDERSON, SECONDED BY GREGERSON TO ACCEPT THE CONSENT AGENDA AS PRESENTED.*

PUBLIC COMMENTS (related to the Consent Agenda): There were no public comments.

*MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING (PH):

•First Amendment to the Development and Transit Way Agreement for the South Link Project Light Rail Project

Agenda Bill #3472; A Resolution authorizing the City Manager to execute a First Amendment to the Development and Transit Way Agreement for the South Link Project Light Rail Project

Summary: The primary purpose of the amendment is to identify the City's 28th/24th Avenue South arterial extension project as an alternative traffic mitigation measure and define Sound Transit's funding commitment to this project.

The City of SeaTac and Sound Transit entered into the Development and Transit Way Agreement for the South Link Project on July 20, 2012. This Agreement included a provision that the City could identify alternative mitigation measures to address project impacts and that Sound Transit would contribute funding toward these eligible alternative mitigation measures in lieu of certain mitigation measures that were identified in the original Development Agreement (DA).

In August 2012 the City conducted a traffic analysis of the 28th/24th Avenue South arterial extension project. This analysis demonstrated that the 28th/24th Avenue South extension would provide an equal or higher level of traffic mitigation than would be provided by certain mitigation measures identified in the Agreement. Sound Transit reviewed this traffic analysis and confirmed its findings. The City and Sound Transit then undertook an effort to determine the value of the projects that would be replaced by the 28th/24th project, as the basis for defining Sound Transit's contribution to the project. Projects that are no longer needed include: (1) a new dedicated right-turn lane for eastbound traffic on South 200th Street turning to travel southbound on IB; and (2) lengthening the existing left-turn pocket for northbound traffic on IB turning to travel westbound on South 204th Street. The combined value of these original mitigation measures is \$3.4 Million, and constitutes Sound Transit's contribution to the 28th/24th Avenue South extension project.

On October 30, 2012 the City and Sound Transit administratively approved a Term Sheet capturing the parties' agreement on these issues. The proposed Amendment formalizes these points of agreement.

In addition, this Amendment memorializes the parties' agreement that in developing pedestrian/bicycle pathways along South 200th Street, the culvert carrying Des Moines Creek under South 200th Street will not be altered in any way that would trigger additional mitigation requirements. While acknowledging Sound Transit's desire to design pathways within the existing environmental envelope, the amendment also guarantees the City that, at a minimum, Sound Transit will provide an eight foot wide shared path on one side of South 200th Street at the Des Moines Creek crossing.

The Amendment also shifts project management responsibility for constructing the sidewalk infill project on South 204th Street from the City to Sound Transit. The project will provide a continuous sidewalk connection between the western driveway of the Brookstone Apartments and IB, which will benefit a multi-family neighborhood to the South and Madrona Elementary to the north. This change is being proposed as a more cost-effective way to deliver the improvement, given the federal funding provisions tied to Sound Transit's financial contributions. As per the original Agreement, Sound Transit will fully fund the design and construction of the sidewalk infill project.

Lastly, the amendment adds language to the Agreement clarifying that 28th/24th Avenue South construction contracts will adhere to Federal Highway Administration provisions. This is to avoid conflicts between Federal Transit Administration and Federal Highway Administration provisions.

The proposed Amendment commits Sound Transit to contribute \$3.4 million dollars toward the construction phase of the 28th/24th Avenue extension project, provided that the City meets the established deadlines outlined in the Agreement.

PH (Continued)

First Amendment to the Development and Transit Way Agreement for the South Link Project Light Rail Project (Continued):

Mayor A. Anderson opened the PH at 7:16 p.m.

Mayor A. Anderson clarified that the presentation on this agreement (Agenda Bill #3472) will take place during this PH, however, Council action is scheduled for the April 9 RCM.

Program Manager Lowry reviewed the agenda bill summary. The remaining schedule is as follows: April 9 - Council action, April 11 - Sound Transit Capital Committee, April 25 – Sound Transit Board action, Spring 2013 – start of construction, and September 2016 – start of service.

CM Forschler stated that this is a good adjustment. He requested staff give feedback to Sound Transit to emphasize the need for the completion of SR 509.

Upon a question posed by CM Ladenburg, Ms. Lowry stated that improvements at South 200th Street and Interstate 5 (I-5) are included as part of the 2016 mitigations. Sound Transit is working with the Washington State Department of Transportation (WSDOT) to figure out how to improve the entire interchange.

CM Ladenburg also stated that as part of the South Link Project, Sound Transit is rebuilding the portion of 28th Avenue South that runs from the south end of the station platform to South 204th Street to a 10-year life cycle with no permanent drainage improvements. He questioned who would be responsible for addressing road quality issues that might arise along this portion of 28th Avenue South before permanent improvements are made with the Kent/Des Moines extension. Ms. Lowry stated that she would follow up with Sound Transit for a response.

Mayor A. Anderson commended staff for their efforts on the traffic mitigation.

There were no public comments.

Mayor A. Anderson closed the PH at 7:32 p.m.

UNFINISHED BUSINESS: There was no Unfinished Business.

NEW BUSINESS: There was no New Business.

CITY MANAGER'S COMMENTS: City Manager Cutts commented on the following: (1) March 30, 9:30 a.m. - Egg Hunt at McMicken Heights Park; and (2) April 3, 6 p.m. - Sound Transit Community Meeting at Madrona Elementary School.

COUNCIL COMMENTS: CM Ladenburg commented on the following: (1) National League of Cities (NLC) conference classes; (2) Angle Lake resident Bud Jones passed away recently; (3) NLC – Mayor's Day of Recognition to National Service; and (4) SR 509 and freight mobility discussion with legislators at the NLC conference.

CM Forschler spoke to public comments made earlier in the meeting: (1) Riverton Heights meetings –the committee was willing to have single-family, but not multi-family, housing; (2) Comprehensive Plan (CP) amendment process should be the same for the City; and (3) agreed that the City shouldn't use taxpayer money for fireworks.

CM T. Anderson thanked the Police Department for their assistance recently.

CM Fernald commented on the following: (1) Council meeting inquiries report - commended staff on the process improvement; (2) received a petition from residents at the Angle Lake Court Apartments residents requesting the City to mediate or cease and assist Comcast from unfair practices and domination of Angle Lake Apartment seniors. Mr. Cutts stated that staff is actively working on the Comcast Franchise Agreement currently and; and (3) attended a business forum for the East African Small Business Association. She thanked ED Manager Robinson for setting it up. Information was provided for anyone wanting to do business in SeaTac.

DM Gregerson commented on the following: (1) upcoming Public Issues Committee (PIC) meeting topics; (2) Federal Legislatives Priorities Committee – successfully presented priority language to all of the separate committees at NLC; (3) also received the petition from the Angle Lake Court Apartments residents – she stated that the community specialist for Comcast is scheduling a meeting during the week of April 15 with the residents; and (4) urged the Mayor to help the City recognize the National Day of Service which is April 9.

COUNCIL COMMENTS (Continued): Mayor A. Anderson commented on his attendance at the NLC Conference, including human trafficking legislation and transportation funding.

ADJOURNED:

MOVED BY T. ANDERSON, SECONDED BY LADENBURG TO ADJOURN THE REGULAR MEETING OF THE SEATAC CITY COUNCIL AT 8:00 P.M.

MOTION CARRIED UNANIMOUSLY.

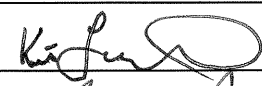
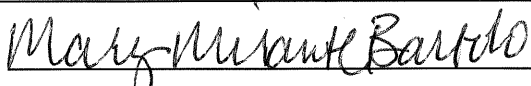


Tony Anderson, Mayor

Kristina Gregg, City Clerk

SeaTac City Council
REQUEST FOR COUNCIL ACTION
 Department Prepared by: Parks and Recreation

Agenda Bill #: 3498

TITLE: An Ordinance amending the City's 2013-2014 Biennial Budget.

March 15, 2013	
<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Info. Only <input type="checkbox"/> Other	
Date Council Action Requested:	RCM 04/9/2013
Ord/Res Exhibits:	
Review Dates:	CSS 03/26/2013
Prepared By:	Kit Ledbetter, Parks and Recreation Director
Director:	
City Attorney:	
Finance:	
BARS #:	Fund 105.000.04.576.10.41.000
City Manager:	
Applicable Fund Name:	Port ILA Fund

mk
349

SUMMARY: The proposed Ordinance amends the City's 2013-2014 Biennial Budget to appropriate an additional \$40,000 (\$20,000 each year) for the staff position of Garden Volunteer Coordinator.

DISCUSSION / ANALYSIS / ISSUES:

During the 2011 budget discussions the City Council agreed to budget \$20,000 per year over five years to support the Highline SeaTac Botanical Garden Volunteer Coordinator position. The \$20,000 has been paid to support the Volunteer Coordinator position in 2011 and 2012 but was inadvertently left out of the 2013-2014 Budget. The requested budget amendment would correct for this omission.

The Volunteer Coordinator works about 20 hours per week during the growing season and is able to accomplish a great deal with the help of volunteers. 110 Community Service volunteers referred by the courts provided an average of 20 hours each or 2200 hours of work in the Garden. 50 Community volunteers provided an average of 20 hours of work (1000 hours), and three work parties provided an additional 600 hours of work. The volunteer coordinator organizes the work schedules of all volunteers and is present when they are working to supervise their work. In addition to leveraging volunteer help, the coordinator also assists with special events in the Garden, the annual plant sale, the Ice Cream Social and other events sponsored by community groups. Presence of the Volunteer Coordinator in the Garden also provides assistance to visitors by giving tours, by answering questions, and by encouraging visitors to return. The volunteer coordinator works closely with the Parks and Recreation staff to be sure that the Highline SeaTac Botanical Garden reflects the high quality standards of the City's public facilities.

RECOMMENDATION(S): It is recommended that the Ordinance be adopted.

FISCAL IMPACT: Expenditures in the City's 2013-2014 Biennial Budget will be increased by \$40,000 in Fund #105, the Port ILA Fund.

ALTERNATIVE(S): Do not adopt the Ordinance. However, this means that the volunteer coordinator position would be severely limited because funding is very minimal through the Garden Foundation operating budget.

ATTACHMENTS: Highline SeaTac Botanical Garden Calendar.

ORDINANCE NO. _____

AN ORDINANCE of the City Council of the City of SeaTac, Washington, amending the 2013-2014 Biennial City Budget by increasing expenditures in Fund 105, the Port ILA Fund, to provide additional funding for the Highline Botanical Garden.

WHEREAS, the City Council decided at the 2011 City Council Budget Workshop that the City would provide \$20,000 per year funding to the Highline Botanical Garden for five years (2011 through 2015); and

WHEREAS, the funding was inadvertently not requested during the 2013-2104 budget process; and

WHEREAS, it is appropriate to provide an additional \$20,000 in funding for the Highline Botanical Garden in 2013 and 2014, to be paid through Fund #105, the Port ILA Fund; and

WHEREAS, and amendment to the City's 2013-2014 Biennial Budget is necessary to provide additional appropriation authority;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON, DO ORDAIN as follows:

Section 1. The 2013-2104 Biennial City Budget shall be amended to increase the expenditures in Fund 105, the Port ILA Fund, by \$40,000.

Section 2. This Ordinance shall be in full force and effect five (5) days after passage and publication as required by law.

ADOPTED this _____ day of _____, 2013, and signed in authentication thereof on this _____ day of _____, 2013.

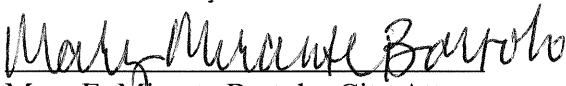
CITY OF SEATAC

Tony Anderson, Mayor

ATTEST:

Kristina Gregg, City Clerk

Approved as to Form:



Mary E. Mirante Bartolo, City Attorney

[Effective Date: _____]

[2013-2014 Budget Amendment Fund 105]

2013 Highline SeaTac Botanical Garden Calendar

Month	Date	Event
January	8	First Tuesday Garden Volunteers
	15	MKL Day - 37 volunteers
February	5	First Tuesday Garden Volunteers
March	5	First Tuesday Garden Volunteers
April	2	First Tuesday Garden Volunteers
	9,10,11	Masa Rock work in Japanese Garden "Cultivate Your Community", SeaTac Community Center 10 am - 5 pm \$7.00 Adults \$5.00 Children and Seniors
	13	Earth Day - Volunteer day
	20	Earth Day - Volunteer day
May	4	Annual Plant Sale 10am - 2 pm
	7	First Tuesday Garden Volunteers
	22	Evergreen Lutheran High School - Day of Service
June	4	First Tuesday Garden Volunteers
	8	Wedding 9am- noon Highline Garden Tour
	12,13,14	Masa Pruning in Seiki Garden
	15	Masa Pruning Class - 20-30 Students
July	2	First Tuesday Garden Volunteers
	27	Wedding 2-5 pm
August		Music in the Garden - set up 4-6pm Music starts @ 6:30 pm Alma y
	2	Azucar - Mexican
	3	Wedding 4 - 7 pm
	6	First Tuesday Garden Volunteers Music in the Garden - set up 4-6pm Music starts @ 6:30 pm Klear
	9	Cut - Mo Town
	10	Wedding 1 -5 pm
	17	Wedding 11:30 am - 3:30 pm
	18	Ice Cream Social noon-3 pm
September	3	First Tuesday Garden Volunteers
October	1	First Tuesday Garden Volunteers
November	5	First Tuesday Garden Volunteers
December	3	First Tuesday Garden Volunteers


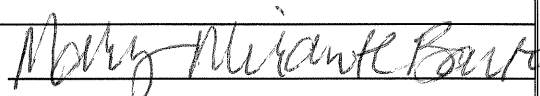


SeaTac City Council

REQUEST FOR COUNCIL ACTION

Department Prepared by: Parks

Agenda Bill #: 3495

TITLE: A Motion to allow the City Manager to enter into a contract with the low bidder for the replacement of the glazing in the City Hall exterior windows.

March 21, 2013	
<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Info. Only <input type="checkbox"/> Other	
Date Council Action Requested: <u>RCM 4/9/13</u>	
Ord/Res Exhibits: _____	
Review Dates: <u>CSS 3/26/13</u>	
Prepared By: <u>Pat Patterson/Facilities Manager</u>	
Director: <u></u>	City Attorney: <u></u>
Finance: <u></u>	BARS #: <u>301.000.04.594.19.62.001</u>
City Manager: <u></u> <u>LKE</u>	Applicable Fund Name: <u>301 Municipal CIP Fund</u>

MK
3/21/13

SUMMARY: This Motion will allow for contracting with Mike Werlech Construction, Inc. for the replacing of the exterior window glass in the City Hall building.

DISCUSSION / ANALYSIS / ISSUES: The glass in the windows in the City Hall building is the original single pane tinted glass installed in the late 1970's. A significant amount of heat is lost in the Winter months and a significant amount of heat is gained in the Summer months. The City had an energy analysis performed by a mechanical engineer in 2012. By installing double paned windows the City will save more than \$15,000 per year on energy consumption. It will eliminate the need for personal space heaters in those offices that have windows. This will also mitigate the 4-5 degree temperature difference between the center areas of these offices and the areas near the windows. The new windows will also be less tinted allowing more natural light into the building.

A request for bids was published in the Seattle Times and in lieu of the Daily Journal of Commerce, also posted on the Builder's Exchange of Washington. A prebid conference was held on Friday, January 25th. Six contractors attended the prebid and several expressed the high degree of difficulty in replacing the glass in the existing frames. The City received 2 bids on February 5th. Both of these bidders have many years of experience in this type of project. The two bids received are:

Mike Werlech Construction Inc.	\$355,019.00
Reflection Industries Inc.	\$390,680.00

RECOMMENDATION(S): It is recommended that the low bid be accepted and a contract entered into with Mike Werlech Construction Inc.

FISCAL IMPACT: The low bid with sales tax and 10% contingency is \$427,620.38. The 301 Municipal CIP Fund has \$431,693.00 allocated for this work over a three year period. The amount in the CIP budget for year 2013 is \$155,943.00. In addition, we applied for and have been awarded a \$100,562.00 grant from the Washington State Department of Commerce for both the replacement of the City Hall glass and replacing the existing parking lot lights with LEDs. The parking lot lighting portion of this award is \$2,450.06. The award is 25% of the cost of both projects without their respective contingencies and is the

maximum allowed by the grant. Approval of this agenda bill will allow the City to accept the grant awarded to the project. It is recommended that Council shift \$35,000 of the 2014 budget appropriation to fiscal year 2013. The result would be a project budget of \$191,384.50 available this year. This would be nearly 50% of the entire project (without contingency) making it a possibility that we could complete the installation in two years instead of three.

ALTERNATIVE(S):

- 1) Rebid the project.
- 2) Do not do the work at this time.
- 3) Do not accept the grant.

ATTACHMENT(S):

None

SeaTac City Council
REQUEST FOR COUNCIL ACTION

Department Prepared by: Legal

Agenda Bill #: 3502

TITLE: A Resolution amending Sections 4, 5, 6, and 8 of the Council Administrative Procedures.

<i>April 2, 2013</i>	
__ Ordinance <input checked="" type="checkbox"/> Resolution __ Motion __ Info. Only __ Other	
Date Council Action Requested:	<u>RCM 04/09/2013</u>
Ord/Res Exhibits:	
Review Dates:	<u>Council Retreat 02/23/2013; SCSS: 03/26/2013</u>
Prepared By:	<u>Mark S. Johnsen, Senior Assistant City Attorney</u>
Director:	<u><i>Mark S. Johnsen, Sr. Asst. City Atty.</i></u>
Finance:	<u><i>[Signature]</i></u>
City Manager:	<u><i>[Signature]</i></u>
City Attorney:	<u><i>Mark S. Johnsen, Sr. Asst. City Atty.</i></u>
BARS #:	<u>N/A</u>
Applicable Fund Name:	<u>N/A</u>

MRK
[Signature]

SUMMARY: The proposed Resolution amends several sections of the Council Administrative Procedures.

DISCUSSION / ANALYSIS / ISSUES: The proposed Resolution amends Sections 4, 5, 6, and 8 of the City Council administrative procedures. The changes to the administrative procedures are summarized as follows:

- The meetings that would be scheduled on the fourth Tuesday of August and December are cancelled for summer and winter recess.
- The start time for the Regular Council Meeting will change from 6:00 p.m. to 6:30 p.m.
- Public comment is allowed during the Study Session. Comments will be limited to 10 minutes total, with individual comments limited to three minutes. The Mayor or designee may reduce equally the amount of time for each speaker so that the total comment time does not exceed ten minutes.
- Public comment related to the consent agenda is removed. However, public comment related to Action Items and unfinished business items is added (one minute per individual and two minutes per group). The public comment related to new business is modified to the same time limits as public comment for Action Items.
- Other miscellaneous housekeeping changes.

This agenda item was discussed at the March 26, 2013 Council Study Session. At that time, it was proposed that changes to Section 13 related to Councilmember travel be removed. Therefore, the proposed Resolution makes no changes to Section 13 of the Administrative Procedures.

RECOMMENDATION(S): No Staff recommendation is made as this is a City Council decision.

FISCAL IMPACT: None.

ALTERNATIVE(S): Do not pass the Resolution.

ATTACHMENTS: None.

RESOLUTION NO. _____

A RESOLUTION of the City Council of the City of SeaTac, Washington amending Sections 4, 5, 6, and 8 of the Council Administrative Procedures.

WHEREAS, RCW 35A.12.120 requires that the Council shall determine its own rules and order of business and may also establish rules for the conduct of meetings and the maintenance of order; and

WHEREAS, in conformance with these statutes, the Council has previously adopted administrative policies and procedures; and

WHEREAS, the City Council finds it appropriate to amend the City Council Administrative Procedures in accordance with this Resolution;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON HEREBY RESOLVES as follows:

Section 1. Section 4 of the City Council Administrative Procedures is hereby amended to read as follows:

Section 4. Meetings

- (A) **Meetings declared open and public.** All meetings of the City Council and its Committees shall be open to the public and all persons shall be permitted to attend any meeting of these bodies.
- (B) **Study Sessions.** The City Council shall hold Study Sessions on the second and fourth Tuesday of each month at 4:00 p.m. except if at any time any Study Session falls on a holiday, the Council shall meet on the next business day at the same hour. The City Council shall meet at SeaTac City Hall, unless otherwise publicly announced. Meetings may be canceled by majority vote of the Council and public notice given by posting such notice at City Hall. Notwithstanding the above, there shall be no City Council Meeting on the fourth Tuesday during the months of August and December for summer and winter recess.
- (C) **Regular Meetings.** The City Council shall meet regularly on the second and fourth Tuesday of each month at ~~6:00~~30 p.m. except if at any time any Regular Meeting falls on a holiday, the Council shall meet on the next business day at the same hour. The City Council shall meet at SeaTac City Hall, unless otherwise publicly announced. Meetings may be canceled by majority vote of the Council and public notice given by posting such

notice at City Hall. Notwithstanding the above, there shall be no City Council Meeting on the fourth Tuesday during the months of August and December for summer and winter recess.

- (D) **Special Meetings.** Special Meetings may be called by the Mayor or ~~three~~ four Councilmembers by written notice delivered to each member of the Council and City Clerk at least 24 hours before the time specified for the proposed meeting. Legal and public notice requirements must be met by posting the appropriate notice of the Special Meeting at City Hall. See RCW 42.30.080.
- (E) **Adjournments.** Any Regular, adjourned Regular, Special or adjourned Special Meeting may be adjourned in the manner as set forth in RCW 42.30.090.
- (F) **Continuances.** Any Hearing being held or ordered to be held by the City Council may be continued in the manner set forth by RCW 42.30.100.
- (G) **Executive Sessions.** The City Council may hold an Executive Session during any City Council meeting ~~a Regular or Special Meeting~~ to consider certain matters as set forth in RCW 42.30.110, or as otherwise permitted by law.
- (H) **Quorum.** At all Meetings of the City Council, four members shall constitute a quorum for the transaction of business.
- (I) **Seating.** Members of the City Council will be seated at the Council table according to position number of Councilmembers, except that, at the Mayor's discretion, the Mayor may be seated at the center seat and the Deputy Mayor may be seated directly to the left of the Mayor.
- (J) **Minutes.** Minutes of all meetings of the Council will be included in the Regular Meeting Consent Agenda for consideration and approval. Regular Council Meetings shall be recorded and such recordings shall be maintained and kept for future reference, in accordance with the applicable records retention schedule.

Section 2. Section 5 of the City Council Administrative Procedures is hereby amended to read as follows:

Section 5. Format for Agendas for Council Meetings

- (A) The City Manager and the City Clerk will prepare a proposed agenda for all meetings of Council, which shall be approved by the Mayor or designee. After the proposed agenda has been approved, the City Clerk shall prepare the final Council packet, which shall be distributed.
- (B) The City Council shall hold Study Sessions in order to address City business in advance of Regular Council Meetings.
 - (1) ~~The City Manager shall provide a~~ Appropriate Staff, appropriate members of City Commissions or Advisory Committees, or appropriate subject matter experts to may provide presentations and be available to answer any questions posed by the City

Council.

~~(2) Items addressed at a Study Session will be handled in one of the following ways: will be referred to the next Study Session agenda unless:~~

~~_____ (i) unanimous consent by the Councilmembers present to place the item on a future Council Meeting Consent Agenda;~~

~~(1ii) a majority of Councilmembers present place the items addressed:~~

- ~~• On a future Council Agenda as a item on the Consent Agenda;~~
- On a future Council Agenda as an Action Item;
- On a future Study Session Agenda; or

~~(2iii) a majority of the membership of the City Council determine that the item should no longer be discussed at a Study Session or Regular Council Meeting.~~

(3) Ordinarily, items may not be referred to the Regular Council Meeting on the same day as the Study Session in which the item was discussed, unless the Mayor or a majority of the Councilmembers present agree that there are extraordinary or urgent circumstances or that it is in the best interest of the City.

(4) At the beginning of a Council Study Session, the City Council shall hear Public Comments.

(i) Public Comments shall be limited to a total of ten minutes and individual comments shall be limited to three minutes. However, the Mayor or designee may reduce equally the amount of time each speaker may comment so that the total public comment time does not exceed ten minutes.

(ii) The Mayor or designee shall be responsible for the allocation of the appropriate time limitations, and any Councilmember may raise a point of order regarding comments that are disrespectful in tone or content, or are otherwise inappropriate.

(C) The format of the Regular City Council Meeting agenda shall substantially be as follows:

(1) Call to Order.

(2) Roll Call.

(3) Pledge of Allegiance.

(4) Public Comments.

(a) Individual comments shall be limited to three minutes in duration.

- (b) Group comments shall be limited to ten minutes. To constitute a group, there must be four or more members, including the speaker, at the meeting. Members of the group shall sign in as a group and identify the group's spokesperson. Individuals identified as a part of the group will not be allowed to speak individually.
- (c) The Mayor or designee shall be responsible for the allocation of the appropriate time limitations, and any Councilmember may raise a point of order regarding comments that are disrespectful in tone or content, or are otherwise inappropriate.
- (5) Presentations, including introduction of new employees, awards, and Certificates of Appointment, Appreciation, or Recognition.

(6) Consent Agenda.

- (a) Contains items placed on the Consent Agenda by the Mayor or Council including but not limited to:

- Approval of vouchers.
- ~~Approval of \$5,000 – \$35,000 purchase requests.~~
- Approval of donations and grant requests to be received by the City.
- Pre-approval or final approval of City Council Councilmember and City Manager travel related expenses and related reimbursement requests or City issued mastercard expenses.
- Approval of minutes.
- Enactment of Ordinances, Resolutions, and Motions when placed on the Consent Agenda at a Council Study Session or previous Council Meeting.
- Final Acceptance of Public Works projects valued at under \$50,000 in total cost.
- Notwithstanding the above, any item may be removed from the Consent Agenda for consideration under unfinished business if so requested by any Councilmember.

- (b) A motion at this time will be in order.

- ~~(c) Public Comments regarding Consent Agenda.~~

- ~~Individual comments regarding the Consent Agenda shall be limited to one minute in duration and group comments shall be~~

~~limited to two minutes. The Mayor or designee shall be responsible for the allocation of the appropriate time limitations.~~

(dc) The Council will vote upon the Consent Agenda.

(7) Public Hearings.

(a) At Public Hearings required by City, State, or Federal law or as Council may direct, where a general audience is in attendance to present input or arguments for or against a public issue:

- The City Manager or designee shall present the issue to the Council and respond to questions.
- Members of the public may speak for no longer than five minutes. No member of the public may speak for a second time until every person who wishes to speak has had an opportunity.
- Councilmembers may ask questions of the speaker and the speaker may respond, but may not engage in further debate. ~~The public comments will then be closed but Councilmanic discussion may ensue if the Council so desires. In the alternative, the Public Hearing may be continued by majority vote, or the Council may recess to deliberate and determine findings of fact, if appropriate, and to reach a final decision which may be announced immediately following such deliberations or at a subsequent date.~~
- The public comments will then be closed but Councilmanic discussion may ensue if the Council so desires. In the alternative, the Public Hearing may be continued by majority vote, or the Council may recess to deliberate and determine findings of fact, if appropriate, and to reach a final decision which may be announced immediately following such deliberations or at a subsequent date.

(b) The following procedure shall apply to quasi-judicial Public Hearings:

- The Hearings Examiner, City Manager, or designee will present a summary of the subject matter and any findings and will respond to Council questions.
- The proponent spokesperson shall speak first and be allowed twenty minutes and Council may ask questions.
- The opponent spokesperson shall be allowed 20 minutes for presentation and Council may ask questions.
- Each side shall then be allowed five minutes for rebuttal.

- After each proponent and opponent has used his/her speaking time, Council may ask further questions of the speakers, who may respond.
- The Mayor may exercise a change in the procedures, but said decision may be overruled by a majority vote of the City Council.

(8) Action Items (as related to a Public Hearing).

(9) Public Comments related to Action Items and Unfinished Business

(a) Individual comments shall be limited to one minute in duration and group comments shall be limited to two minutes. The Mayor or designee shall be responsible for the allocation of the appropriate time limitations.

~~(910)~~ Action Items. This section of the agenda shall include Ordinances, Resolutions, and Motions. The following procedures shall apply to each item listed on the agenda under this section:

- The Mayor or designee may read the item by title only, or if requested by any Councilmember, the document may be read in its entirety.
- The City Manager or designee may give a presentation to provide clarification or to discuss changes in an agenda item from what was discussed at a Study Session. Appropriate Staff, appropriate members of City Commissions or Advisory Committees, or appropriate subject matter experts should be available to answer any questions posed by the City Council.
- A motion at this time will be in order.
- The Council may then discuss the item. The City Manager or designee will be available to answer any questions by the Council.
- The Council will vote upon the item under consideration.

~~(4011)~~ Unfinished Business. This section shall include items removed from the Consent Agenda at the same meeting. The procedures that apply during this section shall be the same as those under Section 910, Action Items.

~~(4112)~~ New Business ~~(not related to a Public Hearing)~~. ~~This section of the agenda shall include Ordinances, Resolutions, and Motions not previously discussed at a Study Session or Regular or Special Council Meeting.~~ The procedures that apply during this section shall be the same as those under Section 910, Action Items. If the City Council votes on any item under this Section, public comment shall be allowed, with individual comments limited to ~~two~~ one minutes in duration and group comments limited to ~~five~~ two minutes in duration.

~~(4213)~~ City Manager Comments. Reports on special interest items from the City

Manager.

~~(1314)~~ Council Comments.

~~(1415)~~ Executive Session, if scheduled or called. However, an Executive Session may be scheduled or called at any time if deemed by the Mayor or by action of the Council to be appropriate at some point in time other than at the end of the meeting. The procedure for conduct of an Executive Session is set forth at Section 12 of these Administrative Procedures.

~~(1516)~~ Adjournment. A Motion to Adjourn.

(D) The format of any Special Meeting shall be as follows:

Special Meetings are meetings in which the date and/or time are set outside of a regular schedule. Only the designated agenda item(s) shall be considered. The format will follow that of a Regular Meeting, as appropriate. Applicable provisions of Section 7 shall govern conduct of Special Meetings.

Section 3. Section 6 of the City Council Administrative Procedures is hereby amended to read as follows:

Section 6. Miscellaneous Agenda Procedures

(A) The City Council desires to provide adequate time for administration and staff analysis, fact finding and preparation.

(1) Except in extraordinary or unusual circumstances, all items that are not routine in nature shall, when presented, include a completed Council agenda bill. The author of the agenda bill shall be responsible for attachments.

(B) In event of extraordinary or unusual circumstances, items may be placed directly on the agenda of a Regular Meeting when the items are approved by the Mayor or two Councilmembers by motion and second, when:

(1) The items are routine in nature such as approval of vouchers, proclamations, acknowledgment or receipt of petitions or documents or discussion of claims for damages, or

(2) An emergency condition exists that represents a personnel hazard, risk of immediate financial loss, or threat to public health, welfare, safety, or property or institutions. In such instances, a summary should clearly define why the special procedure is necessary, or

(3) In the event the sponsor, other than a Councilmember, of any item to come before the City Council feels it both appropriate and beneficial to the City, he/she may request that such item be considered and, with approval of two Councilmembers, by motion and second, the Council shall decide on the appropriateness of that item being placed on the agenda.

- (C) The Mayor or City Manager may affix an approximate time limit for each agenda item at the time of approval of the agenda.
- (D) All proposed Ordinances, Resolutions, and Motions shall be reviewed by the City Attorney and bear his/her certification that they are in correct form prior to its final passage. All accompanying documents shall be available before Ordinances, Resolutions, and Motions can be passed.
- (E) Ordinances and Resolutions of the City Council shall be signed by the Mayor, City Attorney and City Clerk.
- (F) A joint Resolution of the City Council and the Mayor may be proposed when:
 - (1) The subject of the Resolution is of broad City concern, and the subject contains Council policy and administrative procedure; or
 - (2) The subject of the Resolution is of ceremonial or honorary nature.
 - * Joint Resolutions will be subject to the voting rules and will be signed by the Mayor, City Attorney and City Clerk. The Council may provide for all Councilmembers signing the joint Resolution enacted.
- (G) Councilmembers will inform the City Manager or City Clerk if they are unable to attend any Council Meeting. If the Council elects to accept, the minutes will show the Councilmember as having an excused absence. The City Clerk will announce any absences during roll call at a Regular Council Meeting. If there is no objection from the Council, the absence will be deemed excused and noted accordingly in the minutes.

Section 4. Section 8 of the City Council Administrative Procedures is hereby amended to read as follows:

Section 8. Parliamentary Procedures and Motions

- (A) Questions of parliamentary procedure not covered by this Chapter shall be governed by Robert's Rules of Order, Newly Revised (latest edition).
 - (1) If a motion does not receive a second, it dies. Motions that do not need a second include: Nominations, withdrawal of motion by the person making the motion, agenda order, request for a roll call vote, and point of order or privilege.
 - (2) A motion that receives a tie vote is deemed to have failed.
 - (3) When making motions, be clear and concise and not include arguments for the motion within the motion.
 - (4) After a motion and second, the Mayor will indicate the names of the Councilmembers making the motion and second.
 - (5) After a motion has been made and seconded, the Councilmembers may discuss

their opinions on the issue prior to the vote.

- (6) If any Councilmember wishes to abstain from a vote on the motion, pursuant to the provisions of Section 9 hereof, that Councilmember shall so advise the City Council, and shall remove and absent himself/herself from the deliberations and considerations of the motion, and shall have no further participation in the matter. Such advice shall be given prior to any discussion or participation on the subject matter or as soon thereafter as the Councilmember perceives a need to abstain, provided that, prior to the time that a Councilmember gives advice of an intent to abstain from an issue, the Councilmember shall confer with the City Attorney to determine if the basis for the Councilmember's intended abstention conforms to the requirements of Section 9. If the intended abstention can be anticipated in advance, the conference with the City Attorney should occur prior to the meeting at which the subject matter would be coming before the City Council. If that cannot be done, the Councilmember should advise the City Council that he/she has an "abstention question" that he/she would want to review with the City Attorney, in which case, a brief recess would be afforded the Councilmember for that purpose.
- (7) A motion may be withdrawn by the maker of the motion at any time without the consent of the Council.
- (8) A motion to table is not debatable and shall preclude all amendments or debates of the issue under consideration. A motion to table is to be used in instances where circumstances or situations arise which necessitate the interruption of the Councilmembers' consideration of the matter before them. A motion to table, if passed, shall cause the subject matter to be tabled until the interrupting circumstances or situations have been resolved, or until a time certain, if specified in the motion to table. To remove an item from the table in advance of the time certain requires a two-thirds majority vote.
- (9) A motion to postpone to a certain time is debatable, amendable and may be reconsidered at the same meeting. The question being postponed must be considered at a later time at the same meeting, or to a time certain at a future Regular or Special Council Meeting.
- (10) A motion to postpone indefinitely is debatable, not amendable, and may be reconsidered at the same meeting only if it received an affirmative vote.
- (11) A motion to call for the question shall close debate on the main motion and is not debatable. This motion must receive a second and fails without a two-thirds' vote; debate is reopened if the motion fails.
- (12) A motion to amend is defined as amending a motion that is on the floor and has been seconded, by inserting or adding, striking out, striking out and inserting, or substituting.
- (13) Motions that cannot be amended include: Motion to adjourn, agenda order, lay on

the table, roll call vote, point of order, reconsideration and take from the table. A motion to amend an amendment is not in order.

- (14) Amendments are voted on first, then the main motion as amended (if the amendment received an affirmative vote).
 - (15) Debate of the motion only occurs after the motion has been moved and seconded.
 - (16) The Mayor or City Clerk should repeat the motion prior to voting.
- (B) The City Clerk will take a roll call vote, if requested by the Mayor, a Councilmember, or as required by law.
- (C) When a question has been decided, any Councilmember who voted in the majority may move for a reconsideration, but no motion for reconsideration of a vote shall be made until the next Regular Council Meeting.
- (D) The City Attorney shall decide all questions of interpretations of these rules and other questions of a parliamentary nature which may arise at a Council Meeting. All cases not provided for in these rules shall be governed by Robert's Rules of Order, Newly Revised.

PASSED this _____ day of _____, 2013 and signed in authentication thereof on this _____ day of _____, 2013.

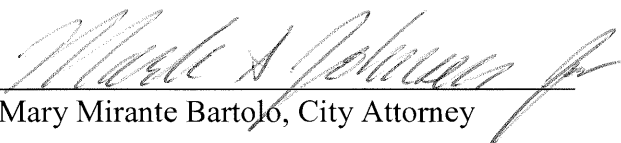
CITY OF SEATAC

Tony Anderson, Mayor

ATTEST:

Kristina Gregg, City Clerk

Approved as to Form:







Mary Mirante Bartolo, City Attorney

[Amend City Council Administrative Procedures March 2013]

SeaTac City Council
REQUEST FOR COUNCIL ACTION
 Department Prepared by: City Manager's Office

Agenda Bill #: **3472**

TITLE: A Resolution authorizing the City Manager to execute a First Amendment to the Development and Transit Way Agreement for the South Link Light Rail Project.

March 21, 2013	
<input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Info. Only <input type="checkbox"/> Other	
Date Council Action Requested:	RCM 04/09/13
Ord/Res Exhibits:	Exhibit A: First Amendment to Development Agreement with Exhibits
Review Dates:	RCM 03/26/13; Public Hearing: 03/26/13
Prepared By:	Soraya Lowry, Program Manager
Director:	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"></div> <div style="width: 45%;">City Attorney: </div> </div>
Finance:	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"></div> <div style="width: 45%;">BARS #: 307.337.00.00.002</div> </div>
City Manager:	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"></div> <div style="width: 45%;">Applicable Fund Name: Transportation CIP Fund</div> </div>

MR

SUMMARY: The proposed Resolution authorizes the City Manager to execute, in substantially the same form as attached, the First Amendment to the Development and Transit Way Agreement between the City and Sound Transit for the South Link Project. The primary purpose of the Amendment is to identify the City's 28th/24th Avenue South arterial extension project as an alternative traffic mitigation measure and define Sound Transit's funding commitment to this project.

DISCUSSION / ANALYSIS / ISSUES: The City of SeaTac and Sound Transit entered into the Development and Transit Way Agreement for the South Link Project on July 20, 2012. This Agreement included a provision that the City could identify alternative mitigation measures to address project impacts and that Sound Transit would contribute funding toward these eligible alternative mitigation measures in lieu of certain mitigation measures that were identified in the original Development Agreement.

In August, 2012 the City conducted a traffic analysis of the 28th/24th Avenue South arterial extension project. This analysis demonstrated that the 28th/24th Avenue South extension would provide an equal or higher level of traffic mitigation than would be provided by certain the mitigation measures identified in the Agreement. Sound Transit reviewed this traffic analysis and confirmed its findings. The City and Sound Transit then undertook an effort to determine the value of the projects that would be replaced by the 28th/24th project, as the basis for defining Sound Transit's contribution to the project. Projects that are no longer needed include 1) a new dedicated right-turn lane for eastbound traffic on South 200th Street turning to travel southbound on International Boulevard and 2) lengthening the existing left-turn pocket for northbound traffic on International Boulevard turning to travel westbound on South 204th Street. The combined value of these original mitigation measures is \$3.4 Million, and constitutes Sound Transit's contribution to the 28th/24th Avenue South extension project.

On October 30, 2012 the City and Sound Transit administratively approved a Term Sheet capturing the parties' agreement on these issues. The proposed Amendment formalizes these points of agreement.

In addition, this Amendment memorializes the parties' agreement that in developing pedestrian/bicycle pathways along South 200th Street, the culvert carrying Des Moines Creek under South 200th Street will not be altered in any way that would trigger additional mitigation requirements. While acknowledging Sound Transit's desire to design pathways within the existing environmental envelope, the amendment also

guarantees the City that, at a minimum, Sound Transit will provide an eight foot (8') wide shared path on one side of South 200th Street at the Des Moines Creek crossing.

The Amendment also shifts project management responsibility for constructing the sidewalk infill project on South 204th Street from the City to Sound Transit. The project will provide a continuous sidewalk connection between the western driveway of the Brookstone Apartments and International Boulevard, which will benefit a multi-family neighborhood to the South and Madrona Elementary to the north. This change is being proposed as a more cost-effective way to deliver the improvement, given the federal funding provisions tied to Sound Transit's financial contributions. As per the original Agreement, Sound Transit will fully fund the design and construction of the sidewalk infill project.

Lastly, the amendment adds language to the Agreement clarifying that 28th/24th Avenue South construction contracts will adhere to Federal Highway Administration provisions. This is to avoid conflicts between Federal Transit Administration and Federal Highway Administration provisions.

RECOMMENDATION(S): It is recommended that the City Council pass the proposed Resolution.

FISCAL IMPACT: The proposed Amendment commits Sound Transit to contribute \$3.4 million dollars toward the construction phase of the 28th/24th Avenue extension project, provided that the City meets the established deadlines outlined in the Agreement.

ALTERNATIVE(S): Do not pass the Resolution. However, this will likely mean that the original mitigation measures would be constructed by Sound Transit, creating significant impacts to properties along South 200th Street and International Boulevard and lengthening pedestrian crossings. Additionally, the City's 28th/24th Avenue South project would lose a \$3.4 Million funding opportunity.

ATTACHMENTS: 1) Development Agreement Amendment (with additions and strikethroughs).

RESOLUTION NO. _____

A RESOLUTION of the City Council of the City of SeaTac, Washington, authorizing a First Amendment to the Development and Transit Way Agreement between the City and Central Puget Sound Regional Transit Authority.

WHEREAS, the City and the Central Puget Sound Regional Transit Authority (Sound Transit) entered into a Development and Transit Way Agreement dated July 20, 2012; and

WHEREAS, the City and Sound Transit find that it is appropriate to amend the July 20, 2012 Agreement; and;

WHEREAS, notice was published pursuant to SMC 16A.13.010, and the Council held a public hearing on March 26, 2013; and

WHEREAS, the Council finds that the attachment Amendment is appropriate;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC,

WASHINGTON HEREBY RESOLVES as follows:

1. The City Manager is authorized to execute, on behalf of the City, a First Amendment to the Development and Transit Way Agreement with Sound Transit, generally in the form attached to this Resolution as Exhibit A.
2. The City Clerk shall cause the fully executed document to be filed with the King County Recorder, consistent with the terms of RCW 36.70B.190 and the Development Agreement.

PASSED this _____ day of _____, 2013 and signed in authentication thereof on this _____ day of _____, 2013.


CITY OF SEATAC

Tony Anderson, Mayor

ATTEST:

Kristina Gregg, City Clerk

Approved as to Form:



Mary E. Mirante Bartolo, City Attorney

[Sound Transit Development Agreement Amendment #1]

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

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

RECITALS

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

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

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

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

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

1.0 Purpose of this First Amendment.

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

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

6.2 South 200th Street Station Improvements by Sound Transit

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

- (a) Frontage improvements on South 200th Street from International Blvd. to 26th Avenue South, including paved vehicular lanes, bike lanes, curb, gutter, sidewalk, storm drainage, illumination, and landscaping. Additional rights-of-way necessary to construct these improvements will be acquired by Sound Transit and dedicated to the City.
- (b) A new, dedicated right-turn lane for eastbound traffic on South 200th Street turning to travel southbound on International Boulevard. Additional rights-of-way necessary to construct these improvements will be acquired by Sound Transit and dedicated to the City. However, this mitigation measure is not required if Sound Transit contributes funding towards the Alternative Mitigation Measure referred to in Section 6.4.
- (c) A new traffic signal on South 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.
- (d) 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 acquired by Sound Transit and dedicated to the City.
- (e) 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 the 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 acquired by Sound Transit and dedicated to the City.
- (f) Rebuilding of 28th Avenue South from the south end of the Station platform to South 204th Street, including reconstruction of the South 204th Street and 28th Avenue South intersection, to either:

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

in accordance with the September 7, 2012 concept design plans, “South Corridor 30% Submittal: Roadway Improvements: 28th Avenue S./International Boulevard/S. 200th Street” 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.

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

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

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

6.3 South 200th Street Station Area Improvements by the City

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

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

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

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

6.4 Alternative Mitigation Measure

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

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

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

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

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

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

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

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

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

8.1 Reimbursement Procedures

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

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

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

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

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

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

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

8.2 Qualifying Subjects of Reimbursement

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

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

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

- (b) Structural Review. The cost of conducting structural review and approval of the Project's structural design but only to the extent that such review is not funded by permit fees paid to the City by Sound Transit and PROVIDED THAT, in no case shall Sound Transit pay the City more than One Hundred Fifty Thousand Dollars (\$150,000) over and above Project building permit fees for this type of review.

- (c) Staff Time Dedicated to the Project. In order to facilitate expedited review and approval of the Project, to obtain a higher level of service than the City would otherwise be able to provide with its existing staff, and to mitigate the direct financial impact of the Project upon the City, Sound Transit shall reimburse the City for the direct costs incurred by the City in excess of the City's typically anticipated costs associated with reviewing plans and performing construction inspections as provided in adopted application and permit fees. Upon selection of the Project contractor by Sound Transit, the parties shall work cooperatively in good faith to determine if any modifications to this subsection 8.2(c) are necessary regarding expenditures of future City staff time. For the purposes of this Agreement, "staff time" shall mean the time dedicated to the Project by regular employees of the City and employees of any consulting firm retained by the City to assist in facilitating expedited review and approval of the Project. Sound Transit agrees to reimburse the City for the three different categories of staff time as described in subsection (i) through (iii) below, subject to the limitations in subsection (iv), below:
 - (i) Sound Transit shall reimburse the City for the cost of City staff time dedicated to the Project during the period from November 2010 until July 20, 2012 (the date the Development Agreement was executed by the parties), PROVIDED THAT, Sound Transit's total financial reimbursement to the City under this subsection (i) shall not exceed One Hundred Fifty-Two Thousand Dollars (\$152,000), unless otherwise mutually agreed in advance by the Parties.

 - (ii) Sound Transit shall reimburse the City for that proportion of the salaries of City staff commensurate with the proportion of each staff member's time dedicated to the Project, as measured in FTEs (Full Time Equivalents) during the period from the date after the Development Agreement is executed by the parties until one hundred twenty (120) days after the design/build contract for the Project is awarded by the Sound Transit board, PROVIDED THAT, the City shall dedicate no fewer than 2.5 FTEs to the Project during this period and FURTHER PROVIDED THAT, Sound Transit's reimbursement under this section (c)(ii) shall not exceed the cost of 3.8 FTEs regardless of the actual number of City staff dedicated to the Project.

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

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

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

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

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

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

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

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

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

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

9.0 Effect of this First Amendment.

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

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

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

THE CITY OF SEATAC

By: _____
Joan M. Earl, Chief Executive Officer

By: _____
Todd Cutts, City Manager

Date: _____

Date: _____

Approved as to form:

Approved as to form:

By: _____
Joanna Valeri, Legal Counsel

By: _____
Mary Mirante Bartolo, City Attorney

Authorized by Motion No. _____

Authorized by Resolution No. _____

DA Section	ITEM	DA Commitment
<u>3rd Pary Phase</u>		
8.2	Peer Reviews	\$26,000
8.2	Structural Review	\$150,000
8.2	Supplemental Staff Time	\$1,811,000
3rd Party Total		\$1,987,000
<u>Construction Phase</u>		
6.5	Fire Truck	\$600,000
	Project Mitigations	
6.3	2030 Traffic	\$445,000
6.4	Alternative Mitigations	\$3,400,000
	<i>Subtotal Project Mitigations</i>	<i>\$3,845,000</i>
Construction Total		\$4,445,000
DA Amendment Total		\$6,432,000

EXHIBIT F-1. Traffic Impact Mitigation Measures and Non-Motorized Transportation Improvements



Exhibit M**Procurement Requirements****Federally Required and Other Model Contract Clauses**

1. Fly America Requirements
2. Buy America Requirements
3. Cargo Preference Requirements
4. Energy Conservation Requirements
5. Clean Water Requirements
6. Pre-Award and Post Delivery Audit Requirements
7. Lobbying
8. Access to Records and Reports
9. Federal Changes
10. Clean Air
11. Recycled Products
12. No Government Obligation to Third Parties
13. Program Fraud and False or Fraudulent Statements and Related Acts
14. Termination
15. Government-wide Debarment and Suspension (Nonprocurement)
16. Privacy Act
17. Civil Rights Requirements
18. Breaches and Dispute Resolution
19. Disadvantaged Business Enterprises (DBE)
20. Incorporation of Federal Transit Administration (FTA) Terms

1. FLY AMERICA REQUIREMENTS

49 U.S.C. § 40118

41 CFR Part 301-10

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

Mandatory Clause/Language

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

3. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241

46 CFR Part 381

Applicability to Contracts

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

4. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.
49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA:

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

5. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements:

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding

\$100,000 financed in whole or in part with Federal assistance provided by FTA.

6. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

49 U.S.C. 5323

49 CFR Part 663

Applicability to Contracts

These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Flow Down

These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language

Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.

- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

-- Specific language for the Buy America certification is mandated by FTA regulation,

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended,"

49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

7. LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying

contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

8. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Flow Down

FTA does not require the inclusion of these requirements in subcontracts.

Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u> a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital Projects	None None unless ¹ non-competitive award	Those imposed on state pass thru to Contractor	None Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None None unless non-competitive award	None None unless non-competitive award	None None unless non-competitive award
<u>II Non State Grantees</u> a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital Projects	Yes ³ Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes Yes	Yes Yes	Yes Yes	Yes Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

9. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or

promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

10. CLEAN AIR
42 U.S.C. 7401 et seq
40 CFR 15.61
49 CFR Part 18

Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Model Clauses/Language

No specific language is required. FTA has proposed the following language.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

11. RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Flow Down

These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language

No specific clause is mandated, but FTA has developed the following language.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

12. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence

by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**13. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS**
31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a

contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

14. TERMINATION
49 U.S.C. Part 18
FTA Circular 4220.1E

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

a. Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient)*directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may

terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor

was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in

writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience or Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its

contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

15. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by **{insert agency name}**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **{insert agency name}**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

16. PRIVACY ACT **5 U.S.C. 552**

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

17. CIVIL RIGHTS REQUIREMENTS

**29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

18. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1E

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall

continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

19. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (*see* section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is __ %. A separate contract goal **[of __ % DBE participation has] [has not]** been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. ***{If a separate contract goal has been established, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (*see* 49 CFR 26.53(3)).

{If no separate contract goal has been established, use the following} The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

e. The contractor must promptly notify **{insert agency name}**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **{insert agency name}**.

20. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS **FTA Circular 4220.1E**

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by

DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

Attachment #1

Copy of Amendment showing changes from the original agreement (additions and strikethroughs marked).

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

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

RECITALS

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

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

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

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

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

1.0 Purpose of this First Amendment.

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

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

6.2 South 200th Street Station Improvements by Sound Transit

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

- (a) Frontage improvements on South 200th Street from International Blvd. to 26th Avenue South, including paved vehicular lanes, bike lanes, curb, gutter, sidewalk, storm drainage, illumination, and landscaping. Additional rights-of-way necessary to construct these improvements will be acquired by Sound Transit and dedicated to the City.
- (b) A new, dedicated right-turn lane for eastbound traffic on South 200th Street turning to travel southbound on International Boulevard. Additional rights-of-way necessary to construct these improvements will be acquired by Sound Transit and dedicated to the City. However, this mitigation measure is not required if Sound Transit contributes funding towards the Alternative Mitigation Measure referred to in Section 6.4.
- (c) A new traffic signal on South 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.
- (d) 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 acquired by Sound Transit and dedicated to the City.
- (e) 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 the 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 acquired by Sound Transit and dedicated to the City.

- (f) Rebuilding of 28th Avenue South- from the south end of the Station platform to South- 204th Street, including reconstruction of the South- 204th Street and 28th Avenue South- intersection, to either:

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

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

in accordance with the September 7, 2012 concept design plans, “South Corridor 30% Submittal: Roadway Improvements: 28th Avenue S./International Boulevard/S. 200th Street” 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. 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.

- (g) 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. In developing the pedestrian/bicycle pathways along S. 200th Street, the parties agree that the culvert carrying Des Moines Creek under S. 200th Street shall not be altered in any way that would increase coverage or shading of the Creek’s waters or impinge permanently upon the Creek’s buffer zone in such a way as would trigger the City’s, or other authority having jurisdiction, mitigation requirements during the permitting process. As a result the parties agree that at a minimum, an eight foot (8’) wide shared path on one side of South 200th Street will be provided across Des Moines Creek.
- (h) Improvements to I-5/Military/S. 200th intersection as negotiated between Sound Transit and WSDOT and approved by the City.

- (i) Lengthening the existing left- turn pocket for northbound traffic on International Boulevard turning to travel westbound on South 204th Street. The additional turn pocket length will be taken from the existing median such that no additional right of way will need to be acquired by Sound Transit. However, this mitigation measure is not required if Sound Transit contributes funding towards the Alternative Mitigation Measure referred to in Section 6.4.
- (j) South 204th Street: sidewalk infill on the south side of the street to provide continuous pedestrian connection between the western driveway of the Brookstone Apartments and International Boulevard.

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

6.3 South 200th Street Station Area Improvements by the City

In connection with the construction of the Project, and no later than ~~January~~ May 31, 2013, Sound Transit shall contribute to the City a total lump sum amount of \$445,000 ("2030 Mitigation Payment") to provide partial funding assistance for the City to design and construct the South 200th Street Station Area Improvements depicted in Exhibit F-1. ~~These improvements 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).~~ This contribution by Sound Transit will satisfy Sound Transit's funding toward the following category of improvements:

- ~~(a) 204th Street: sidewalk infill on south side of street to provide continuous pedestrian connection between western driveway of Brookstone Apartments and International Boulevard. (\$410,300)~~
- (ba) Mitigations required in 2030: Sound Transit's traffic studies indicate that growth in area background traffic will trigger the need for additional mitigating improvements by 2030. The City will be responsible for implementing mitigation measures required after the Project opens for revenue service, and Sound Transit shall contribute funding toward the total cost of such mitigation measures in proportion to the effect of light rail transit patrons' driving to/from the Station upon area network performance, as depicted in Exhibit F-1. ~~Sound Transit's payment of \$445,000~~The 2030 Mitigation Payment is the true and full present value of Sound Transit's contribution to the future cost of these capital improvements and shall fulfill all of its obligations to the City relating to the future traffic impacts of the Project described in this subsection.

Section 6.3 (b) defines Sound Transit's financial responsibility for traffic mitigation measures required in 2030. The ~~a~~Alternative ~~m~~Mitigation ~~m~~Measure described in Section 6.4 will eliminate the need for many of the mitigation measures required in 2030, as identified in the Agreement. Therefore, ~~t~~The amount of Sound Transit's payment defined in 6.3 (a) will remain unchanged and the City will be solely responsible to determine the appropriate application of these funds, whether to the ~~a~~Alternative ~~m~~Mitigation ~~m~~Measure or to other, future mitigation measures.

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

6.4 Alternative Mitigation Measures

~~In the event that the~~The City is able to identify~~has identified~~ an ~~a~~Alternative ~~m~~Mitigation ~~m~~Measures that will perform as well as, or better than, those identified above,⁵ Sound Transit will contribute to the City Three Million Four Hundred Thousand Dollars (\$3,400,000), which has been determined to be the full value of a mutually agreed upon portion of the funds, for implementing the identified mitigation measures listed above in Sections 6.2(b), 6.2(i), and the difference in cost between Urban Access standards and Local Access standards identified in Section 6.2 (f), to the agreed-upon aAlternative ~~m~~Mitigation ~~m~~Measures (the "Alternative Mitigation Payment"), PROVIDED THAT, the City shall be responsible for all design, environmental review, federal, state, and local permitting, and all other soft costs associated with the ~~a~~Alternative ~~m~~Mitigation ~~m~~Measures and for any construction costs that exceed ~~Sound Transit's contribution~~the Alternative Mitigation Payment.

This alternative mitigation process depends upon timely implementation by the City for it to succeed. Time is of the essence with respect to the City's deadlines below. Any failure by the City (other than schedule delays resulting from events of force majeure as described in Section 27.9) to meet the schedule set forth below shall render the alternative mitigation process terminable by Sound Transit at its election. Any election by Sound Transit to excuse one or more schedule failures by the City shall in no way limit its ability to terminate the alternative mitigation process in the event of subsequent failures. ~~A~~Termination by Sound Transit of the alternative mitigation process shall not release Sound Transit from its other obligations above described in Section of the 2012 Agreement, as unmodified by this First Amendmentthis Agreement. The identified ~~a~~Alternative ~~m~~Mitigation ~~m~~Measures must comply with the following implementation schedule milestones, unless otherwise agreed in writing by the Parties:

- (a) ~~Parties shall execute a term sheet by September 28, 2012 detailing cost estimates based on 30% design studies and the full value of mitigation measures identified above that may be supplanted by alternative mitigation measures, thereby identifying the amount of funding that may be available to contribute to an alternative mitigation measure;~~

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

If this alternative mitigation process is not terminated by Sound Transit, Sound Transit will contribute to the City the Alternative Mitigation Payment will be made the mutually agreed upon amount toward the alternative mitigation measure no earlier than thirty (30) days, and no later than one hundred eighty (180) days, following the City's award of the applicable construction contract in the form of reimbursements for payments made by the City under the construction contract for the Alternative Mitigation Measure. The process to reimburse the City is set forth in Section 8.1 of this Agreement. In exchange for any Upon payment by Sound Transit pursuant to this Section of the Alternative Mitigation Payment, Sound Transit may request and the City shall provide a written release, executed by the City Manager, from releasing Sound Transit from its 's related mitigation obligations identified in Sections 6.2 (b) and 6.2(i) above, and the obligation to construct the mitigation identified in Section 6.2 (f) to "Urban Access" standards above.

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

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

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

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

8.1 Reimbursement Procedures

(a)- Unless expressly stated otherwise, the procedures and requirements of this subsection shall apply to all subjects of reimbursement under subsection 8.2.

(a)(i) The City shall invoice Sound Transit on a quarterly basis based on actual expenditures of staff time in excess of that typically covered by building permit and other administrative permit fees. The City shall provide Sound Transit with sufficient documentation to show that the direct costs invoiced to Sound Transit under this Agreement are for goods and services that would not have been covered by the amount of permit fees paid by Sound Transit or its contractors. Invoices shall bear a purchase order number (currently #136203) and be addressed to Sound Transit, Accounts Payable, 401 S. Jackson Street, Seattle, WA 98104. Within thirty (30) calendar days after Sound Transit's receipt of any complete and accurate City invoice, Sound Transit shall remit the reimbursement for the amount of valid expenditures.

(bii) 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.

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

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

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

complete and accurate City invoice, Sound Transit shall remit the reimbursement for the amount of cost invoiced.

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

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

8.2 Qualifying Subjects of Reimbursement

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

- (a) Peer Review. The cost of conducting peer review of the Project's noise & vibration report technical memorandum (dated June 30, 2011) and the parking demand study interim technical memorandum (dated January 14, 2011) for a total amount not to exceed Twenty-Six Thousand Dollars (\$26,000).
- (b) Structural Review. The cost of conducting structural review and approval of the Project's structural design but only to the extent that such review is not funded by permit fees paid to the City by Sound Transit and PROVIDED THAT, in no case shall Sound Transit pay the City more than One Hundred Fifty Thousand Dollars (\$150,000) over and above Project building permit fees for this type of review.
- (c) Staff Time Dedicated to the Project. In order to facilitate expedited review and approval of the Project, to obtain a higher level of service than the City would otherwise be able to provide with its existing staff, and to mitigate the direct financial impact of the Project upon the City, Sound Transit shall reimburse the City for the direct costs incurred by the City in excess of the City's typically anticipated costs associated with reviewing plans and performing construction inspections as provided in adopted application and permit fees. Upon selection of the Project contractor by Sound Transit, the parties shall work cooperatively in good faith to determine if any modifications to this subsection 8.2(c) are necessary

regarding expenditures of future City staff time. For the purposes of this Agreement, "staff time" shall mean the time dedicated to the Project by regular employees of the City and employees of any consulting firm retained by the City to assist in facilitating expedited review and approval of the Project. Sound Transit agrees to reimburse the City for the three different categories of staff time as described in subsection (i) through (iii) below, subject to the limitations in subsection (iv), below:

- (i) Sound Transit shall reimburse the City for the cost of City staff time dedicated to the Project during the period from November 2010 until July 20, 2012 (the date the Development Agreement ~~is~~was executed by the parties), PROVIDED THAT, Sound Transit's total financial reimbursement to the City under this subsection (i) shall not exceed One Hundred Fifty-Two Thousand Dollars (\$152,000), unless otherwise mutually agreed in advance by the Parties.
- (ii) Sound Transit shall reimburse the City for that proportion of the salaries of City staff commensurate with the proportion of each staff member's time dedicated to the Project, as measured in FTEs (Full Time Equivalents) during the period from the date after the Development Agreement is executed by the parties until one hundred twenty (120) days after the design/build contract for the Project is awarded by the Sound Transit board, PROVIDED THAT, the City shall dedicate no fewer than 2.5 FTEs to the Project during this period and FURTHER PROVIDED THAT, Sound Transit's reimbursement under this section (c)(ii) shall not exceed the cost of 3.8 FTEs regardless of the actual number of City staff dedicated to the Project.
- (iii) Sound Transit shall reimburse the City for that proportion of the salaries of City staff commensurate with the proportion of each staff member's time dedicated to the Project, as measured in FTEs (Full Time Equivalents) during the period from one hundred twenty-one (121) days after the design/build contract for the Project is awarded by the Sound Transit board and the date that Project revenue service begins, PROVIDED THAT, the City shall dedicate no fewer than 3.0 FTEs to the Project during this period and FURTHER PROVIDED THAT, Sound Transit's obligation under this section (c)(iii) shall equate to no less than eighteen (18) months of salary for the applicable dedicated staff, even if Project revenue service begins sooner, and FURTHER PROVIDED THAT, the City shall hire, and Sound Transit shall reimburse the City for additional staff dedicated to the Project if Sound Transit determines that 3.0 FTEs is not adequate and Sound Transit requests in writing that the City hire additional dedicated staff.
- (iv) Sound Transit's reimbursement to the City will be made for actual hours expended by city staff on the Project and documented by the City (excluding staff time covered by building permit fees as described

in Section 8.2(c)), PROVIDED THAT, those hours of City staff assigned at less than 1.0 FTE each must exceed those covered by the permit fees paid by Sound Transit to the City, and FURTHER PROVIDED THAT, nothing in this subsection shall be construed to allow an increase in the not-to-exceed amounts set forth in subsections (i) through (iii) above.

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

10.18 Sound Transit's design and construction of the Project is subject to a financial assistance contract between Sound Transit and the Federal Transit Administration ("FTA"). In addition, the Alternative Mitigation Measure identified in Section 6.4 and depicted in Exhibit F-1 of this Agreement will be partially funded through a grant received by the City through the Federal Highway Administration (FHWA). The FTA requires the incorporation of applicable federal provisions into agreements executed by Sound Transit on projects which use federal funds.

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

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

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

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

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

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

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

9.0 Effect of this First Amendment.

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

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

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

THE CITY OF SEATAC

By: _____
Joan M. Earl, Chief Executive Officer

By: _____
Todd Cutts, City Manager

Date: _____

Date: _____

Approved as to form:

Approved as to form:

By: _____
Joanna Valeri, Legal Counsel

By: _____
Mary Mirante Bartolo, City Attorney

Authorized by Motion No. _____

Authorized by Resolution No. _____