

UMBRELLA MEMORANDUM OF UNDERSTANDING
FOR INTERGOVERNMENTAL COOPERATION BETWEEN THE CITY OF
BELLEVUE AND THE CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY FOR
THE
EAST LINK PROJECT

This UMBRELLA MEMORANDUM OF UNDERSTANDING (“MOU”), 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, Bellevue is the second largest city in King County, is recognized as the economic and cultural center of the Eastside, and is committed to supporting infrastructure and planning that support and enhance Bellevue’s designation as a Metropolitan Regional Growth Center.

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.

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 MOU, 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,” “MOU,” or “Agreement” means this Memorandum of Understanding approved by appropriate action of the City and of Sound Transit.
- 1.2 City. “City” means the City of Bellevue and any successor or assignee following an assignment that is permitted under this MOU.
- 1.3 City Contingency. “City Contingency” means that portion of the City Contribution with a potential value of up to \$60 million (2010\$), subject to a permanent reduction at the time of Project Baseline Budget, the final amount of which will be determined and payable after final Project cost reconciliations, as further described in Section 4.
- 1.4 City Contribution. “City Contribution” means the City’s financial contribution to the Project, which was based on the estimated cost difference between an at-grade and tunnel alignment through downtown Bellevue. The April, 2010 Term Sheet between the parties established a \$320 million cost difference and the City contribution was identified at \$150 million (both in 2007 dollars). At the time of the preliminary engineering (PE) cost estimate for the East Link Project, the cost difference between the at-grade and tunnel alignments was updated to reflect changes in alignment and advances in design. In the PE cost estimate, the cost difference between the at-grade and tunnel alignments was \$276 million in 2010 dollars. The originally-identified City contribution of \$150 million was inflated to \$160 million in 2010 dollars by using the Consumer Price Index (CPI), Right-of-Way (ROW) and Construction Cost indices contained in the Sound Transit financial model. See Exhibit A (Inflation of City Contribution). The City Contribution consists of the Up-front Contribution and the City Contingency.

- 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 of or relating to this MOU or occurring on or relating to the design, construction and/or operation of 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, 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 MOU Baseline. “MOU Baseline” means the cost estimate, based on preliminary engineering plans for Segment B, Segment C, and Segment D and further described in Section 4, against which the parties shall compare the same elements of the Project Baseline Budget for purposes of the City Contingency calculation described in Section 4.
- 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 Facility.
- 1.10 Portal to Portal Costs. “Portal to Portal Costs” means those certain construction costs, as identified on Exhibit B (Portal to Portal Costs), against which the City Contingency may be applied.
- 1.11 Project. “Project” means the segments of the light rail system in the City of Bellevue as described in Exhibit C (Project Description), attached and incorporated herein, and as may be modified as described in this MOU.
- 1.12 Project Baseline Budget. “Project Baseline Budget” means the baseline budget for the entire East Link project from the City of Seattle to Overlake, developed in accordance with Sound Transit’s project control and phase gate procedures and based on 60% design drawings following any necessary land use approvals from the City.

- 1.13 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 MOU, 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.
- 1.14 Third Party. “Third Party” means any person other than the City or an employee of the City and any person other than Sound Transit or an employee of Sound Transit.
- 1.15 Up-Front Contribution. “Up-Front Contribution” means that portion of the City Contribution due during the course of Project development and construction, which consists of the elements described in Exhibit D (Up-Front Contribution) and which together are valued as a \$100 million (2010\$) credit toward the City Contribution, as calculated and adjusted in Section 4.

2.0 COOPERATION AND GOOD FAITH EFFORTS

- 2.1 The parties understand and agree that the process described in this MOU 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 MOU 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 MOU 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.
- 2.3 The City may apply for grants available to local agencies to supplement Sound Transit funds as contemplated by this MOU. Upon request, Sound Transit will provide letters of support for and otherwise cooperate fully in grant applications made by the City.
- 2.4 Attached to this MOU is Exhibit E (Collaborative Design Process), adopted and incorporated herein by this reference, explaining in further detail the Collaborative Design Process (CDP) the parties intend to pursue following execution of the MOU.

3.0 SEPA COMPLIANCE

3.1 Sound Transit is the “lead agency” for purposes of the Project (as described herein) compliance with the State Environmental Policy Act, RCW Chapter 43.21C (“SEPA”). The City agrees that the Project has been subject to procedural and substantive SEPA through issuance of the following environmental documents, which taken together comprise the “Project Environmental Documents,” incorporated herein by reference:

- (a) East Link Project Draft Environmental Impact Statement, December 12, 2008.
- (b) East Link Project Supplemental Draft Environmental Impact Statement, November 12, 2010
- (c) East Link Project Final Environmental Impact Statement, July 15, 2011.

3.2 Sound Transit acknowledges that it has not applied for required permits for the Project from the City and that the City’s issuance of permits for the Project is an action which may be subject to SEPA. The parties agree that pursuant to WAC 197-11-600 (adopted by reference in Bellevue City Code (BCC) Section 22.02.020) as supplemented by BCC 22.02.037, the Project Environmental Documents will be used by the City unchanged for its review and decisions on permit applications related to the Project, unless otherwise indicated pursuant to WAC 197-11-600(3) or BCC 22.02.037.

4.0 CITY FUNDING CONTRIBUTIONS FOR C9T TUNNEL

4.1 Description of City Contribution. The City shall provide a City Contribution of up to \$160 million (2010\$) toward the cost of the Project, as further described in this Section 4.1, and as adjusted as described in Section 4.2.

- (a) Up-front Contribution. Subject to Section 4.2(b), the Up-Front Contribution shall be due regardless of the final cost of the Project and as described in Exhibit F (Cost within Bellevue) attached and incorporated herein. The credit for the real property components described in Exhibit D shall be \$83.6 million towards the City Contribution, which amount shall be removed from the MOU Baseline, as set forth in the table in 4.2(a) below. The remaining components of the Up-Front Contribution have a total credit value of \$16.4 million (2010\$). The credit value for each specific component listed on Exhibit D will be reconciled as described in such Exhibit.
- b) City Contingency. Subject to Section 4.2(b) the City Contingency of up to \$60 million in value (2010\$), shall be adjusted at the time of the Project Baseline Budget as described in Section 4.2, and the final amount shall be determined through the Project close-out cost reconciliation procedures described in Section 4.3.

4.2 Preliminary City Contribution Adjustments. During Project design and prior to construction of the Project, the parties agree that the City Contribution may be adjusted as follows:

The adjustment procedures described below will require in some cases adjustment from 2010 to “year of expenditure” (YOE). The adjustment calculation will be made using the CPI, ROW, and Construction Cost indices contained in the Sound Transit financial model as illustrated in Exhibit F.

a) Establish MOU Baseline. In order to adjust the City Contingency at the time of Project Baseline Budget, the parties agree to establish the MOU Baseline, as shown in the following table:

Construction and ROW cost estimates in Bellevue by Segment	2010\$*
Segment B: I-90 and Bellevue Way SE Interchange to Winters House	\$285.44
Segment C: Winters House to BNSF	\$711.36
Segment D: BNSF to 148th Ave. NE, incld LRV Storage Track	\$426.49
Bellevue – Permits, Design Reviews, Construction Assistance	\$18.01
Total Construction and ROW cost estimates in City of Bellevue	\$1,441.31
112th Avenue SE Alignment Modification	\$7M
STart\$ in PE Cost Estimate (STart is now a standalone project)	-\$7.17
City Property Contribution Value	-\$83.56
Interim MOU Baseline	\$1,357.57
Bellevue – Final Design Award Authority	+TBD
MOU Baseline	TBD

* Cost estimates in millions of 2010\$

The MOU Baseline is a portion of the PE cost estimate, calculated as follows: the total of construction costs for the Project with allocated contingency, right-of-way costs within the City with allocated contingency, and City plan and permit review and inspection fees PLUS the cost estimate for the 112th Avenue SE alignment modification LESS , STart and the property components of the Up-Front Contribution PLUS the actual amount of the Bellevue portion of the award authority for the East Link Project civil design contract. See Preliminary Engineering and MOU Baseline Exhibit F. If the City opts to purchase

properties near SE 8th and 112th that Sound Transit would otherwise partially acquire, the MOU Baseline will be adjusted to provide credit to the City for the value of the partial acquisitions, which will be reflected as an adjustment to the “City Property Contribution Value” and which will count as a credit towards the City’s Up-Front Contribution. The parties shall confirm the MOU Baseline in writing when all required costs are available.

- b) Confirmation of Agreement. At the time of Project Baseline Budget, either party may terminate this MOU with no further obligation, as described in Section 14. If neither party exercises such option, the parties shall confirm in writing any adjustment to the City Contingency and associated terms regarding the availability of the City Contingency at Project close-out, as further described in this Section 4.2.
- c) Adjustment of City Contingency. Upon confirmation of agreement, if the cost of the Project included in the Project Baseline Budget, based on the same elements as included in the MOU Baseline, are lower than the MOU Baseline, then the City contingent contribution will be permanently adjusted downward by an equal amount of such cost reduction, up to a total reduction of \$60 million (2010\$). In order to determine if costs are reduced, the MOU Baseline shall be inflated to the same year as the Project Baseline Budget. The inflated MOU Baseline shall be compared to the same elements of the Project Baseline Budget. Cost reductions from value engineering, design advancement, scope modifications, or for any other reason shall count towards the reduction of the City Contingency, provided, however, that cost reductions that are the direct result of deferral of stations, deferral of park-and-ride lots, and deferral or complete elimination of other Project elements that have a direct, substantial negative impact on East Link Project ridership or operations and maintenance shall not count towards a reduction in the City Contingency. Following application of the adjustment procedures herein, the City Contingency may range from \$0 to \$60 million (2010\$) and shall be inflated to year of expenditure dollars based upon the Project Baseline schedule. Subject to Section 14, at the time of Project baselining the City must identify the City’s revenue sources that would be used to pay the adjusted City Contingency. The actual amount of City Contingency will be subject to final reconciliation as set forth below. The City will identify the revenue source(s) to pay the maximum amount of City Contingency and provide an unconditionally binding agreement to pay the funds consistent with this MOU.

4.3 Timing and Application of City Contribution.

- a) The credit value of the property components of the Up-Front Contribution is permanently set at the preliminary engineering cost estimates with contingency as shown in Exhibit D. Except as set forth in such Exhibit, the City shall assume the sole risk and receive the full benefit for any differences between estimated and actual purchase prices.

- b) The remaining balance of the Up-Front Contribution will be due for each component as set forth in Exhibit D. After reconciling the credit for the non-cash items, any remaining amount in the cash contribution shall be adjusted to year of expenditure dollar (YOES), according to the year(s) the City commits to make payment(s) to Sound Transit. The City shall have the option to pay in one installment or over time provided the last payment is made no later the start of revenue service. Notwithstanding the foregoing, the City may contribute to Sound Transit any portion of properties purchased along 112th SE near SE 8th needed for the Project toward the remaining balance of Up-Front Contributions. The City's credit for such contribution shall be based on the appraised value of the portions contributed to Sound Transit including any damages, and the City's remaining obligations for the Up-Front Contribution shall be adjusted accordingly.

- c) The final amount of City Contingency to be paid shall be determined based only on the actual expenditures required for Portal to Portal Costs. The Portal to Portal Costs estimated on Exhibit B shall be updated in writing with the agreement described in Section 4.2(c) above based on the Project Baseline Budget. The City Contingency shall be the last source of funds expended for Portal to Portal Costs. Sound Transit shall provide the City with forecasts of the amount of City Contingency anticipated to be needed at the 90% design stage, 100% design stage, tunnel contract bid award, and then quarterly throughout construction of the Project. The parties shall identify through the CDP the content and details to be included in the quarterly reports anticipated by this Section.

- d) After Project close out, the City and Sound Transit will cooperatively conduct a final reconciliation of the Portal to Portal Costs to determine what portion of the City Contingency is due to Sound Transit as the last source of funds. All sources of contribution, including Sound Transit's resources as identified in Exhibit F and any net proceeds from the final resolution of any claim that Sound Transit may have against any contractor, subcontractor or other party for damages or costs that contributed to actual Portal to Portal Cost expenditures must be exhausted prior to the City owing any amount of the remaining City Contingency. The City may make payments to Sound Transit as the City Contingency is drawn upon or pursuant to a delayed payment schedule as agreed by the parties at the time that it appears that the first amount of City Contingency may be required, provided that any delayed payment schedule shall include provisions whereby the City shall be responsible for Sound Transit's financing costs, if any, for the delayed payments. Final satisfaction of the City Contingency shall be due after Project close-out and final reconciliation and paid by the City to Sound Transit within 120 days of receipt of an invoice from Sound Transit. If it is determined after final reconciliation that the City paid more than the amount owed from the City Contingency, Sound Transit shall reimburse the City

within 120 days of the Project close-out and final reconciliation. The agreement anticipated in Section 4.2(c) shall include additional detail about the final reconciliation process, including the City's role in review of all documents substantiating expenditures and Portal to Portal Costs, the City's rights to audit Sound Transit and its contractors records associated with Portal to Portal Costs or Additional Revenues.

5.0 CITY REQUESTED DESIGN MODIFICATIONS

- 5.1 The City supports the Project described in Exhibit C with certain modifications, which are the subject of Sound Transit's commitment to conduct any necessary environmental review of the City Requested Modifications listed below in Section 5.4 for potential inclusion in the Project scope. These potential modifications are intended to reduce or further mitigate impacts to the surrounding neighborhood and the environment. The parties estimate that any additional environmental review will be completed in 2012.
- 5.2 The City will be given the opportunity to review and comment on the administrative draft of any additional SEPA environmental review of the City Requested Modifications and Sound Transit shall address such comments before it is published.
- 5.3 Upon completion of the environmental review described herein, the Sound Transit Board will determine, after consultation with the City, if modifications to the Project selected in Resolution No. R2011-10 are appropriate and the parties will jointly determine if modifications to the Project description in Exhibit C are appropriate .
- 5.4 The City Requested Modifications include the following:
 - a) { Placeholder for 112th street crossing option },
 - b) An undercrossing of SE 4th via a retained cut alignment,
 - c) Between Surrey Downs Park and Main Street provide additional landscaping between the light rail alignment and the sidewalk on 112th,
 - d) Close the access to Surrey Downs Park from 112th Avenue SE and provide alternate access from SE 4th in order to enhance the Park's neighborhood character.

6.0 POTENTIAL REGULATORY CHANGES

- 6.1 The parties agree to work cooperatively to identify and process a package of Land Use Code (LUC) and other technical code amendments that, if adopted, would accomplish the following objectives:
 - a) Provide certainty and predictability for the City, Sound Transit and the public with respect to land use code requirements and processes
 - b) Allow for the City Council, through a development agreement, to establish a comprehensive and consolidated permit process for the Project

- c) Add provisions in the LUC to accommodate Light Rail Transit Facilities and Systems as a permitted use allowed under the consolidated permit process
- d) Allow for extended vesting or duration of land use approvals for the Project
- e) Provide a mechanism for addressing any LUC requirements that are impractical or infeasible for the Project
- f) Resolve identified technical code conflicts

6.2 For purposes of this MOU and Exhibit G (Code and Permitting), references to “development agreement” shall refer to development agreements as defined and authorized pursuant to RCW ch. 36.70B or such other form of agreement determined by the parties to be appropriate to accomplish the objectives described herein.

6.3 Attached to this MOU is Exhibit G, adopted and incorporated herein by this reference, explaining in further detail the land use approval framework the parties intend to pursue following execution of the MOU. Exhibit G includes Figure G-1, which illustrates how the parties anticipate that the code and permitting framework and Collaborative Design Process described in Section 2.4 and Exhibit E may be integrated.

7.0 SUBSEQUENT FUTURE AGREEMENTS

7.1 The parties contemplate that additional agreements, subsequent to execution of this MOU, will be necessary to fully implement the Project. The parties agree to work cooperatively to negotiate in good faith and execute such agreements as needed, including but not limited to, development agreement(s) as described in Section 6.2 and an operation and maintenance agreement before the start of Project operations.

7.2 The parties recognize that the City may elect, in its sole discretion, to undertake a capital project to add a lane to Bellevue Way from the main entrance of the South Bellevue Park & Ride north to the “Y” intersection of Bellevue Way and 112th SE. Sound Transit, as part of the Project, will construct certain improvements to Bellevue Way from the main entrance south to I-90 as mitigation for certain impacts. Prior to Project baselining, if the City elects to go forward with its capital project on Bellevue Way the City may undertake the entire project. In such case, the City may receive a payment or receive a credit from Sound Transit for the value of improvements Sound Transit would otherwise construct.

8.0 PERMITS

8.1 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, land use, shoreline, rights-of-way, building, health, environmental, and communication permits and licenses, and (ii) indemnify the City against payment of the costs thereof and against any fines or penalties that

may be levied for failure to procure, or to comply with, such permits or licenses, as well as any remedial costs incurred by the City in curing any such failures.

- 8.2 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 cooperative goals outlined in this MOU.
- 8.3 Nothing in this MOU 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.
- 8.4 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 MOU to comply with its funding requirements. The parties agree to consider any such request in good faith.

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 MOU. 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 MOU.

10.0 INSURANCE

10.1 Sound Transit shall maintain, throughout the term of this MOU 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 MOU 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 DISPUTE RESOLUTION

- 11.1 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 MOU or the Project, except as set forth herein.
- 11.2 Any disputes or questions of interpretation of this MOU 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.
- 11.3 The parties agree to use their best efforts to prevent and resolve potential sources of conflict at the lowest level.
- 11.4 The parties agree to use their best efforts to resolve disputes arising out of or related to this MOU 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 Director of Link Light Rail and the City's [insert title] 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.

11.5 Except as otherwise specified in this MOU, 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 MOU in the same manner and under the same terms as existed prior to the dispute. Notwithstanding anything in this MOU 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.

12.0 DEFAULT

12.1 No party shall be in default under this MOU unless it has failed to perform under this MOU 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 through dispute resolution.

13.0 REMEDIES; ENFORCEMENT

13.1 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 MOU, 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.

13.2 Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

- 13.3 Neither party shall be relieved of any of its obligations to comply promptly with any provision of this MOU 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.

14.0 TERM; TERMINATION

- 14.1 This MOU shall be effective as of the date the last party signs. Unless terminated sooner pursuant to the terms hereof, this MOU shall remain in effect until the completion of Project closeout or five (5) years after commencement of Project operation, whichever occurs earlier; provided, however, that the term shall automatically extend to allow the parties to conclude the cost reconciliation procedures described in Section 4 (City Contribution and Reconciliation Procedures).

- 14.2 In the event that the code amendments described in Section 6.1 (Potential Regulatory Changes) have not been approved by the City Council as of December 31, 2012, Sound Transit may, in its sole discretion, terminate this MOU or work cooperatively with the City to identify appropriate revisions to the MOU. In the event that the City Requested Modifications described in Section 5.4(a) and (b) have not been adopted by the Sound Transit Board as a modifications to the Project description or the necessary state or federal approvals for the City Requested Modifications are not obtained as of December 31, 2012, the City may, in its sole discretion, terminate this MOU or work cooperatively with Sound Transit to identify appropriate revisions to the MOU.

- 14.3 In the event that a portion of the Project to be constructed in the City is for any reason determined by the Sound Transit Board or by the City of Bellevue, to be unaffordable due to increased cost or insufficient revenue legally available under the Project financial plan or without additional voter approval to the party responsible for contributing the revenue, or to be impractical or infeasible to accomplish due to changed or unforeseen conditions, legal prohibition, or force majeure events, the parties are excused from further performance under this MOU. In the event the parties are excused from further performance, the parties will work cooperatively to identify appropriate revisions to the Project's scope; schedule or budget, provided however, any final decisions regarding revisions to the Project's scope, schedule or budget will be made by the Sound Transit Board consistent with the policies in the approved ST 2 Plan.

15.0 COVENANTS AND WARRANTIES

- 15.1 By execution of this MOU, the City warrants:
- (a) That the City has the full right and authority to enter into and perform this MOU, and that by entering into or performing this MOU the City is not

knowingly 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 MOU by the City has been duly authorized by all requisite corporate action, that the signatories for the City hereto are authorized to sign this MOU, 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 MOU.

15.2 By execution of this MOU, Sound Transit warrants:

- (a) That Sound Transit has full right and authority to enter into and perform this MOU in accordance with the terms hereof, and by entering into or performing under this MOU, Sound Transit is not knowingly 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 MOU by Sound Transit has been duly authorized by all requisite Board action, that the signatories for Sound Transit hereto are authorized to sign this MOU, 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 MOU.

16.0 RECORDINGS, TAXES AND OTHER CHARGES

- 16.1 Sound Transit shall pay all transfer taxes, documentary stamps, recording costs or fees, or any similar expense in connection with the recording or filing of any 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.
- 16.2 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.

17.0 ASSIGNABILITY; BENEFICIARY

- 17.1 This MOU 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 MOU or take any other lesser action with respect thereto. The above requirement for consent shall not apply to (i) any disposition of all or substantially all of the assets of a party, (ii) any governmental entity merger, consolidation, or reorganization, whether voluntary or involuntary, or (iii) a sublease or assignment of this MOU (in whole or in part) to a governmental entity; provided, however, that no sublease or assignment under (ii) or (iii) shall be permitted to a governmental entity not operating, constructing or maintaining a Light Rail Transit System on behalf of Sound Transit, and provided

further that no unconsented assignment shall relieve Sound Transit of its obligations and liabilities under this MOU.

- 17.2 Either party hereto may assign any monetary receivables due them under this MOU; provided, however, such assignment shall not relieve the assignor of any of its rights or obligations under this MOU.
- 17.3 Neither this MOU 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.

18.0 DESIGNATED REPRESENTATIVES

- 18.1 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 11.
- 18.2 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.
- 18.3 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 MOU. The parties reserve the right to change Designated Representatives, by written notice to the other party during the term of this MOU. Each party’s Designated Representative is identified in Exhibit H.

19.0 NOTICE

- 19.1 Unless otherwise provided herein, all notices and communications concerning this MOU 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.
- 19.2 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 14, Termination, must be delivered in person or by certified mail, return receipt requested.

21.0 GENERAL PROVISIONS

- 21.1 The parties shall not unreasonably withhold requests for information, approvals or consents provided for in this MOU; 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 MOU 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 MOU.
- 21.2 This MOU shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this MOU shall be King County, Washington.
- 21.3 This MOU shall be binding upon and inure to the benefit of the successors and assigns of the City and Sound Transit.
- 21.4 Time is of the essence in every provision of this MOU. Unless otherwise set forth in this MOU, 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.
- 21.5 This MOU 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 MOU.
- 21.6 No joint venture or partnership is formed as a result of this MOU. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of any other party.
- 21.7 This MOU 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 MOU. The parties intend this MOU to be interpreted to the full extent authorized by applicable law.
- 21.8 Each party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this MOU, unless otherwise agreed in writing by the parties.

21.10 This MOU may be amended only by a written instrument executed by each of the parties hereto.

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

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

21.13 In construction of this MOU, 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.

21.14 This MOU 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.

IN WITNESS WHEREOF, each of the parties has executed this MOU 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

- A Inflation of City Contribution
- B Portal to Portal Costs
- C Project Description
- D Up Front Contribution
- E Collaborative Design Process
- F Cost within Bellevue
- G Code and Permitting
- H Designated Representatives