

**TRANSITWAY AGREEMENT BETWEEN THE CITY OF BELLEVUE AND
THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY FOR
THE EAST LINK PROJECT**

This TRANSITWAY AGREEMENT (“Agreement”), effective this day of _____, 2011, is entered into between the CITY OF BELLEVUE, a Washington municipal corporation (“City”), and the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (“Sound Transit”), a regional transit authority. For and in consideration of the mutual covenants contained herein, the City and Sound Transit do hereby agree as follows regarding the Sound Transit East Link Project.

RECITALS

WHEREAS, The City is a non-charter optional municipal code city incorporated under the laws of the State of Washington, with authority to enact laws and enter into agreements to promote the health, safety and welfare of its citizens and for other lawful purposes.

WHEREAS, Sound Transit is a regional transit authority created pursuant to chapters 81.104 and 81.112 RCW with all powers necessary to implement a high capacity transit system within its boundaries in King, Pierce, and Snohomish Counties, and Sound Transit is implementing the East Link Project pursuant to its statutory authority and the voter approved Sound Transit 2 plan.

WHEREAS, on November 4, 2008, Central Puget Sound area voters approved the Sound Transit 2 plan, a package of transit improvements and expansions including increased bus service, increased commuter rail service, an expansion of link light rail, and improved access to transportation facilities and Sound Transit is implementing the East Link Project pursuant to its statutory authority described above and the voter approved Sound Transit 2 plan.

WHEREAS, the expansion of link light rail approved in the Sound Transit 2 plan includes an expansion of light rail from Downtown Seattle to Mercer Island, downtown Bellevue, and the Overlake Transit Center with stations serving Mercer Island, South Bellevue, downtown Bellevue, Bel-Red and Overlake areas.

WHEREAS, both before and since the public vote on Sound Transit 2, Bellevue has been engaged in extensive planning efforts for deploying light rail, including but not limited to the Bel-Red Plan, the Light Rail Best Practices Report and amendments to its Comprehensive Plan.

WHEREAS, segments of the East Link Project will be constructed and operated within Bellevue, with associated impacts and benefits for residents, businesses and visitors to Bellevue.

WHEREAS, the parties recognize the mutual benefits of a tunnel alignment through downtown Bellevue, including that such an alignment maximizes the ability of

Sound Transit's high capacity light rail system to meet long-term regional transportation needs, increases run-time predictability and light rail operational performance, while avoiding additional congestion on downtown streets and impacts to the homes and businesses in downtown Bellevue.

WHEREAS, since the public vote on Sound Transit 2, Bellevue and Sound Transit have cooperated in efforts to identify and develop a financially feasible tunnel route through Downtown Bellevue.

WHEREAS, the parties' cooperative efforts have resulted in a shorter, less expensive tunnel alternative than the alternatives originally identified in the DEIS, known as the C9T alternative.

WHEREAS, Bellevue has demonstrated a willingness to cooperate and partner with Sound Transit in order to make the C9T affordable by reducing Sound Transit's project costs through Bellevue or by undertaking projects that reduce costs or add value to the project.

WHEREAS, on April 23, 2010 the City and Sound Transit entered into a Term Sheet which provided a general framework regarding the City's funding contributions and commitments for the East Link Project if the C9T tunnel alternative were to be ultimately selected by the Sound Transit Board as a component of the East Link Project.

WHEREAS, on July 28, 2011, the Sound Transit Board selected the alignment and station locations for construction of the East Link Project from downtown Seattle to the cities of Mercer Island, Bellevue and Redmond as set forth in Sound Transit Resolution R2011-10, incorporated by reference herein, and which includes the C9T tunnel alternative.

WHEREAS, on August 10, 2011, the City and Sound Transit entered into another Term Sheet which further defined the City's funding contributions and commitments and called for the parties to enter into good-faith negotiations to produce a binding umbrella MOU on or before October 25, 2011, unless extended by the parties, which addresses at least the following issues: (a) C9T tunnel funding, (b) project cost updating, cost reconciliation, and risk and benefit sharing procedures, (c) use of City right-of-way and associated terms and conditions, (d) a description of the applicable City codes and regulations and potential regulatory changes, (e) and design modifications to the project scope.

WHEREAS, the City has identified potential City Requested Modifications to portions of the alignment selected by the Sound Transit Board as described in Sound Transit Resolution No. R2011-10 (dated July 28, 2011), which modifications would seek to address impacts to the surrounding neighborhoods through design options to avoid or minimize noise, visual and transportation system impacts, particularly in the B Segment and any additional environmental review of these modifications will occur as described in this MOU.

WHEREAS, the City owns and operates public rights-of-way, utilities, parks and other infrastructure and improvements within the City, that will be impacted by certain Project improvements. The City is responsible for managing streets and rights-of-way and public utilities within its jurisdiction for a variety of uses and public benefits, including public safety. The parties intend to enter into a separate Transitway Agreement which will provide for Sound Transit's temporary and long term use of City right-of-way.

WHEREAS, the City is responsible for administering state and local land use laws and development regulations that will apply to planning, design, development and operation of the Project. Such development regulations and land use laws, including but not limited to the Growth Management Act ("GMA"), Shoreline Management Act ("SMA") and SEPA, grant the City authority to exercise its land use powers in review of permits related to the Project and nothing herein is intended to waive such authority.

WHEREAS, the Growth Management Act (RCW 36.70A) provides that regional transportation facilities are essential public facilities and the Project is an essential public facility.

WHEREAS, the parties have a joint interest in serving Bellevue, the eastside and the Puget Sound region with high quality, convenient public transit, and the Project has the potential to provide a reliable, high frequency transportation option for Bellevue residents and regional commuters, and to benefit the eastside and Bellevue residents and workers by linking to multiple destinations in the region.

WHEREAS, the parties have a joint interest in ensuring that the Project incorporates design and mitigation measures appropriate to its impacts and represents a high-quality investment for taxpayers, the City and Sound Transit.

WHEREAS, the parties anticipate that additional agreements may be necessary to ensure successful completion of the Project.

WHEREAS, the parties desire to cooperatively identify design modifications for the Project, develop a protocol for sharing information in a timely manner and at stages of the Project appropriate to ensure adequate consideration of issues identified by either party, develop communication and decision making standards that maximize transparency and efficiency in decision making, and build effective cooperation between the parties.

NOW THEREFORE, in consideration of mutual promises and covenants contained herein, the Parties agree to the terms and conditions as follows:

1.0 DEFINITIONS

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

- 1.1 Memorandum of Understanding. “Memorandum of Understanding” or “MOU,” means the Memorandum of Understanding approved by appropriate action of the City and of Sound Transit, contemporaneously with this Agreement.
- 1.2 City. “City” means the City of Bellevue and any successor or assignee following an assignment that is permitted under this Agreement.
- 1.3 Emergency. “Emergency” means, except as otherwise provided, a sudden, unexpected occurrence or set of circumstances demanding immediate action in order to prevent and/or avoid an imminent threat to public health or safety, public or private property, or to prevent and/or avoid serious environmental degradation.
- 1.4 Final Right-of-Way Plans. “Final Right-of-Way Plans” means City and Sound Transit approved prints, or mutually acceptable electronic media, showing in detail the proposed construction and specifications of the Light Rail Transit System, including alignment drawings showing exact limits of the Light Rail Transit Way mathematically tied to existing City monumentation.
- 1.5 Liability. “Liability” means all loss, damage, cost, expense (including costs of investigation and attorneys’ fees and expenses at arbitration, trial or appeal and without institution of arbitration or suit), claims and demands of whatever kind or nature (including those arising under the Federal Employers Liability Act), arising out or relating to this Agreement or occurring on or relating to the Light Rail Transit System described herein.
- 1.6 Light Rail Transit Facility. “Light Rail Transit Facility” means a structure, rail track, equipment, maintenance base or other improvement of a Light Rail Transit System, including but not limited to ventilation structures, traction power substations, utilities serving the Light Rail Transit System, Light Rail Transit

stations and related passenger amenities, bus layover and inter-modal passenger transfer facilities, park-and-ride lots, and transit station access facilities.

- 1.7 Light Rail Transit System. “Light Rail Transit System” means a public rail transit line that operates at grade level or above or below grade level, and that provides high-capacity, regional transit service owned or operated by a regional transit authority authorized under chapter 81.112 RCW. A Light Rail Transit System may be designed to share a street right-of-way although it may also use a separate right-of-way.
- 1.8 Light Rail Transit Way. “Light Rail Transit Way” means the areas of the Public Rights-of-Way occupied by Sound Transit for its Light Rail Transit System after construction pursuant to this Agreement, as shown on the record drawings of the Final Right-of-Way Plans approved by the City and on file with the City Clerk.
- 1.9 Parties. “Parties” means the City of Bellevue and Sound Transit.
- 1.10 Passenger. “Passenger” means any person who is not an employee or agent of Sound Transit, and who is using any Sound Transit Light Rail Transit System Facility.
- 1.11 Project. “Project” means the segments of the light rail system in the City of Bellevue as described in in the MOU incorporated by reference herein.
- 1.12 Public Rights-of-Way. “Public Rights-of-Way” means all public streets and property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, sidewalks, bikeways and horse trails, whether improved or unimproved, including the air rights, sub-surface rights and easements related thereto
- 1.13 Routine Maintenance and Operation. “Routine Maintenance and Operation” means Sound Transit’s maintenance and operation of the Light Rail Transit System that does not require (i) the excavation of materials that would alter or disturb the Public Right-of-Way; (ii) closure or other modifications of the Public Right-of-Way in a way that impedes the flow of pedestrian or vehicular traffic or (iii)the use of heavy machinery within fifty (50) feet of or upon the Public Right-of-Way.
- 1.14 Sound Transit. “Sound Transit” means the Central Puget Sound Regional Transit Authority, and any other entity to the extent such entity, as permitted under this Agreement, is exercising any rights to operate the Light Rail Transit System over any portion of the Light Rail Transit Way pursuant to a specific written grant of such rights by Sound Transit.

- 1.15 Third Party. “Third Party” means any person other than the City or an employee of the City and any person other than Sound Transit or an employee of Sound Transit.

2.0 COOPERATION AND GOOD FAITH EFFORTS

- 2.1 The Parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. In this regard, communication of issues, changes, or problems that arise in the acquisitions, in identifying the parcels or property rights to be transferred, or with any aspect of the performance of terms of this Agreement should occur as early as possible in the process, and not wait for explicit due dates or deadlines. Each party agrees to work cooperatively and in good faith toward resolution of any such issues in a manner that ensures adequate time for each party to work through issues.
- 2.2 The Parties acknowledge that this Agreement contemplates the execution and delivery of a number of future documents, instruments and permits, the final form and contents of which are not presently determined. The Parties agree to provide the necessary resources and to work in good faith to diligently and timely develop the final form and contents of such documents, instruments and permits.

3.0 PERMITS

- 3.1 Sound Transit, at its sole cost and expense, shall (i) secure and maintain in effect, all federal, state and local permits and licenses required for the construction, operation and maintenance of the Light Rail Transit System, including, without limitation, crossing, zoning, building, health, environmental, Right of Way Use and communication permits and licenses, and (ii) indemnify the City against payment of the costs thereof and against any fines or penalties that may be levied for failure to procure, or to comply with, such permits or licenses, as well as any remedial costs incurred by the City in curing any such failures.
- 3.2 The City shall not hinder Sound Transit’s attempts to secure, obtain, and maintain, at Sound Transit’s sole cost and expense, any permits, licenses or approvals of other governmental agencies or authorities, or of any necessary Third Parties, for the use of any structures or facilities consistent with the cooperative goals outlined in the MOU and this Agreement.
- 3.3 Nothing in this Agreement shall be deemed a waiver of the City’s regulatory authority nor a predetermination of the compliance of the Project with applicable codes and regulations.
- 3.4 Sound Transit’s design and construction of the Project is subject to a financial assistance contract between Sound Transit and the Federal Transit Administration (“FTA”). Both parties recognize that the FTA may request a

change to this Agreement to comply with its funding requirements. The Parties agree to consider any such request in good faith.

4.0 LIGHT RAIL TRANSIT WAY

- 4.1 a) The City hereby grants in accordance with this Agreement to Sound Transit, its successors and assigns, a non-exclusive use of portions of the Public Right-of-Way, the general location of which is described and depicted on Exhibit "A," attached and incorporated herein, and the general profile of which is described and depicted on Exhibit "B". The general location and profile, shown on Exhibit A and B and as the same may be amended pursuant to the MOU and this Agreement, together shall be known as a Light Rail Transit Way. This grant is for the purpose of enabling Sound Transit to construct, operate, maintain, and own a Light Rail Transit System and the Light Rail Transit Facilities in the Light Rail Transit Way in accordance with the terms and conditions of this Agreement.
- b) The City's Transportation Director and Sound Transit's Executive Director of Design Engineering Construction Management may, from time to time, jointly revise and modify Exhibits "A" and "B" to conform to the Final Construction Plans and the Final Right-of-Way Plans as long as the revisions are, in their professional judgment, within the scope and intent of Exhibit "A." Upon completion of construction of the Light Rail Transit System and Light Rail Facilities, the approved As-Built Final Right of Way Plans and Final Construction Plans shall be filed with the City Clerk.
- c) Sound Transit expressly agrees that it will construct, operate and maintain the Light Rail Transit System in compliance with this Agreement and all applicable City permits, ordinances and state and federal laws.
- 4.2 The non-exclusive use of the Light Rail Transit Way granted herein is solely for the purpose of, construction, maintenance, operation, and ownership of the Light Rail Transit System detailed in the Final Construction Plans and for no other purpose. Sound Transit intends, and shall have the right to use the Light Rail Transit Way solely for Light Rail Transit System uses. Subsequent to construction of the Light Rail Transit Facilities authorized in accordance with the approved building permit plans, the Final Right-of-Way Plans, and any other necessary approvals, Sound Transit shall not construct any additions or expansions to the Light Rail Transit System on or along the Light Rail Transit Way without the City's written consent, including but not limited to all necessary permits and approvals. Notwithstanding the foregoing, nothing contained herein shall prevent Sound Transit from replacing Light Rail Transit Facilities or equipment existing after construction after first obtaining any necessary permits or other authorization from the City.

- 4.3 Sound Transit understands and agrees that during the normal course of Light Rail Transit Way use, the City may engage in construction, maintenance, demolition, leasing, licensing, permitting, and similar activities that have the potential to cause interruption to the Light Rail Transit System. Sound Transit understands and agrees that such activities may be caused, from time to time, by reasons including but not limited to: (1) traffic conditions; (2) public safety; (3) construction of facilities which constitute permissible uses of the Public Rights-of-Way; (4) repair of facilities which constitute permissible uses of the Public Rights-of-Way (including resurfacing or widening); (5) change of grade to facilities within the Public Rights-of-Way; (6) response to emergencies and natural disasters; and (7) construction, installation, maintenance, or repair of sewers, drains, water pipes, power lines, signal lines, traffic control devices, tracks, communications systems, public works, public facilities or improvements, or any other utilities. The City acknowledges that Sound Transit has a formal procedure referred to as a "Track Access Permit" and agrees to address in the standard operating procedures referenced in Section 6.4 coordination with Sound Transit on access to the Light Rail Transit Way. At a minimum, the City agrees to exercise its reasonable best efforts to provide written notice to Sound Transit of such activities within the Light Rail Transit Way, to the extent they are permitted or controlled by the City, at least forty-eight (48) hours prior to commencement of the work, unless an Emergency exists as defined herein or as defined in the City's Right of Way Use code, now or as hereafter amended. The City shall further exercise its reasonable best efforts to ensure that any such activities done by or for the City shall be undertaken in a manner that avoids or minimizes, to the extent practical given the nature of the activities and resources available, disruption to operation of the Light Rail Transit System.
- 4.4 Sound Transit understands that the rights granted herein are non-exclusive. The City shall have the right to grant other non-exclusive uses or occupancies of the Light Rail Transit Way. The City agrees that such uses or occupancies shall not unreasonably impair the ability of Sound Transit to operate and maintain the Light Rail Transit System.
- 4.5 This Agreement does not authorize the provision of any services by Sound Transit other than services strictly related to the operation and maintenance of the Light Rail Transit System. Sound Transit's use of the Light Rail Transit Way for anything other than a Light Rail Transit System shall require written permission or permits from the City.
- 4.6 Unless otherwise provided in this Agreement or in other City project approvals or agreements, Sound Transit shall own all tracks and other Light Rail Transit Facilities on the Light Rail Transit Way. Nothing in this Agreement, however, shall be construed as granting to Sound Transit any interest or right in the Light Rail Transit Way or the non-Light Rail Transit System improvements on the Light Rail Transit Way other than the rights expressly provided herein.

- 4.7 No rights shall pass to Sound Transit by implication. Without limiting the foregoing, by way of example and not limitation, this Agreement shall not include or be a substitute for:
- (a) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City; or
 - (b) Any permit, agreement or authorization required in connection with operations on or in public streets or property, including by way of example and not limitation, Right of Way Use permits; or
 - (c) Any permits or agreements for occupying any other property of the City to which access is not specifically granted by this Agreement.
- 4.8 This Agreement shall not be read to diminish or in any way affect the authority of the City to control and charge for the use of its water, storm, solid waste and wastewater utilities. In the event that Sound Transit desires to use such facilities, Sound Transit must obtain any necessary permits and approvals as required by the City, which shall not be unreasonably withheld.
- 4.9 In the event that Sound Transit acquires real property that the Parties agree should be transferred to the City for Public Right of Way, such real property shall be transferred to the City pursuant to the procedures provided in Bellevue City Code without further compensation from the City.
- 4.10 After the City's standard maintenance bond period has expired, the City shall maintain all landscaping and stormwater improvements (including but not limited to rain gardens) associated with the Project and located in the Public Rights-of-way, and as provided in a subsequent future agreement between the parties.

5.0 PLAN REVIEW AND CONSTRUCTION

- 5.1 Sound Transit shall obtain approval from the City for construction of the Project through submittal of the appropriate applications as described in this Agreement, Bellevue City Code, and subsequent agreements prior to any such work commencing. Final Construction Plans must be accompanied by Final Right of Way Plans. Prior to advertisement of the first Project construction contract by Sound Transit, Sound Transit shall submit a Construction Mitigation Plan, which may be developed through the MOU Collaborative Design Process, to the City for its review and approval, and such Plan shall be reviewed, conditioned and approved or denied in accordance with the City's codes and regulations, and consistent with any applicable agreement between the parties regarding the Plan or contents of the Plan.

- 5.3 As promptly as possible, but in no event later than six months after each segment of the Light Rail Transit System is “finaled” under its respective Right of Way Use permit, Sound Transit shall furnish to the City record drawings of the Final Construction Plans and Final Right-of-Way Plans showing the as-built condition. These record drawings shall be provided in paper and associated electronic AUTOCADD format.
- 5.4 During construction of the Light Rail Transit System, Sound Transit may utilize and fence portions of the Public Right-of-Way for the temporary storage of construction equipment and materials subject to conditions and provided that such use has been approved through Right-of-Way Use permits issued pursuant to Bellevue City Code.
- 5.5 The Parties recognizes that the Light Rail Transit System is a public transportation improvement. The Parties will cooperate by notifying any conflicting non-City owned utilities and private utilities to relocate when necessary at such utilities’ expense, to the extent provided by law, city franchise or city right of way use agreement. Such notification shall be consistent with applicable franchise, agreements and other provisions in existence regarding the process for requesting and requiring relocation, including the timing of requests and information provided to such utilities to support the relocation request. Sound Transit agrees that it will coordinate with all utilities to minimize utility relocation costs and related construction, and will negotiate with non-City owned utilities on relocation costs and cost allocation. Sound Transit shall fully indemnify and hold harmless the City from any claim or lawsuit and undertake the defense of any litigation directed at the City arising from such relocation to accommodate the construction of the Light Rail Transit System. The City shall cooperate with Sound Transit in the defense of any such claim.
- Except as otherwise provided herein or in the MOU, Sound Transit shall pay for any relocation or protection of City-owned utilities that the City determines is necessary due to construction or operation of the Light Rail Transit System. The specific allocation of costs of such relocation or protection shall be as set forth in the MOU.
- 5.6 Sound Transit, at Sound Transit’s sole cost and expense, shall furnish all materials, parts, components, equipment and structures necessary to construct and operate the Light Rail Transit System, or any part thereof, in accordance with this Agreement. Any and all work by Sound Transit shall be done in a good and workmanlike manner, in conformity with all applicable engineering, safety, and other statutes, laws, ordinances, regulations, rules, codes, orders, permits, approvals or specifications of any public body or authority having jurisdiction.
- 5.7 All facilities and installations must meet or exceed applicable specifications of the City and be in compliance with all existing federal, state and local laws, ordinances and regulations.

- 5.8 During any work of any character by Sound Transit at locations of the Light Rail Transit Facilities, and in accordance with the Final Construction Plans, Sound Transit shall support the tracks and roadbed of the Light Rail Transit System in such a manner as is necessary for the safe operation of the Light Rail Transit System and ordinary use of the Public Right-of-Way.
- 5.9 If, during construction, there is an Emergency the Light Rail Transit System creates, or contributes to, an imminent danger to health, safety, or property that Sound Transit is unable to immediately address, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Light Rail Transit System without prior notice, and Sound Transit shall pay for costs incurred by the City. The City shall provide notice of such Emergency or other danger to Sound Transit as soon as practicable, taking into consideration the nature and complexity of the Emergency or other imminent danger.
- 5.11 Sound Transit shall promptly repair any and all Public Right-of-Way and public property that is disturbed or damaged during the construction of its Light Rail Transit System to the same condition as existing prior to construction or as required under any applicable permit. In the event Sound Transit does not comply with the foregoing requirement, the City may, upon seven calendar days' advance notice to Sound Transit, take actions to restore the Public Right-of-Way or public property at Sound Transit's sole cost and expense.
- 5.12 Sound Transit's design and construction of the Project is subject to a financial assistance contract between Sound Transit and the Federal Transit Administration ("FTA"). Both parties recognize that the FTA may request a change to this Agreement to comply with its funding requirements. The Parties agree to consider any such request in good faith.

6.0 ENTRY NOTICE

- 6.1 Sound Transit, its employees and agents shall have access to the Public Right-of-Way in connection with Sound Transit's construction, operation, and maintenance of the Light Rail Transit System as is reasonably necessary in accordance with this Agreement and permit conditions established under Right of Way Use permits issued for each construction segment; provided, however, except to the extent expressly provided in this Agreement, this right of access shall not be deemed to require the City to take any actions or expend any funds to enable such persons to exercise such rights of access, and provided further that such access may not unreasonably interfere with or disrupt, other than in ways approved in advance by the City by permit, the use of the Light Rail Transit Way by the City or Third Parties in and along the Light Rail Transit Way.

- 6.2 During construction, Sound Transit shall provide the City at least 48 hours advance written notice before initial entry upon any portion of the Public Right-of-Way for construction purposes.
- 6.3 After completion of construction of the Project, any entry by Sound Transit onto the Public Rights of Way that is not pursuant to the Routine Maintenance and Operation of the Light Rail Transit System or for purposes relating to an Emergency shall require (i) advance written notice from Sound Transit to the City not less than ten (10) days prior to Sound Transit's planned entry, with notice to specify the purpose of the entry; (ii) an approved City Right of Way Use permit, which approval shall not be unreasonably withheld, conditioned or delayed, taking into account the nature of the proposed entry.
- 6.4 In order to maintain safe and efficient operations of the Light Rail Transit Facilities, the Parties shall jointly develop standard operating procedures for the City's entry and access to Light Rail Transit Facilities before commencement of Project construction.

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

- 7.1 Sound Transit shall operate, maintain, and repair its Light Rail Transit System in compliance with all federal, state, and local laws, ordinances, and regulations and practices affecting such system, which includes, by way of example and not limitation, the obligation to operate, maintain, and repair in accordance with the applicable provisions of Bellevue City Code and standards. In addition, the operation, maintenance, and repair shall be performed in a manner consistent with industry standards, with any agreed "standard operating procedures" developed by the parties pursuant to Section 6.4 above, and in such a manner as to minimize disruption to other users of the Public Rights-of-Way. Sound Transit shall exercise reasonable care in the performance of all its activities and shall use industry accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.
- 7.2 Sound Transit personnel may enter the Light Rail Transit Way for Routine Maintenance and Operation without notice to the City. Maintenance and operations activities that are outside of the Light Rail Transit Way or impact the Public Rights of Way shall require permit approval by the City, which approval shall not be unreasonably withheld or delayed, taking into account the nature of the proposed entry.
- 7.3 Except in cases of Emergency or Routine Maintenance and Operation, Sound Transit's operation, maintenance, or repair of its Light Rail Transit System shall not commence until all required permits have been properly applied for and

obtained from the proper City officials and, unless otherwise agreed to by the City, all required associated fees paid, including, but not limited to the costs of permit application review and inspection.

- 7.4 In the event of an Emergency that interrupts or significantly disrupts operation of the Light Rail Transit System and for purposes of taking immediate corrective action, Sound Transit personnel may enter the Public Rights of Way as long as such entry is for the sole purpose of addressing the Emergency. Verbal or telephonic notice of the location and manner in which entry is required shall be given to the City's Right of Way Use Division immediately upon notice of the Emergency. Written notice via a Right of Way Use Permit, including plans for any necessary work required to follow-up on the Emergency action taken shall be provided to the City as soon as is reasonable following the initial Emergency action.
- 7.5 Sound Transit shall promptly repair any and all Public Right-of-Way or other public property that is disturbed or damaged during the operation, maintenance, or repair of its Light Rail Transit System. Public property and Public Right-of-Way must be restored to the same condition as before the disturbance or damage occurred or in accordance with the terms and conditions of any permit issued for the operation, maintenance or repair that resulted in the disturbance or damage.
- 7.6 The City shall have no responsibility for inspecting, maintaining, servicing or repairing any trains or other equipment used by Sound Transit as part of the Light Rail Transit System, but all such equipment shall at all times comply with applicable federal, state, and local governmental requirements.
- 7.7 In the event of an Emergency, or where the Light Rail Transit System creates, or is contributing to, an imminent danger to health, safety, or property that Sound Transit is unable to immediately address, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Light Rail Transit System without prior notice, and Sound Transit shall pay to the City the cost of any such action undertaken by the City. The City shall provide notice of such danger as soon as practicable thereafter, taking into consideration the nature and complexity of the Emergency or other imminent danger.
- 7.8 If identified and agreed in a future agreement between the parties, upon final acceptance by the City, the City shall assume all maintenance responsibilities for all betterments and improvements to Public Rights-of-Way dedicated to the City. Until such final acceptance, any betterments and improvements remain the sole responsibility of Sound Transit.
- 7.9 Sound Transit shall, on the request of any third party holding a valid Right of Way use or other appropriate permit by a governmental authority, temporarily raise or lower its wires to permit moving of buildings or other loads. Sound Transit may require that the expense of such temporary removal or raising or lowering of wires be paid in advance by the requesting third party

8.0 FACILITY LOCATION SIGNS

8.1 Sound Transit, at its sole cost, expense and risk, shall furnish, erect and thereafter maintain signs showing the location of all Sound Transit facilities. Signs shall be in conformance with applicable requirements of Bellevue City Code and Sound Transit shall obtain all necessary permits and approvals for such signage prior to installation.

9.0 LIABILITY, INDEMNIFICATION

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

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

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

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

10.0 INSURANCE

10.1 Sound Transit shall maintain, throughout the term of this Agreement and for six years after its termination, an appropriate program of insurance, self-insurance, or any combination thereof in amounts and types sufficient to satisfy its liabilities. When commercial insurance is utilized, Sound Transit shall secure

and maintain in effect insurance adequate to protect the City against claims or lawsuits that may arise as a result of the design, construction, operation, maintenance, repair, removal, occupancy, or use of the Light Rail Transit System in the Light Rail Transit Way, including, without limitation: (i) commercial general liability insurance; (ii) workers' compensation insurance (to the extent required by law); (iii) employer's liability insurance; (iv) auto liability coverage for Any auto); (v) environmental liability insurance; and, (vii) during the construction phase, builder's risk.

- 10.2 Sound Transit shall carry such insurance with insurers who are licensed to do business in the State of Washington or self-insure or participate in an insurance pool or pools at levels of coverage or with reserves adequate, in the reasonable judgment of Sound Transit, to protect Sound Transit and the City against loss, and as are ordinarily carried by municipal or privately owned entities engaged in the operation of systems comparable to the Light Rail Transit System. Sound Transit shall also require any contractors or subcontractors working on the Light Rail Transit System in the Light Rail Transit Way to maintain insurance as noted herein and to name the City as an additional insured on their commercial general liability, auto liability, environmental liability. Sound Transit shall also either require any professional services consultants, subconsultants, contractors or subcontractors working on the Light Rail Transit System project to carry appropriate levels of Professional Liability insurance coverage during the course of design, engineering, and construction or Sound Transit may itself acquire such insurance or self-insure the work.
- 10.3 Sound Transit shall file with the City's Risk Manager on an annual basis proof of an appropriate program of insurance, self-insurance, or any combination thereof in amounts and types sufficient to satisfy its liabilities. When commercial insurance is utilized, Sound Transit shall provide the City's Risk Manager with Certificates of Insurance reflecting evidence of the required insurance, naming the City as an additional insured where appropriate, to evidence continued coverage during the term of this Agreement and for six years after its termination. The certificates shall contain a provision that coverage shall not be canceled until at least 30 days' prior written notice has been given to the City.
- 10.4 If Sound Transit fails to maintain the required insurance, the City may order Sound Transit to stop constructing or operating the Light Rail Transit System in the Light Rail Transit Way until the required insurance is obtained.
- 10.5 On City projects impacting the Light Rail Transit Way, the City shall require any contractors or subcontractors to maintain insurance as required by the City in its standard contracts, and to name Sound Transit as an additional insured on their required insurance. The City shall also either require any professional services consultants, subconsultants, contractors or subcontractors working on City projects impacting the Light Rail Transit Way to carry appropriate levels of

Professional Liability insurance coverage during the course of design, engineering, and construction or the City may itself acquire such insurance or self-insure the work.

11.0 LIENS

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

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

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

12.0 DISPUTE RESOLUTION

12.1 The parties agree that neither party shall take or join any action in any judicial or administrative forum to challenge actions of the other party associated with this Agreement or the Project, except as set forth herein.

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

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

- 12.4 The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute escalation process should any such disputes arise:
- (a) Level One - Sound Transit's Designated Representative and the City's Designated Representative shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level One, either party may refer the dispute to Level Two.
 - (b) Level Two - Sound Transit's Executive Director of Design, Engineering and Construction Management and the City's Transportation Director shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) business days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.
 - (c) Level Three - Sound Transit's Chief Executive Officer or Designee and the City Manager or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner.
- 12.5 Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within fourteen (14) calendar days after referral of that dispute to Level Three, the Parties are free to file suit, seek any available legal remedy, or agree to alternative dispute resolution methods such as mediation. At all times prior to resolution of the dispute, the Parties shall continue to perform any undisputed obligations and make any undisputed required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute. Notwithstanding anything in this Agreement to the contrary, neither party has an obligation to agree to refer the dispute to mediation or other form of dispute resolution following completion of Level Three of the process described herein. Such agreement may be withheld for any reason or no reason.

13.0 DEFAULT

- 13.1 No party shall be in default under this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) calendar days after written notice of default from the other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure; provided that in no event shall a cure take longer than ninety (90) days to complete without mutual written consent. Any dispute regarding the existence of a default or appropriate cure shall be handled as provided in Section 12.

14.0 REMEDIES; ENFORCEMENT

- 14.1 The Parties reserve the right to exercise any and all of the following remedies, singly or in combination, and consistent with the dispute resolution and default Sections of this Agreement, in the event the other violates any provision of this MOU:
- (a) Commencing an action at law for monetary damages;
 - (b) Commencing an action for equitable or other relief; and
 - (c) Seeking specific performance of any provision that reasonably lends itself to such remedy.
 - (d) The prevailing party (or substantially prevailing party if no one party prevails entirely) shall be entitled to reasonable attorney fees and costs.
- 14.2 Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.
- 14.3 Neither party shall be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure by the other party to enforce prompt compliance, and such failure to enforce shall not constitute a waiver of rights or acquiescence in the other party's conduct.

15.0 TERM; TERMINATION

- 15.1 This Agreement shall be effective as of the date the last party signs. Unless sooner terminated pursuant to the terms hereof, this Agreement shall remain in effect for so long as the Light Rail Transit Way is used for light rail public transportation purposes consistent with all permits and approvals.
- 15.2 Upon termination of this Agreement, Sound Transit agrees to prepare, execute and deliver to the City all documentation necessary to evidence termination of this Agreement or portion thereof so terminated. No such termination, however, shall relieve the parties of obligations accrued and unsatisfied at such termination.
- 15.3 Upon the cessation of use of the Light Rail Transit Way for the Light Rail Transit System, to the extent any portion of it remaining in the Public Right-of-Way or on any other public property is not removed by Sound Transit, the City, as expressed by ordinance, may deem it abandoned and it shall become the property of the City. If the City does not desire such ownership, Sound Transit shall remove any remaining portion of the Light Rail Transit System at its sole cost.
- 15.4 Sound Transit shall file a written removal plan with the City no later than sixty (60) calendar days following the date of the receipt of any orders directing

removal, or any consent to removal, describing the work that will be performed, the manner in which it will be performed, and a schedule for removal by location. The removal plan shall be subject to approval and regulation by the City. The affected property shall be restored to as good or better condition than existed immediately prior to removal.

16.0 COVENANTS AND WARRANTIES

16.1 By execution of this Agreement, the City warrants:

- (a) That the City has the full right and authority to enter into and perform this Agreement, and that by entering into or performing this Agreement the City is not in violation of any law, regulation or agreement by which it is bound or to which it is bound or to which it is subject; and
- (b) That the execution, delivery and performance of this Agreement by the City has been duly authorized by all requisite corporate action, that the signatories for the City hereto are authorized to sign this Agreement, and that, upon approval by the City, the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement.

16.2 By execution of this Agreement, Sound Transit warrants:

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

17.0 RECORDINGS, TAXES AND OTHER CHARGES

17.1 Sound Transit shall pay all transfer taxes, documentary stamps, recording costs or fees, or any similar expense in connection with the recording or filing of any permits that may be granted hereunder. Sound Transit further agrees that if it is determined by any federal, state, or local governmental authority that the sale, acquisition, license, grant, transfer, or disposition of any part or portion of the Light Rail Transit Facilities or rights herein described requires the payment of any tax, levy, excise, assessment, or charges (including, without limitation, property,

sales or use tax) under any statute, regulation, or rule, Sound Transit shall pay the same, plus any penalty and/or interest thereon, directly to said taxing authority and shall hold the City harmless therefrom. Sound Transit shall pay all taxes, levies, excises, assessments, or charges, including any penalties and/or interest thereon, levied or assessed on the Light Rail Transit Facilities, or on account of their existence or use (including increases attributable to such existence or use, and excluding taxes based on the income of the City), and shall indemnify the City against payment thereof. Sound Transit shall have the right to claim, and the City shall reasonably cooperate with Sound Transit in the prosecution of any such claim for refund, rebate, reduction or abatement of such tax(es); provided, however, that such obligation to cooperate shall not apply to claims for refunds, rebates, reduction or abatement of such taxes levied by the City, which such claims shall be processed in accordance with City codes and regulations.

- 17.2 The City may, in its sole discretion and without obligation, pay any tax, levy, excise, assessment or charge, plus any penalty and/or interest thereon, imposed upon Sound Transit for which Sound Transit is obligated pursuant to this Section if Sound Transit does not pay such tax, levy, excise, assessment, or charge when due. Sound Transit shall reimburse the City for any such payment made pursuant to the previous sentence, plus interest at the prime rate per annum, as published in the Wall Street Journal.

18.0 ASSIGNABILITY; BENEFICIARY

- 18.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assignees. No assignment hereof or sublease shall be valid for any purpose without the prior written consent of the other party, and any attempt by one party to assign or license the rights or obligations hereunder without prior written consent will give the other party the right, at its written election, immediately to terminate this Agreement or take any other lesser action with respect thereto. The above requirement for consent shall not apply to (i) any governmental entity merger, consolidation, or reorganization, whether voluntary or involuntary, or (ii) a sublease or assignment of this Agreement (in whole or in part) to a governmental entity; provided, however, that no sublease or assignment under (i) or (ii) shall be permitted to a governmental entity not operating, constructing or maintaining a Light Rail Transit System on behalf of Sound Transit, and provided further that no unconsented assignment shall relieve Sound Transit of its obligations and liabilities under this Agreement.
- 19.2 Either party hereto may assign any monetary receivables due them under this Agreement; provided, however, such assignment shall not relieve the assignor of any of its rights or obligations under this Agreement.
- 19.3 Neither this Agreement nor any term or provision hereof, or any inclusion by reference, shall be construed as being for the benefit of any party not a signatory hereto.

20.0 DESIGNATED REPRESENTATIVES

- 20.1 To promote effective intergovernmental cooperation and efficiencies, each party shall designate a representative (“Designated Representative”) who shall be responsible for coordination of communications between the parties and shall act as the point of contact for each party. The Designated Representatives shall communicate regularly to discuss the status of the tasks to be performed, identify upcoming Project decisions and any information or input necessary to inform those decisions, and to resolve any issues or disputes related to the Project, consistent with Section 12.
- 20.2 Communication of issues, changes, or problems that may arise with any aspect of the Project should occur as early as possible in the process, and not wait for specific due dates or deadlines. The Designated Representatives shall use reasonable efforts to provide up-to-date and best available information to the other party promptly after such information is obtained or developed.
- 20.3 Each Designated Representative is also responsible for coordinating the input and work of its agency, consultants, and staff as it relates to the objectives of this Agreement. The Parties reserve the right to change Designated Representatives, by written notice to the other party during the term of this Agreement. Each party’s Designated Representative is identified in Exhibit “__.”

21.0 NOTICE

- 21.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to the Designated Representative. Any party at any time by written notice to the other party may designate a different address or person to which such notice or communication shall be given.
- 21.2 Unless otherwise provided herein, all notices shall be either: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered electronically to the other party’s Designated Representative as listed herein. However, notice under Section __, Termination, must be delivered in person or by certified mail, return receipt requested.

22.0 GENERAL PROVISIONS

- 22.1 The Parties shall not unreasonably withhold requests for information, approvals or consents provided for in this Agreement; provided, however, that approvals or consents required to be given by vote of the Sound Transit Board or Bellevue City Council are recognized to be legislative actions. The Parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement provided, however, that where such actions or documents required must be first approved

by vote of the Sound Transit Board or Bellevue City Council, such actions are recognized to be legislative actions. The City and Sound Transit agree to work cooperatively with each other to achieve the mutually agreeable goals as set forth in this Agreement.

- 22.2 This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be King County, Washington.
- 22.3 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the City and Sound Transit.
- 22.4 Time is of the essence in every provision of this Agreement. Unless otherwise set forth in this Agreement, the reference to “days” shall mean calendar days. If any time for action occurs on a weekend or legal holiday, then the time period shall be extended automatically to the next business day.
- 22.5 This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.
- 22.6 No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of any other party.
- 22.7 This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by applicable law.
- 22.8 Each Party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties.
- 22.9 The Parties shall not be deemed in default with provisions of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods or other natural catastrophes beyond its control; the unforeseeable unavailability of labor or materials; or labor stoppages or slow-downs, or power outages exceeding back-up power supplies. This Agreement shall not be revoked or a party penalized for such noncompliance, provided that such party takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, and integrity of both parties’ employees or property, or the health, safety, and integrity of the public, Public Right-of-Way, public property, or private property.

22.10 This Agreement may be amended only by a written instrument executed by each of the Parties hereto.

22.11 This Agreement constitutes the entire agreement of the Parties with respect to the subject matters of this Agreement, and supersedes any and all prior negotiations (oral and written), understandings and agreements with respect hereto.

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

22.13 In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.

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

23.0 SEVERABILITY

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

IN WITNESS WHEREOF, each of the parties has executed this Agreement by having its authorized representative affix his/her name in the appropriate space below:

CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY
(SOUND TRANSIT)

THE CITY OF BELLEVUE

By: _____
Joan M. Earl, Chief Executive Officer

By: _____
Steven R. Sarkozy, City Manager

Date: _____

Date: _____

Authorized by Motion No. _____

Authorized by Ordinance _____

Approved as to form:

Approved as to form:

By: _____
Stephen G. Sheehy, Legal Counsel

By: _____
Mary Kate Berens, Deputy City Attorney

Exhibit List