

CITY COUNCIL STUDY SESSION ITEM

SUBJECT

Review and discussion of proposed binding umbrella Memorandum of Understanding and Transit Way Agreement with Sound Transit for the East Link Project through Bellevue.

STAFF CONTACT

Mary Kate Berens, Deputy City Attorney, 452-4616

City Attorney's Office

Bernard Van de Kamp, East Link Project Manager, 452-6459

Transportation Department

POLICY CONSIDERATION

Should the Council approve execution of a binding umbrella Memorandum of Understanding (MOU), which establishes a financial contribution of \$160 million from the City towards the East Link Project's downtown tunnel, commits Sound Transit to pursue certain modifications to the preferred alignment along 112th SE, and commits the parties to working cooperatively to further design and permitting of the Project? A separate Transit Way Agreement provides conceptual approval for use of certain described City rights of way for East Link, subject to final approval of required permits and plans.

DIRECTION NEEDED FROM COUNCIL

- Action
- Discussion
- Information

The City and Sound Transit executed a Term Sheet enumerating the basic terms of the proposed MOU in August 2011. That term sheet indicated that the MOU should be completed by October 25, 2011, unless otherwise agreed by the parties. The Sound Transit Board is anticipated to discuss and take action on the MOU and Transit Way Agreement at their October 27, 2011 Board meeting. Staff is seeking direction on the provisions of the MOU and Transit Way Agreement in advance of the Sound Transit Board action in order to identify any necessary changes to the provisions of the document.

BACKGROUND/ANALYSIS

The City has a long history of planning for and working with Sound Transit to try to shape the East Link Project through Bellevue. Those efforts have led to a number of features of the East Link project, including an alignment that serves Downtown, and stations in Bel-Red supportive of future transit-oriented development planned for that area. Most recently, the City and Sound Transit have focused on efforts to identify a tunnel alignment in Downtown and modifications to the B-segment of East Link to try to minimize negative impacts on the adjacent properties. The agencies' efforts on these issues led to a Term Sheet in August 2011, included as Attachment A to the memorandum.

Since August, the City and Sound Transit have been engaged in negotiations to complete the binding MOU called for in the Term Sheet, as well as a Transit Way Agreement that addresses the terms of Sound Transit's use of City rights of way. Attachments B and C are the review drafts of those two agreements.

Basic MOU Framework:

The MOU focuses the most detail on the next two years of the East Link project. It establishes a cooperative approach to taking the project to 60% design, focused on the agreed alignment. The agreed alignment includes the downtown tunnel, and a process for finalizing the revisions to the B2M alignment that were discussed at last Monday's study session. This cooperative approach, referred to in the MOU as the "collaborative design process" includes a commitment to Bellevue staff involvement and influence over all phases of design, including a discussion of possible scope reductions and value engineering, with a shared goal of saving costs while delivering a quality project meeting the objectives of Sound Transit 2.

At the end of this 60% design process, Sound Transit will establish its "Baseline Budget." At this point, the City's \$60 million contingent contribution could be permanently reduced if the baseline budget is lower than the cost estimate developed based on 30% design. It is important to note that the \$60 million contribution cannot be increased. At this point of establishing the baseline budget, if both agencies confirm that the project is affordable, the parties would execute an agreement confirming the final amount of the City's contingent contribution. In addition, details about construction management, reporting on costs throughout construction, and final cost reconciliation, which are outlined in the MOU, would be established in more detail.

Additional Detail Regarding Financial Commitments:

As anticipated in the Term Sheet, the City's \$160 million contribution to the tunnel is made up of two components. A \$100 million "Up-Front Contribution" that consists of no or low cost contributions of City real property and other items, as well as purchase of properties that could serve other non-East Link public purposes. The bulk of these contributions would be made after Sound Transit completes its Project baseline budget, later 2014 or in 2015. The impact and affordability of the Up-Front Contribution has been discussed in recent study sessions with the Council.

The remaining City contribution is the City Contingency of up to \$60 million. As discussed above, based on project costs, this amount would be adjusted downward if efforts to save costs are successful. According to the terms of the MOU, except for savings realized from deferrals or elimination of critical elements of the Project, any cost savings are first applied to the City's \$60 million contribution.

As construction proceeds, the City Contingency will be applied only to the tunnel portion of construction, and is to be the last source of funds used to pay for construction costs. Essentially, the City Contribution becomes a source of contingency dollars for the tunnel, with Sound Transit's resources for construction of the tunnel used and exhausted before any City money is contributed. Therefore, if at the end of the Project the tunnel did not cost as much as anticipated, the City would realize the benefit of such savings.

Separate from the direct contributions to the East Link project, the MOU collaborative design process is a significant commitment of City staff time, with the possible need for consultants to support some of those efforts. It is anticipated that a future budget request will address the expected costs of that participation.

Permitting Commitments:

The City cannot and does not, in the MOU, agree to adopt a particular code amendment or issue a particular permit approval. Instead, the MOU establishes a 3-step process for Sound Transit to apply for permits. First, by the end of 2012, the MOU commits the City to processing certain Land Use Code amendments. These are largely process-based amendments, with the possibility of also adopting amendments to specific regulations with which the City agrees it is not feasible or desirable to have East Link comply. Then, the MOU envisions that the City will process (again, not adopt) a development agreement that further clarifies the permitting process for East Link, as well as defines a specific set of development standards applicable to the project. Finally, the MOU envisions a final land use permitting action in early 2014.

“Off-ramps” in the MOU:

Recognizing that project design is ongoing and that circumstances may change in ways that the parties cannot anticipate, the MOU includes “off-ramps” for the parties. If the City-requested modifications to the B2M alignment along 112th Avenue SE are not adopted by the Sound Transit Board after all required environmental processes are complete, the City may choose to terminate. If the City has not adopted the described code amendments by the end of 2012, Sound Transit may choose to terminate. Thereafter, the parties may terminate if either decides that the project is no longer affordable within legally-available resources, or if other unforeseen circumstances or changed conditions impact the affordability or feasibility of the project.

Transit Way Agreement:

A companion agreement is presented called a Transit Way Agreement. This separate agreement grants conceptual use of City rights of way where the alignment falls within City streets. It is important to note that the agreement grants rights only for the agreed alignment, subject to the requested modifications on 112th Avenue SE. If for some reason the alignment changes general location or profile (at-grade, tunnel or elevated) in any particular area, the City Council would have to agree to amend the Transit Way Agreement before use of City streets would be allowed for such a change. The Transit Way Agreement also outlines typical standards for applying for permits to do work in the right of way, restoration, and other provisions surrounding use of the right of way.

OPTIONS:

1. Authorize execution and transmittal of the MOU and Transit Way Agreement to the Sound Transit Board.
2. Direct preparation and transmittal of a letter to the Sound Transit Board seeking delay in authorizing execution and transmittal of the MOU and Transit Way Agreement to allow for public review and further Council discussion.
3. Provide alternative direction to staff.
4. Take no action.

MOTIONS:

For Option 1:

Move to authorize execution and transmittal of the MOU and Transit Way Agreement to the Sound Transit Board.

For Option 2:

Move to direct the City Manager to prepare and transmit a letter to the Sound Transit Board seeking delay in authorizing the execution and transmittal of the MOU and Transit Way Agreement to allow for public review and further Council discussion.

ATTACHMENTS:

- A August, 2011 Term Sheet
- B Memorandum of Understanding Review Draft
- C Transit Way Agreement Review Draft

Attachment A

TERM SHEET BETWEEN THE CITY OF BELLEVUE AND SOUND TRANSIT IN ANTICIPATION OF AN AGREEMENT

1) Purpose

Upon execution of this Term Sheet, the parties will immediately enter into good-faith negotiations to produce a binding umbrella memorandum of understanding (hereinafter "umbrella MOU"), as described below, on or before October 25, 2011, unless this date is extended by mutual agreement of the parties. It is anticipated that this binding umbrella MOU will address, at least, the following: C9T tunnel funding and project cost updating, cost reconciliation and risk and benefit sharing procedures, use of City right-of-way and associated terms and conditions, a description of the applicable City codes and regulations and potential regulatory changes, and design modifications to the project scope. These potential modifications to project scope address design modifications to the Project intended to meet the City's goals of mitigating traffic, noise, and visual impacts to the surrounding neighborhood and environment while ensuring that the Project continues to meet the objectives established by the Sound Transit Board.

This Term Sheet does not bind the parties to specific project funding actions, alignment decisions, or approvals, but rather is a commitment to negotiate in good faith future binding agreements consistent with these terms including the umbrella MOU. If the parties are not able to reach agreement on a subsequent agreement(s) consistent with this Term Sheet after negotiating in good faith, neither party shall be further bound by this Term Sheet.

2) Project Scope Description

As used herein, "Project" refers to the approximately six-mile alignment through Bellevue described in Exhibit A with certain City requested modifications to the Project alignment that will be a subject of the binding umbrella memorandum of understanding.

3) City Funding Contributions and Commitments to Manage Project Cost

The City and Sound Transit will commit to actions and activities as defined in this Term Sheet to work together towards closing the funding gap for the "C" segment, such actions and activities to be detailed in the binding umbrella MOU. The City will reduce by up to \$150 million (\$2007) Sound Transit's costs for the Project. The specific values associated with the City's funding commitments will be identified in the binding umbrella MOU. Credits to the City's funding commitments for the real property interests described herein will be based on Sound Transit estimates and as further described in the binding umbrella memorandum of understanding.

The binding umbrella MOU between the parties will include provisions and a process for quantifying and sharing Project cost benefits and risks, for baselining the Project cost estimate, for cost reconciliation, and other funding procedures.

A. Up-Front City Commitments:

The City will take all or a portion of the actions listed below and to be detailed in the binding umbrella MOU to reduce Sound Transit's costs by a minimum amount of \$100 million (\$2010):

- Provide permanent easements on certain City-owned property at no cost to Sound Transit.

- Provide temporary easements for construction staging on certain City-owned property at no cost to Sound Transit.
- Contribute the depreciated value of City-owned utilities relocated by the Project
- Cooperate with Sound Transit to direct conflicting private utilities to relocate when necessary at their expense, as provided by law.
- Contribute sales and B&O taxes received by the City as a result of the Project.
- Purchase certain properties needed for the East Link Project, which also could be used to serve other public purposes. The City would then provide permanent easements or other property interests.
- Other City actions that reduce Sound Transit's costs for the Project.

B. Contingent Contributions

Depending upon the cost of the Project within Bellevue after consideration of the benefit and risk sharing allocations and Project cost reconciliation procedures to be included in the binding umbrella memorandum of understanding, including providing appropriate credit for cost and risk reductions as a result of cooperative actions of the City, the City will take some or all of the following additional actions to reduce Sound Transit's costs by up to an additional amount to bring the total cost reduction to Sound Transit to up to \$160 million:

- Cash or other contributions. The City may provide cash, property or other contributions funded by the City, third parties or through grant funding to in whole or in part satisfy its commitment.

C. City and Sound Transit Commitments to Cost Management

The parties are committed to managing within the Project scope, schedule and budget as follows:

- The City will convey permanent property easements and permanent underground easements in City street rights of way to Sound Transit for as long as required solely for the Project and consistent with Federal Transit Administration continuing control requirements.
- The City will provide all third-party assistance necessary to maintain project schedule, including design reviews, construction inspections, police control, and tunnel rescue team.
- Sound Transit and the City will work together to value engineer the Project with the goal of reducing the Project costs.

4) City Requested Modifications to the Project

Sound Transit agrees to evaluate for potential inclusion in the Project's scope the following City requested modifications, and to conduct further engineering, environmental and other federal reviews, and outreach as appropriate:

- a) Grade-separate the alignment along 112th Avenue NE so as to eliminate traffic conflicts and to reduce noise from gated crossings and/or bells.
- b) Review further the optimal location to cross from the east to the west-side of 112th.
- c) Move the SE 8th Station to the East Main Street Design Option location described in the final EIS. Noise walls planned by Sound Transit in this area should be designed so as to mitigate noise from trains entering and exiting the station.
- d) Between Surrey Downs Park and Main Street provide additional landscaping between the light rail alignment and the sidewalk on 112th.

- e) Change access to enhance Surry Downs Park for neighborhood use.
- f) Improve traffic flow on Bellevue Way by adding an additional southbound lane on the City's Bellevue Way project between 112th and I-90. Sound Transit will fund the portion of the lane as described in the final EIS as mitigation for the expansion of the South Bellevue park-and-ride.
- g) Such other requests intended for the purposes of reducing costs.

5) Subsequent Agreements

The parties acknowledge that the binding umbrella memorandum of understanding will establish the scope and timelines for developing additional agreements on the following subjects:

- a) Project and program management ideas as described in the April 2010 term sheet between the parties.
- b) A process for cooperative identification of value engineering for the Project, including cooperative development of 60% design.
- c) Identification of opportunities to clarify the codes and regulations that apply to the Project, including negotiation of a development agreement pursuant to the provisions of the Growth Management Act addressing the following issues:
 - i. development standards and other provisions that govern and vest the development, permissibility of use, interim design for 16th/136th street, and mitigation of the Project,
 - ii. coordinated and efficient permit processing and timelines for permit decisions, and
 - iii. environmental compliance, the use of existing environmental documents and early identification of any additional environmental information required based on final design of the Project.

6) City Regulatory Authority

Nothing in this Term Sheet shall be deemed a waiver of the City's regulatory authority or a predetermination of the compliance of the Project with applicable codes and regulations.

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7) **Waiver of Litigation**

The parties agree that during the period of negotiating the binding umbrella memorandum of understanding referenced above through October 25, 2011, neither party will take or join any action in any judicial, administrative or legislative forum to challenge actions of the other with regard to SEPA and the Project alignment decision. Future commitments to avoid litigation will be included in the binding umbrella memorandum of understanding and subsequent agreements, and such provisions shall supersede this Section 7. If the parties fail to execute the binding umbrella memorandum of understanding when required by this Term Sheet, this Section 7 shall be of no further force or effect. Nothing in this Term Sheet is intended to limit or waive the City's full participation in the Section 106 and Section 4(f) processes, as provided for in the regulations. The parties waive no rights except as explicitly set forth herein, and failure to pursue judicial, administrative or legislative remedies during the effective period of this Section shall not be used against a party upon termination of this Section 7.

SOUND TRANSIT


Joan M. Earl
Chief Executive Officer

August 16, 2011
Date

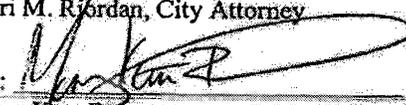
CITY OF BELLEVUE


Steven R. Sarkozy
City Manager

August 9, 2011
Date

Approved as to Form:

Lori M. RJordan, City Attorney

By: 
Mary Kate Berens
Deputy City Attorney

Approved as to Form:

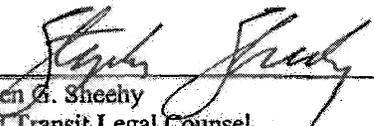
By: 
Stephen G. Sheehy
Sound Transit Legal Counsel

Exhibit "A" to August 2011 Term Sheet

EAST LINK PROJECT DESCRIPTION

The project consists of constructing and operating an approximately 14-mile light rail system including 10 stations known as East Link. This system would connect with Sound Transit's Central Link at the International District/Chinatown Station. It then would travel east across Lake Washington via Interstate 90 (I-90) to Mercer Island, Downtown Bellevue, Bel-Red, and terminate in Overlake. Exhibit 1 shows the four segments of the project.

Segments B, C, and a portion of segment D are within the City of Bellevue. The following describes the portions of the project in these segments within the City of Bellevue, beginning at the I-90 interchange with Bellevue Way, traveling into Downtown Bellevue, then proceeding east over I-405 and through the Bel-Red area. The portions of the East Link Project with the City of Bellevue include 5 or 6 stations over approximately 6 miles.

Current designs of the Project are included in the East Link Final PE plans and the parameters of project mitigation and construction are included in the East Link EIS. While detailed design and mitigation will continue through project development, the City of Bellevue and Sound Transit are committed to managing within the project scope, schedule and budget.

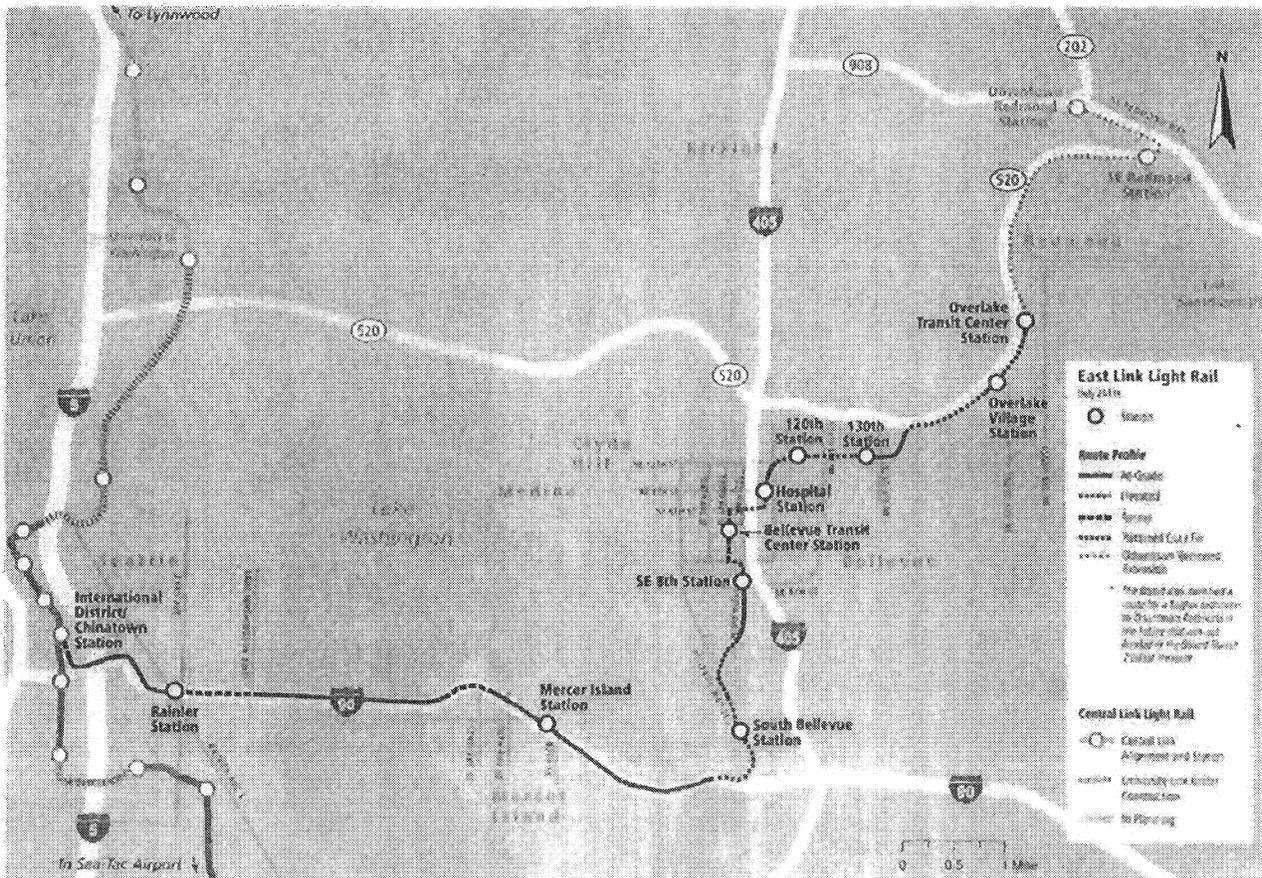


EXHIBIT 1
Project Segments

Exhibit "A" to August 2011 Term Sheet

Segment B: South Bellevue

112th SE Modified Segment (B2M)

Segment B2M (see Exhibit 2) is elevated in the I-90 center roadway, crosses over westbound I-90, and continues elevated on the east side of Bellevue Way SE to the South Bellevue Station, located at the current South Bellevue Park-and-Ride Lot; this alternative also maintains the westbound and eastbound I-90 HOV direct access ramps.

The South Bellevue Station includes a parking structure with approximately 1,400 stalls on up to five levels built on the site of the existing South Bellevue Park-and-Ride Lot. After leaving the station, the route transitions to a retained cut on the east side of Bellevue Way within Mercer Slough Nature Park to the intersection of Bellevue Way SE and 112th Avenue SE. In front of the Winters House the route is in a lidded retained cut approximately 170 feet long. From this point, *Segment B2M* would connect to the 110th NE Tunnel Alternative Segment (C9T). All traffic impacts on Bellevue Way will be mitigated by adding an HOV lane from the main entrance of the S. Bellevue park-and-ride to I-90 and installing a U-turn at the south entrance to the park-and-ride.

B2M transitions from retained cut to at-grade on the east side of 112th Avenue SE to the at-grade SE 8th Station north of SE 8th Street. From there, *B2M* remains at-grade until reaching Segment C at SE 6th Street (Exhibit 3). *Segment B2M* has a gated crossing at SE 15th Street and SE 8th Street.

A traction power substation is located on the east side of Bellevue Way at SE 30th Street, near the Swaylocken boat launch and a cross-over is located south of the South Bellevue Station. Other than embedded track at the SE 15th and SE 8th street crossings, all track within Segment B is direct fixation or ballasted.

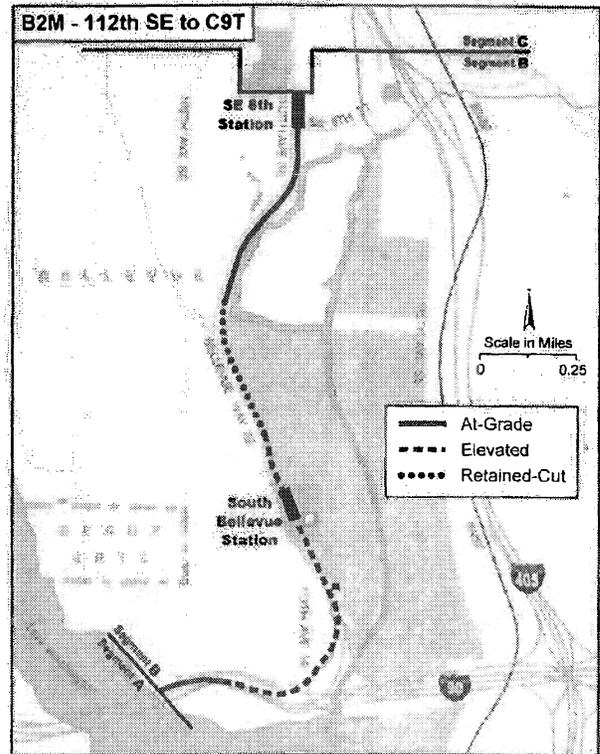


EXHIBIT 2
Preferred Alternative B2M

Exhibit "A" to August 2011 Term Sheet

Segment C: Downtown Bellevue

110th NE Tunnel Alternative Segment (C9T)

The 110th NE Tunnel Alternative Segment (C9T) (see Exhibit 3) travels from Segment B in a tunnel north along 110th Avenue NE, turns east at NE 6th Street, and crosses over I-405 to connect with the Segment D alternatives.

From the 112th SE Modified Segment (B2M), Segment C9T begins on the east side of 112th Avenue SE at SE 6th Street and then transitions to the west side of 112th Avenue SE at SE 6th Street. Segment C9T then travels at-grade on the west side of 112th Avenue SE before turning west at Main Street to enter the tunnel portal on Main Street. The project includes realigning SE 4th Street through Surrey Downs Park to connect to 112th Avenue SE farther south, forming a four-way intersection at SE 6th Street and dead-ending SE 1st Place to the west of 112th Avenue SE.

From the tunnel portal on Main Street, Segment C9T continues on the south side of Main Street before turning north under 110th Avenue NE. Segment C9T includes the Bellevue Transit Center Station at NE 4th Street with two entrances. From this station, Segment C9T continues north to NE 6th Street, where it turns east and transitions to an elevated profile in the center of NE 6th Street, and then swings to the north side of NE 6th Street to cross 112th Avenue NE, I-405, and 116th Avenue NE. Preferred Alternative C9T then turns north along the former BNSF

Railway corridor to cross NE 8th Street and reach the elevated Hospital Station with entrances on the north side of NE 8th. Preferred Alternative C9T then connects with Segment D alternatives from the former BNSF Railway corridor.

There is a traction power substation for Segment C9T, located near the intersection of Main Street and 112th Avenue SE. Cross-overs are located between SE 4th and SE 1st Place and between I-405 and 116th Avenue NE. Other than embedded track at the SE 6th street crossing, all track within Segment C is direct fixation or ballasted.

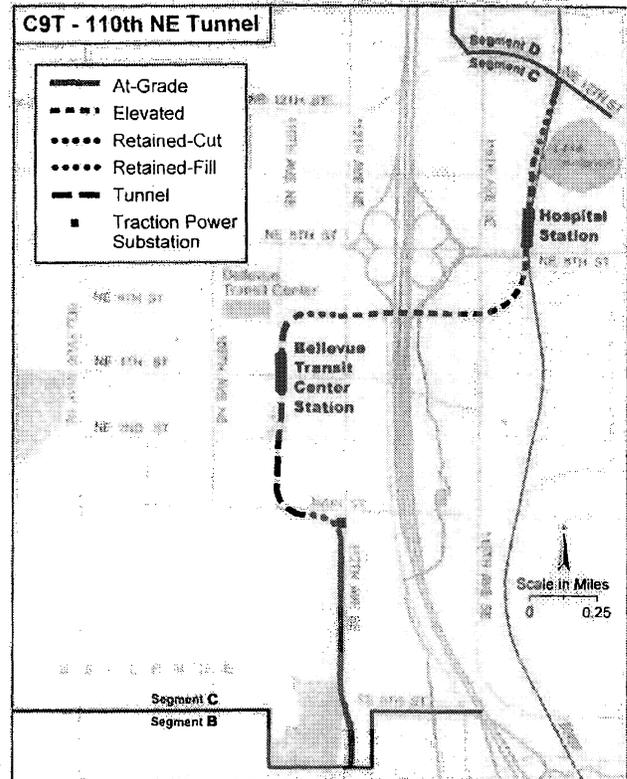


EXHIBIT 3
Preferred Alternative C9T

Exhibit "A" to August 2011 Term Sheet

Segment D: Downtown Bellevue to Overlake Transit Center

NE 16th At-Grade Segment (D2A)

Segment D2A (see Exhibit 4) travels parallel to and north of a new NE 15th Street corridor east from the former BNSF Railway corridor in a mixed at-grade, retained-cut, and elevated profile. Segment D2A leaves the former BNSF Railway corridor at-grade and then transitions to a retained cut under 120th Avenue NE to a retained-cut 120th Station subject to a funding agreement with the property owner. After leaving the 120th Station, the route continues in a retained cut under 124th Avenue NE before transitioning to an elevated profile over the West Tributary of Kelsey Creek and then returns to the at-grade 130th Station. The 130th Station would include a new 300 stall park-and-ride lot adjacent to and immediately north of the station. Segment D2A continues at-grade on NE 16th Street, turns at 136th Place NE, and crosses NE 20th Street at-grade. NE 16th and 136th will be widened with a partially tiered road design to create a median for light rail within the footprint described in the preliminary engineering plans. From NE 20th, the project transitions to an elevated structure along the south side of SR 520. The project then continues northeast across the Bellevue City Limits at 148th Ave NE and into the City of Redmond. Storage tracks would be in the former BNSF Railway corridor north of the Segment C/D break with lead tracks, operator report and light maintenance facilities adjacent to the corridor.

There are two traction power substations for Segment D2A in the City of Bellevue: one near the 120th Station and one located under the elevated guideway at NE 24th Street. A cross-over is located between 124th and 130th Avenues NE. Other than embedded track at street crossings, all track within Segment D is direct fixation or ballasted.

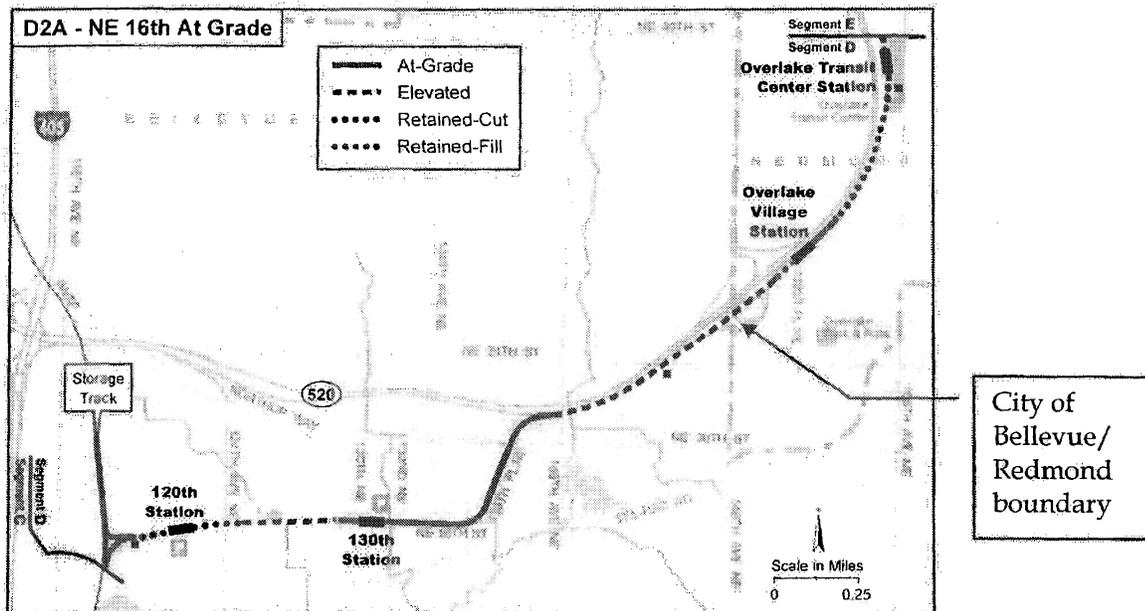


EXHIBIT 4
Preferred Alternative D2A

Attachment B

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 polices 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 THE CITY OF BELLEVUE
TRANSIT AUTHORITY
(SOUND TRANSIT)

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

Exhibit A: Inflation of City Contribution

Draft 10/20/2011

Table A-1: Inflation of \$150 million (2007\$) to \$160 million (2010\$)

Calculation using July 2010 escl. Factors					150.00	(2007\$)
	<u>Tunnel Cost Est.</u>	<u>Weight</u>	<u>Escl Factor</u>	<u>Weighted Average</u>		
CPI	438,441,889	0.158	1.0553	0.166		
ROWI	305,304,933	0.110	0.8997	0.099		
CCI	2,039,111,444	0.733	1.0949	0.802		
	<u>2,782,858,266</u>	<u>1.000</u>		1.067	160.08	(2010\$)

Table A-2: Escalation Indices from ST Financial Model (Updated July 2010)

CPI		
Year	Escalation Factor 2007 = 1	Growth Rate
2007	1.0000	
2008	1.0433	4.332%
2009	1.0492	0.562%
2010	1.0553	0.581%

ROWI		
Year	Escalation Factor 2007 = 1	Growth Rate
2007	1.0000	
2008	1.0357	3.57%
2009	0.8945	-13.64%
2010	0.8997	0.58%

CCI		
Year	Escalation Factor 2007 = 1	Growth Rate
2007	1.0000	
2008	1.0592	5.92%
2009	1.0675	0.79%
2010	1.0949	2.56%

Table A-3: Escalation Index Used by Estimate Item

Segment / SCC	Total w/AC	Escl. Index
10 GUIDEWAY & TRACK ELEMENTS	840,600,565	CCI
20 STATIONS, STOPS, TERMINALS, INTERMODAL	266,341,600	CCI
30 SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	15,013,362	CCI
40 SITEWORK & SPECIAL CONDITIONS	339,384,746	CCI
50 SYSTEMS	251,696,114	CCI
60 ROW, LAND, EXISTING IMPROVEMENTS	305,304,933	ROWI
80 PROFESSIONAL SERVICES		
80.01: Preliminary Engineering	71,555,207	CPI
80.02: Final Design	176,930,726	CPI
80.03: Project Management	144,920,672	CPI
80.04: Construction Management	82,095,599	CCI
80.05: Insurance	0	
80.06: Legal; Permits; Review Fees	45,035,284	CPI
80.07: Surveys, Testing, Inspection	71,229,705	CCI
80.08: Start up	17,347,430	CCI
90 UNALLOCATED CONTINGENCY	155,402,324	CCI
Grand Total	2,782,858,266	

Exhibit B: Portal to Portal Costs

Draft 10/20/2011

Portal to Portal Cost	ST	Bellevue	Total
Bid Amount (PE Cost Estimate with Design Allowance)	241.4	0.0	241.4
Allocated and Unallocated Contingency**	28.5	60.0	88.5
Total	269.9	60.0	329.9

** \$22 million of Construction Unallocated Contingency is assigned to this contract (E650).

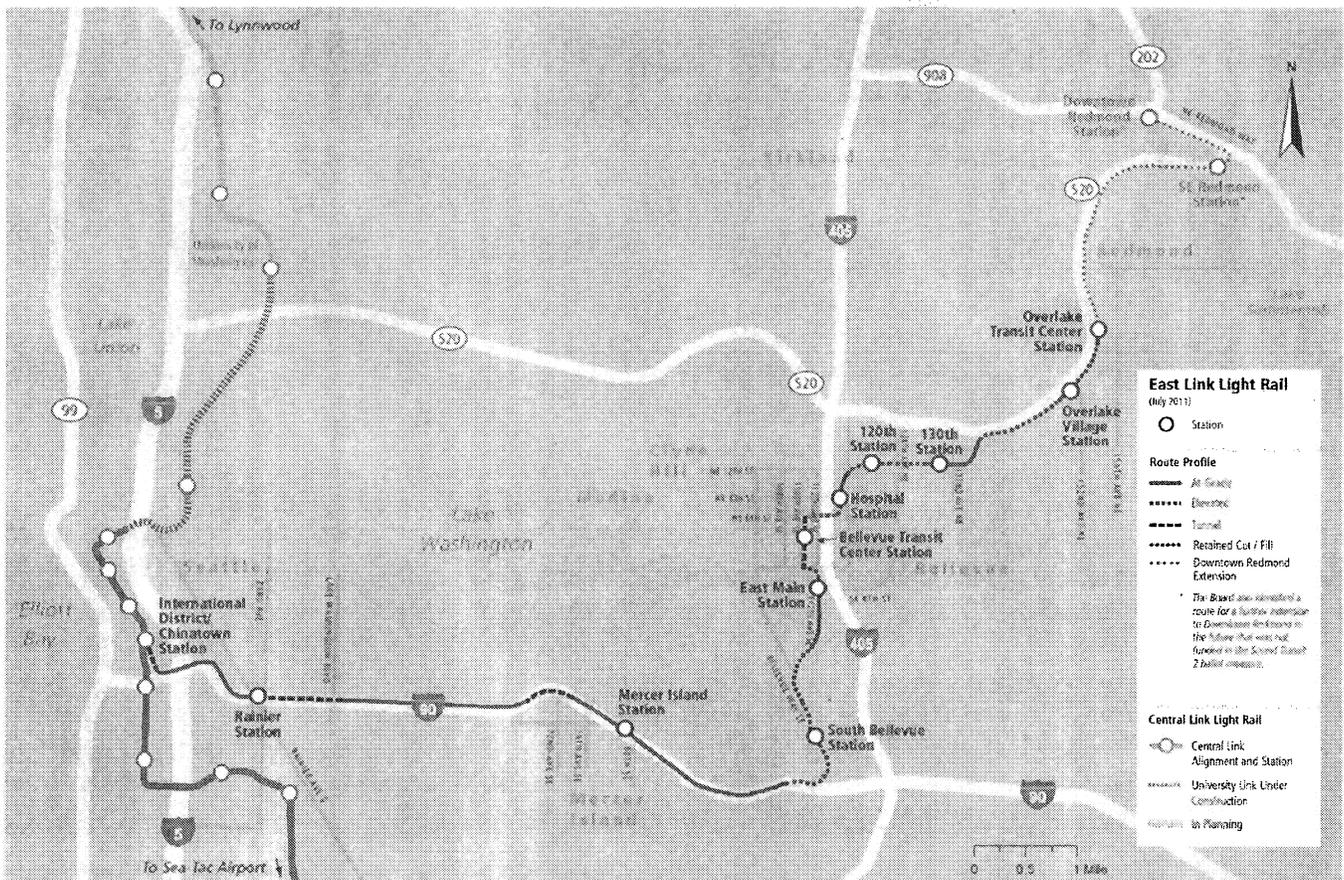
Exhibit C: East Link Project Description

Draft 10/20/2011

The project consists of constructing and operating an approximately 14-mile light rail system including 10 stations known as East Link. This system would connect with Sound Transit's Central Link at the International District/Chinatown Station. It then would travel east across Lake Washington via Interstate 90 (I-90) to Mercer Island, Downtown Bellevue, Bel-Red, and terminate in Overlake. The figure below shows the four segments of the project.

Segments B, C, and a portion of segment D are within the City of Bellevue. The following describes the portions of the project in these segments within the City of Bellevue, beginning at the I-90 interchange with Bellevue Way, traveling into Downtown Bellevue, then proceeding east over I-405 and through the Bel-Red area. The portions of the East Link Project with the City of Bellevue include 5 or 6 stations over approximately 6 miles.

Current designs of the Project are included in the East Link Final PE plans and the parameters of project mitigation and construction are included in the East Link EIS. While detailed design and mitigation will continue through project development, the City of Bellevue and Sound Transit are committed to managing within the project scope, schedule and budget.



Segment B: South Bellevue

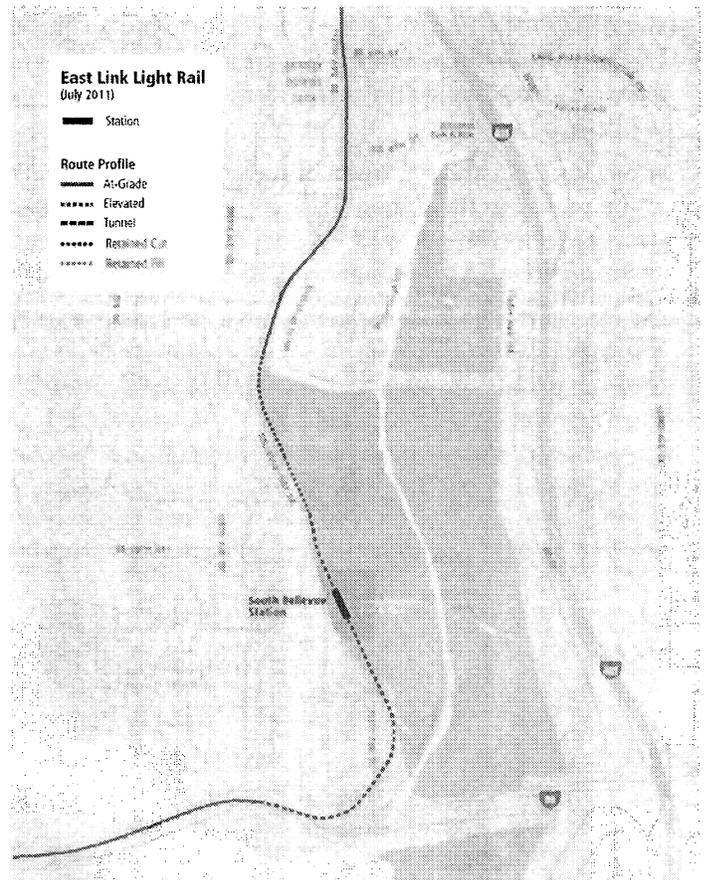
112th SE Modified Segment (B2M)

Segment B2M is elevated in the I-90 center roadway, crosses over westbound I-90, and continues elevated on the east side of Bellevue Way SE to the South Bellevue Station, located at the current South Bellevue Park-and-Ride Lot; this alternative also maintains the westbound and eastbound I-90 HOV direct access ramps.

The South Bellevue Station includes a parking structure with approximately 1,400 stalls on up to five levels built on the site of the existing South Bellevue Park-and-Ride Lot. After leaving the station, the route transitions to a retained cut on the east side of Bellevue Way within Mercer Slough Nature Park to the intersection of Bellevue Way SE and 112th Avenue SE. In front of the Winters House the route is in a lidded retained cut approximately 170 feet long. From this point, *Segment B2M* would connect to the *110th NE Tunnel Alternative Segment (C9T)*. All traffic impacts on Bellevue Way will be mitigated by adding an HOV lane from the main entrance of the S. Bellevue park-and-ride to I-90 and installing a U-turn at the south entrance to the park-and-ride.

B2M transitions from retained cut to at-grade on the east side of 112th Avenue SE. *B2M* remains at-grade until reaching Segment C at SE 6th Street (Exhibit 3). *Segment B2M* has a gated crossing at SE 15th Street and SE 8th Street.

A traction power substation is located on the east side of Bellevue Way at SE 30th Street, near the Sweylocken boat launch and a cross-over is located south of the South Bellevue Station. Other than embedded track at the SE 15th and SE 8th street crossings, all track within Segment B is direct fixation or ballasted.



Segment C: Downtown Bellevue

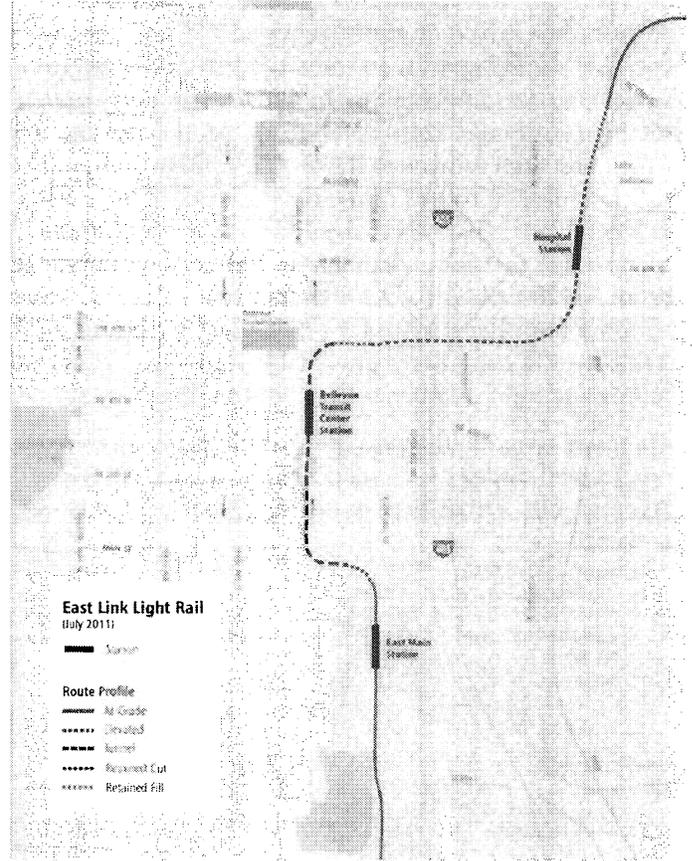
110th NE Tunnel Alternative Segment (C9T)

The 110th NE Tunnel Alternative Segment (C9T) travels from Segment B in a tunnel north along 110th Avenue NE, turns east at NE 6th Street, and crosses over I-405 to connect with the Segment D alternatives.

From the 112th SE Modified Segment (B2M), Segment C9T begins on the east side of 112th Avenue SE at SE 6th Street and then transitions to the west side of 112th Avenue SE at SE 6th Street. Segment C9T then travels at-grade on the west side of 112th Avenue SE, serving the East Main Station, just before turning west at Main Street to enter the tunnel portal on Main Street. The project includes realigning SE 4th Street through Surrey Downs Park to connect to 112th Avenue SE farther south, forming a four-way intersection at SE 6th Street and dead-ending SE 1st Place to the west of 112th Avenue SE.

From the tunnel portal on Main Street, Segment C9T continues on the south side of Main Street before turning north under 110th Avenue NE. Segment C9T includes the Bellevue Transit Center Station at NE 4th Street with two entrances. From this station, Segment C9T continues north to NE 6th Street, where it turns east and transitions to an elevated profile in the center of NE 6th Street, and then swings to the north side of NE 6th Street to cross 112th Avenue NE, I-405, and 116th Avenue NE. Preferred Alternative C9T then turns north along the former BNSF Railway corridor to cross NE 8th Street and reach the elevated Hospital Station with entrances on the north side of NE 8th. Preferred Alternative C9T then connects with Segment D alternatives from the former BNSF Railway corridor.

There is a traction power substation for Segment C9T, located near the intersection of Main Street and 112th Avenue SE. Cross-overs are located between SE 4th and SE 1st Place and between I-405 and 116th Avenue NE. Other than embedded track at the SE 6th street crossing, all track within Segment C is direct fixation or ballasted.



Segment D: Downtown Bellevue to Overlake Transit Center

NE 16th At-Grade Segment (D2A)

Segment D2A travels parallel to and north of a new NE 15th Street corridor east from the former BNSF Railway corridor in a mixed at-grade, retained-cut, and elevated profile. *Segment D2A* leaves the former BNSF Railway corridor at-grade and then transitions to a retained cut under 120th Avenue NE to a retained-cut 120th Station subject to a funding agreement with the property owner. After leaving the 120th Station, the route continues in a retained cut under 124th Avenue NE before transitioning to an elevated profile over the West Tributary of Kelsey Creek and then returns to the at-grade 130th Station. The 130th Station would include a new 300 stall park-and-ride lot adjacent to and immediately north of the station. *Segment D2A* continues at-grade on NE 16th Street, turns at 136th Place NE, and crosses NE 20th Street at-grade. NE 16th and 136th will be widened with a partially tiered road design to create a median for light rail within the footprint described in the preliminary engineering plans. From NE 20th, the project transitions to an elevated structure along the south side of SR 520. The project then continues northeast across the Bellevue City Limits at 148th Ave NE and into the City of Redmond. Storage tracks would be in the former BNSF Railway corridor north of the Segment C/D break with lead tracks, operator report and light maintenance facilities adjacent to the corridor.

There are two traction power substations for *Segment D2A* in the City of Bellevue: one near the 120th Station and one located under the elevated guideway at NE 24th Street. A cross-over is located between 124th and 130th Avenues NE. Other than embedded track at street crossings, all track within Segment D is direct fixation or ballasted.

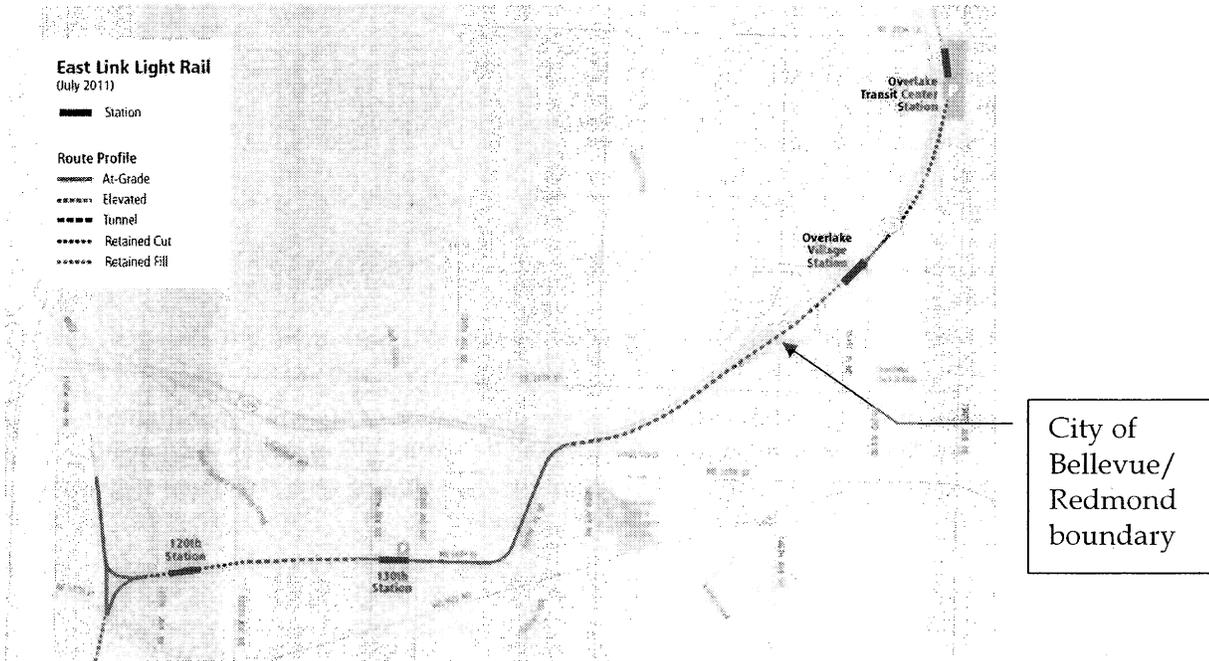


EXHIBIT D: Up-Front Contributions

Draft 10/20/2011

Contribution	Tunnel Credit (2010\$)	Assumptions
Properties		<p>For all properties:</p> <ol style="list-style-type: none"> The City will provide Sound Transit permanent and temporary rights through construction close out, to be detailed in easement agreements. The rights granted will be based on 60% design plans. Bellevue contributing property rights without expectation of additional financial compensation or replacement land, beyond the tunnel credit accounted for in this Agreement. Properties to be provided as-is to Sound Transit, unless specifically noted below. A list of parcels affected by this MOU follows this table; this list may be modified by mutual agreement.
NE 2 nd Pocket Parks (369900-0075, -0080, -0030; 808760-0029)	Included in subtotal below	<ol style="list-style-type: none"> ST responsible for project related park mitigation and restoration, including temporary and permanent mitigation included in the FEIS.
Bel-Red City-owned Properties (282505-9296, 282505-9240)	Included in subtotal below	<ol style="list-style-type: none"> The City will provide land on these sites for wetland mitigation for impacts on these sites, for Sound Transit to use to meet its federal, state, and City permitting requirements related to wetland mitigation, in a location approved by the City. If these sites cannot accommodate required mitigation, the City and Sound Transit will cooperate to find an alternative location within existing resources. Mitigation for impacts shown in the 30% PE Plans on these sites appear to be able to be accommodated on site. ST is responsible for all environmental documentation and permitting, construction of wetland improvements, and wetland maintenance and monitoring for the duration of the permits. City to ensure wetland improvements, developed in cooperation with and subject to City's site operation and maintenance requirements, to remain in perpetuity. Maintenance and liability issues to be included in the easement document.

Contribution	Tunnel Credit (2010\$)	Assumptions
Mercer Slough (700010-0210, -0150, -0445, -0350; 082405-9278; 052405-9254, -9084; 066287-0090)	Included in subtotal below	<p>11. City to purchase private property as currently identified and agreed to by the parties. The purchased property shall be at least 2.61 acres and at least equal value and function as the land identified by Sound Transit as needing to be replaced to satisfy 6(f) and WA RCO requirements.</p> <p>12. Parties agree to cooperate to resolve issues within existing identified resources if WA RCO or NPS fail to approve proposed conversion or do not approve replacement property within parameters defined above.</p> <p>13. The timing of the purchase will be in accordance with the replacement proposal timetable in the LWCF manual.</p> <p>14. City responsible to meet process requirements for parkland conversion required of the grant recipient. Sound Transit responsible to meet other federal process requirements, perform environmental and other analysis as needed, and to cooperate in parkland conversion process (e.g. document preparation, presentations, interagency coordination, etc.).</p> <p>15. City responsible for any state and federal requirements associated with land acquisitions; ST to cooperate and assist as needed. ST responsible to communicate any additional process requirements beyond standard FHWA requirements.</p> <p>16. ST responsible for project related park mitigation and restoration, including temporary and permanent mitigation included in the FEIS.</p> <p>17. The City will provide land on these sites for wetland mitigation for impacts on these sites, for Sound Transit to use to meet its federal, state, and City permitting requirements related to wetland mitigation, in a location approved by the City.</p> <p>18. If these sites cannot accommodate required mitigation, the City and Sound Transit will cooperate to find an alternative location within existing resources.</p> <p>19. ST is responsible for all environmental documentation and permitting, construction of wetland improvements, and wetland maintenance and monitoring for the duration of the permits.</p> <p>20. City to ensure wetland improvements, developed in cooperation with and subject to City's site operation and maintenance requirements, to remain in perpetuity.</p> <p>21. Maintenance and liability issues to be included in the easement document.</p>

Contribution	Tunnel Credit (2010\$)	Assumptions
Surrey Downs Park Property (322505-9140)	Included in subtotal below	<p>22. If B2M-C9T Preferred Alternative:</p> <ul style="list-style-type: none"> a. ST to transfer rights to remaining land along 112th and Main Street north from Surrey Downs Park to City (approximately 2.9 acres based on FEIS) and to landscape property consistent with City plans; b. Bellevue contributing this property without expectation of additional financial compensation or replacement land, beyond the tunnel credit accounted for in this agreement; c. ST responsible for project related park mitigation and restoration in Surrey Downs, including temporary and permanent mitigation, as included in the FEIS. <p>23. If B2M Westside variation:</p> <ul style="list-style-type: none"> a. City will update Surrey Downs Park Master Plan prior to project baselining; b. ST to construct replacement vehicular and pedestrian access consistent with updated Master Plan, and as agreed to by both parties, prior to construction to maintain park access; c. ST to transfer rights to remaining land along 112th and Main Street to City and to landscape property consistent with City plans; d. ST to restore landscaping in Park affected by the Project, consistent with updated Master Plan; e. ST to maintain pedestrian and vehicular access to Surrey Downs Park during construction. <p>24. If King County Court remains open during construction, ST to maintain access to Court House and parking except for temporary closures for construction, requiring approval by the City.</p> <p>25. The options may require the Court House building to be modified. The City is responsible for building modifications.</p> <p>26. City responsible to comply with 2005 King County deed requirements for Surrey Downs.</p>
City Hall (322505-9199, -9017)	Included in subtotal below	<p>27. City responsible to replace temporary and permanent lost parking from visitor/police garage; assumes modification of existing employee garage for police and creation of new stalls on Meydenbauer site.</p> <p>28. Parking solution implemented prior to construction.</p> <p>29. ST will restore garage and plaza and all existing features, exclusive of betterments subject to 60% design, as part of tunnel construction, at its sole cost, with associated terms related to liability and construction defects.</p>
King County Metro (322505-9216)	Included in subtotal below	<p>30. Purchase prior to construction.</p> <p>31. City responsible for any state and federal requirements associated with land acquisitions; ST to cooperate and assist as needed. ST responsible to communicate any additional process requirements beyond standard FHWA requirements.</p>

Contribution	Tunnel Credit (2010\$)	Assumptions
Private Parcel (369980-0035, 808760-0035)	Included in subtotal below	<p>32. Purchase prior to construction.</p> <p>33. City responsible for any state and federal requirements associated with land acquisitions; ST to cooperate and assist as needed. ST responsible to communicate any additional process requirements beyond standard FHWA requirements.</p> <p>34. Option to evaluate and purchase alternative properties with equal function and value for temporary staging needs by end of 60% design, as agreed to by both parties.</p>
Private Parcel (109910-0005)	Included in subtotal below	<p>35. Purchase prior to construction.</p> <p>36. City responsible for any state and federal requirements associated with land acquisitions; ST to cooperate and assist as needed. ST responsible to communicate any additional process requirements beyond standard FHWA requirements.</p>
Properties Subtotal	\$83,600,000	
Private Utilities	\$0-8,000,000	37. Final value of credit to be reconciled based on Sound Transit's estimate of the value of relocates City is able to require of private utilities. Credit to be updated to YOE\$ value.
Public Utilities	\$7,700,000	38. City contribution fixed at \$7.7M (2010\$). Payment schedule to be determined and agreed by the parties prior to the start of construction and updated to YOE\$.
112 th Ave SE Overlay	\$0-1,000,000	<p>39. ST performs all design and construction work needed for the relocation and the reconstruction.</p> <p>40. Subject to terms related to liability for design and construction.</p> <p>41. Overlay 112th Ave SE from Bellevue Way to Main Street after Sound Transit utility relocated and other in-road work.</p> <p>42. Value to be based on Sound Transit scope at 60% design.</p> <p>43. Credit to be based on YOE\$.</p>
Sales Tax Credit/Cash	\$0-8,700,000	<p>44. Overlay date to be agreed to by both parties.</p> <p>45. Programmed in 2011-2017 CIP for 2015.</p> <p>46. Credit value up to \$4.4M for estimated taxes received as a result of the project; remainder in cash, depending on final credit value (as inflated) of other items shown as ranges, to make total credit \$100M.</p> <p>47. Payment no later than the start of revenue service in YOE\$. Option to provide other contributions not listed above, as mutually agreed to by Sound Transit and the City, in lieu of cash contribution, to make total credit \$100M.</p>
Non-Properties Subtotal	\$16,400,000	48. Subject to Section 4, Cost Reconciliation Procedures.
TOTALS	\$100,000,000	49. Not to exceed \$100M up front contribution.

List of Parcels

King County Parcel ID	ST ROW ID No.	Property Name	Taxpayer Name	Site Address	SF (Lot)	SF (Bldg.)	Type of Take
700010-0210	B-2020	VACANT	City of Bellevue Parks & Recreation	11300 Hendrickson Rd	466,142	0	TCE
700010-0150	B-2033	VACANT	City of Bellevue Parks & Recreation	2920 114th Ave SE	34,490	0	TCE
700010-0445	B-2066	VACANT	City of Bellevue Parks & Recreation	2820 Bellevue Way SE	90,169	0	P
700010-0350	B-2236	VACANT	City of Bellevue Parks & Recreation	2420 Bellevue Way SE	138,520	0	TCE
082405-9278	B-2259	BLUEBERRY FARM	City of Bellevue Parks & Recreation	2400 Bellevue Way SE	73,616	0	P
052405-9254	B-2295	BLUEBERRY FARM	City of Bellevue Parks & Recreation	2340 Bellevue Way SE	37,300	400	P
052405-9084	B-2358	WINTERS HOME	City of Bellevue Parks & Recreation	2102 Bellevue Way SE	605,457	4,080	P
066287-0090	B-2404	BELFIELD NATURE PARK	City of Bellevue Parks & Recreation	1575 112th Ave Ne	635,420	0	P
322505-9140	C-2000	SURREY DOWNS	City Of Bellevue	675 112th Ave SE	496,148	32,810	P
282505-9296	D-1027	VACANT INDUSTRIAL LAND	City of Bellevue	1750 124th Ave NE	311,116	0	P
282505-9240	D-1034	SAFEWAY	City Of Bellevue	1420 124th Ave NE	144,516	0	TCE
369900-0075	C-8010	VACANT	City Of Bellevue	10857 NE 2nd Pl	6,637	0	P
369980-0080	C-8014	VACANT	City Of Bellevue	10867 NE 2nd Pl	5,463	0	P
369980-0030	C-8016	VACANT	City Of Bellevue	10846 NE 2nd Pl	5,011	0	P
808760-0029	C-8020	VACANT	City Of Bellevue	10919 NE 3rd Pl	4,067	0	F
322505-9199	C-8026	BELLEVUE CITY HALL	City Of Bellevue	450 110th Ave NE	209,322	646,328	P
322505-9017	C-8029	BELLEVUE CITY HALL PARKING	City Of Bellevue	11105 NE 6th St NE	67,836	0	P
PROPERTY PURCHASE							
369980-0035	C-8017			10856 NE 2nd Pl	5,537	0	P
808760-0035	C-8022			11009 3rd Ane NE	40,633	0	F
322505-9216	C-9002	VACANT	King County Metro	11101 NE 6th St	67,954	0	P
1099100005	D-1013			1445 120th Ave NE	238,097	146,991	F
TOTAL REAL ESTATE						\$83.6 million	

F = Full Take, P = Partial Take, TCE = Temporary Construction Easements only

EXHIBIT E: COLLABORATIVE DESIGN PROCESS

DRAFT 10/20/201

Following execution of the MOU, Sound Transit will begin the final design process with the goal of achieving a 60% Project design plan and Project baseline budget within approximately two and one half years. Typically 60% design plans include reports, drawings showing design information sufficient to support the cost estimate based on actual material quantities, special provisions, supplemental technical specifications, and permit review drawings to determine compliance with applicable land use codes. The final 60% cost estimate proposed for baselining the Project budget is based on these 60% design plans and further must reflect design as reviewed by Bellevue and ST as well as all requirements of the Project land use approvals and associated permit conditions.

Sound Transit and the City are committed to working together in a collaborative manner throughout the final design process and anticipate continuous and regular dialog during the course of design and construction in order achieve the joint goals of reducing costs and delivering a quality project on schedule and in compliance with applicable codes and regulations. While the specific tasks outlined below focus on the process of developing 60% design drawings, the parties recognize the need for continued collaboration beyond that point, through completion of construction drawings, final technical construction permitting, construction coordination and construction impact mitigation and project close-out. The parties intend to address these other areas of collaboration at a future date appropriate to the phase of the Project. By working together in this fashion, both parties intend to reduce cost and schedule risks throughout the duration of the project. It is the intent of the parties to establish a decision making framework within the CDP process that allows decisions to be made at the lowest appropriate levels, with issues that require significant policy decisions or resolution of disputes to be elevated in a predictable, consistent manner when necessary.

PROCESS & PROCEDURE

The Sound Transit Board is the final authority for all Project decisions. As a funding partner in the Project, the City will have a clearly defined role on Project scope and design through the Collaborative Design Process (CDP). The parties agree that the CDP will place a priority on advancing engineering design while exploring and accepting scope reductions, modifications and value engineering options that result in material Project cost savings, provided that such reductions and modifications do not compromise East Link's performance with respect to stated Project and City objectives. Cost saving scope reductions or modifications that are explored but not accepted will be clearly reported prior to Project baselining.

Coordination between Sound Transit and the City will be accomplished using a Leadership Group consisting of three City Councilmembers and three Sound Transit Board Members and a Steering Committee consisting of appropriate department heads from both agencies.

The Leadership Group will meet on an as-needed basis to determine issues of general policy consistent with this MOU and resolve issues that are not resolved at the Steering Committee or Project Management Team levels.

The Steering Committee will meet on a regular basis to resolve issues identified through the CDP. The Steering Committee will establish a Project Management Team and technical working groups to coordinate staff level work needed to achieve the joint goals in accomplishing the Project.

It is acknowledged that the City may, at its expense, utilize consultants to assist it in participating in the CDP. Sound Transit shall coordinate and share information with City consultants used by the City to provide additional technical expertise or labor support for tasks described in the CDP.

Nothing in this Exhibit is intended to waive or modify City of Bellevue permit processes or other powers or authorities. It is understood that at the appropriate stage of design, Sound Transit will submit to the City for required land use approvals and other technical and construction permits, and that the City's participation in CDP, while intended to inform and shape design to avoid code conflict issues, is not a substitute for the permit process.

TASKS

1. Within 60 days of MOU execution, the City and Sound Transit will develop a CDP Management Plan to be approved by the Steering Committee, which will address the following elements:
 - 1.1. Working principles/goals/roles of the parties
 - 1.2. Organizational chart for the Project Management Team and any identified technical working groups
 - 1.3. Cooperative procedures/decision-making process
 - 1.4. A detailed Project schedule including a review schedule providing sufficient time for each party to review materials in advance of providing input on design, technical and cost estimating issues, as well as specific minimum and maximum turn-around times to be agreed by both parties. The final design consultant will provide an update of the Project schedule to be incorporated into the approved CDP Management Plan and such design consultant's scope of work and schedule shall be consistent with the CDP Management Plan.
 - 1.5. The process to develop an efficient permit processing plan including the following:
 - 1.5.1. Submittal standards (i.e. defining minimum acceptable content and quality, CAD standards, formatting, delivery method)
 - 1.5.2. Submittal timing to allow adequate time to process and approve permits or reach related decisions
 - 1.5.3. Turn-around times for City permit and plan review and for Sound Transit to provide response to permit/plan revision requests
 - 1.5.4. The establishment of permitting, plan review, inspection and other Project-related fee estimates for use in the 60% Project baseline budget and cost reconciliation
 - 1.6. City's participation in Sound Transit's development of 60% design drawings, including the parties' roles for jointly identifying and investigating the feasibility of reductions to the Project scope, resolution of existing PE comments and other comments already offered by the City on Project design and mitigation, and other savings

- 1.7. City's participation in Sound Transit's development of design and mitigation associated with the City Requested Modifications (if accepted by the parties and included in the Project) including but not limited to ensuring that the design of the flyover of 112th Avenue SE is designed to allow only the minimum clearance over the public right-of-way, that the flyover is the minimum practicable and feasible distance given the profile along 112th Avenue SE, that the flyover structure includes permanent sound walls along elevated portions, that Sound Transit's final design process includes specific outreach to and participation by residents adjacent to and along the Project route, that the flyover support structure visual impact is minimized, and cooperative development of the audible warning systems
- 1.8. City's participation in Sound Transit's Value Engineering process
- 1.9. Sound Transit's participation in City's sub-area and station area planning processes that may affect the Project
- 1.10. City's participation in Sound Transit's 60% baseline budget development, including at a minimum the City's review and input on Sound Transit's detailed 60% design cost estimate. Cost estimate revisions shall be proposed in writing to the Steering Committee; Sound Transit will provide a written response for suggestions not accepted by Sound Transit
- 1.11. Procedures and protocols for regular reports to the City Council, Sound Transit Board and community
- 1.12. Procedures for the City and Sound Transit to coordinate with private utilities related to relocation of such utilities to accommodate those portions of the Project within City rights-of-way
2. Figure G-1 to Exhibit G illustrates how the parties intend to integrate the Code and Permitting Framework with the Collaborative Design Process.

Exhibit F: Cost within Bellevue

Draft 10/20/2011

PE Cost Estimates: Tunnel vs. At-Grade by Segment and City Limits

City Limits / SCC	At-grade Alignment			Tunnel Alignment			delta
	Bid Amount	A.C. %	Total	Bid Amount	A.C. %	Total	
Segment A: Downtown Seattle to South Bellevue	357.6	28%	457.8	357.6	28%	457.8	-
Seattle, Mercer Island, I-90	357.6	28%	457.8	357.6	28%	457.8	-
10 GUIDEWAY & TRACK ELEMENTS	216.5	30%	281.5	216.5	30%	281.5	-
20 STATIONS, STOPS, TERMINALS, INTERMODAL	26.4	26%	33.2	26.4	26%	33.2	-
40 SITEWORK & SPECIAL CONDITIONS	33.7	25%	42.0	33.7	25%	42.0	-
50 SYSTEMS	80.9	25%	101.1	80.9	25%	101.1	-
Segment B: I-90 and Bellevue Way SE Interchange to Winters House	228.7	25%	285.4	228.7	25%	285.4	-
Bellevue	228.7	25%	285.4	228.7	25%	285.4	-
10 GUIDEWAY & TRACK ELEMENTS	99.4	25%	124.1	99.4	25%	124.1	-
20 STATIONS, STOPS, TERMINALS, INTERMODAL	56.7	25%	70.7	56.7	25%	70.7	-
40 SITEWORK & SPECIAL CONDITIONS	53.1	24%	65.9	53.1	24%	65.9	-
50 SYSTEMS	16.4	25%	20.4	16.4	25%	20.4	-
60 ROW, LAND, EXISTING IMPROVEMENTS	3.2	34%	4.3	3.2	34%	4.3	-
Segment C: C9T from Winters House	413.5	28%	552.2	557.7	28%	711.4	179.2
Bellevue	413.5	28%	552.2	557.7	28%	711.4	179.2
10 GUIDEWAY & TRACK ELEMENTS	119.0	25%	148.4	227.8	27%	288.7	140.2
20 STATIONS, STOPS, TERMINALS, INTERMODAL	26.1	25%	32.6	86.6	25%	108.3	75.7
40 SITEWORK & SPECIAL CONDITIONS	81.9	27%	103.9	94.7	27%	120.5	16.5
50 SYSTEMS	47.4	25%	59.2	44.0	24%	54.7	-4.5
60 ROW, LAND, EXISTING IMPROVEMENTS	141.1	33%	188.1	104.5	33%	139.3	-48.8
Segment D: BNSF to OTC	446.3	26%	563.7	446.3	26%	563.7	-
Bellevue to 148th Ave NE	336.3	27%	426.5	336.3	27%	426.5	-
10 GUIDEWAY & TRACK ELEMENTS	89.1	24%	110.8	89.1	24%	110.8	-
20 STATIONS, STOPS, TERMINALS, INTERMODAL	19.9	24%	24.7	19.9	24%	24.7	-
30 SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	12.2	23%	15.0	12.2	23%	15.0	-
40 SITEWORK & SPECIAL CONDITIONS	56.8	27%	72.2	56.8	27%	72.2	-
50 SYSTEMS	43.2	25%	54.0	43.2	25%	54.0	-
60 ROW, LAND, EXISTING IMPROVEMENTS	115.3	30%	149.8	115.3	30%	149.8	-
Redmond	109.9	25%	137.2	109.9	25%	137.2	-
10 GUIDEWAY & TRACK ELEMENTS	28.8	23%	35.6	28.8	23%	35.6	-
20 STATIONS, STOPS, TERMINALS, INTERMODAL	24.0	23%	29.5	24.0	23%	29.5	-
40 SITEWORK & SPECIAL CONDITIONS	31.0	25%	38.8	31.0	25%	38.8	-
50 SYSTEMS	17.2	25%	21.5	17.2	25%	21.5	-
60 ROW, LAND, EXISTING IMPROVEMENTS	8.9	33%	11.9	8.9	33%	11.9	-
Subtotal Construction and ROW Costs	1,448.0	27%	1,839.1	1,550.3	27%	2,018.3	179.2
80 PROFESSIONAL SERVICES			546.0			609.1	63.1
80.01: Preliminary Engineering			71.6			71.6	-
80.02: Final Design			154.3			176.9	22.6
80.03: Project Management			132.3			144.9	12.6
80.04: Construction Management			71.4			82.1	10.7
80.06: Legal; Permits; Review Fees			41.8			45.0	3.3
Seattle			3.0			3.2	0.1
Mercer Island			0.3			0.3	-
Bellevue			16.1			18.0	1.9
Redmond			0.5			0.5	-
WSDOT / KCM			9.3			9.9	0.6
Legal, Permits, Other			12.5			13.1	0.6
80.07: Surveys, Testing, Inspection			57.4			71.2	13.8
80.08: Start up			17.3			17.3	-
90 UNALLOCATED CONTINGENCY**			122.1			155.4	33.3
Grand Total			2,507.3			2,782.9	275.6

Cont.
Next
Page

MOU Baseline

PE Cost Estimate with City of Bellevue by Segment	2010\$
Segment B: I-90 and Bellevue Way SE Interchange to Winters House	285.44
Segment C: C9T from Winters House	711.36
Segment D: BNSF to 148th Ave NE	426.49
Bellevue - Permits, Design review, Construction Assistance	18.01
Total PE Cost Estimate in City of Bellevue	1,441.31
112th Ave SE Alignment Modification	7.00
StartS (a standalone project)	-7.17
City Property Contribution	-83.56
MOU Baseline	1,357.57
Bellevue - Final Design Cost	+TBD
Revised MOU Baseline	TBD

Dollar figures are in Millions 2010\$

Segment C, grouped by Zone (Tunnel Alignment)

	Bid Amount	A.C. %	Grand Total
Segment C: CRT from Winters House	557.7	28%	711.4
B1040: "W" to EB 2968+00	17.1	24%	21.1
B1050: EB 2968+00 to 2988+00	22.8	25%	28.5
B1060: EB 2988+00 to 3000+30 incld SE8th Station	33.9	25%	42.2
B1070: SE 8th Roadwork	9.0	27%	11.5
C1010: EB 3000+30 to 3014+00 incld SE4th Work	26.5	27%	33.6
C1020: EB 3014+00 to SE 1st	37.4	29%	48.4
C1030: Tunnel, BTC Station, Portal Retained Cut			
E650: Downtown Tunnel	241.4	28%	307.9
E750: Systems	6.8	26%	8.5
Right-of-way	49.3	33%	65.6
C1040: Portal to East of 116th Ave NE	36.3	25%	45.6
C1050: 116th Ave NE to BNSF Touchdown	77.3	27%	98.4

	ST	Bellevue	Total
E650: Downtown Tunnel			
Bid Amount (PE Cost Estimate with Design Allowance)	241.4	0.0	241.4
Allocated and Unallocated Contingency**	28.5	60.0	88.5
Total	269.9	60.0	329.9

** \$22 million of Construction Unallocated Contingency is assigned to this contract (E650).

MOU CODE AND DISCRETIONARY PERMITTING FRAMEWORK

Following execution of the MOU, Sound Transit will begin the final design process with the goal of achieving a 60% Project design plan and Project baseline budget within approximately two and one half years. Typically Sound Transit applies for local land use permits at approximately the 60% Project design plan stage, with Project baseline budget established after any required land use approvals are issued. It is the intent of the parties to identify and process amendments to the City's Land Use Code that allow for a consolidated land use permitting process for the East Link Project. Such amendments are anticipated to provide certainty and predictability with respect to permitting processes and requirements both for Sound Transit as the project applicant and to interested parties commenting on or otherwise participating in the permitting process.

LAND USE AND TECHNICAL CODE AMENDMENT PACKAGE

The City Council, through a legislative action, is the final decision maker on amendments to the City's Land Use Code (LUC), according to the Process IV procedures and criteria in Part 20.35 of the LUC. Nothing in this MOU is a waiver or limitation of the City's legislative authority, nor is any particular legislative outcome contracted for in this MOU. Rather, the parties agree to work cooperatively to identify and process a package of LUC and other code amendments that, if adopted, could accomplish the following objectives:

- Allow for the City Council, through a subsequent development agreement, to establish a consolidated permit process for the East Link project;
- Amend requirements of the LUC that are technically infeasible for the East Link Project, based on the Project description that is the subject of this MOU;
- Amend and add definitions in the LUC consistent with this MOU to accommodate light rail uses and related facilities
- Allow for extended vesting of land use approvals through a development agreement; and
- Allow for further administrative modifications to LUC requirements through the applicable permitting process if such code requirements are impracticable or infeasible for the Project
- Resolve identified technical code conflicts

It is the intent of the parties to initiate the code amendment process, utilizing the City's Process IV provisions with a public hearing directly with the City Council, as allowed under LUC Section 20.35.400, with sufficient time to complete the process by no later than December 31, 2012, unless otherwise agreed by the parties.

DEVELOPMENT AGREEMENT

If the City Council approves an amendment to the LUC that allows for a development agreement in association with a light rail project, the parties agree to work cooperatively to negotiate a development

agreement that, if approved by the agencies' respective legislative bodies, could accomplish the following objectives:

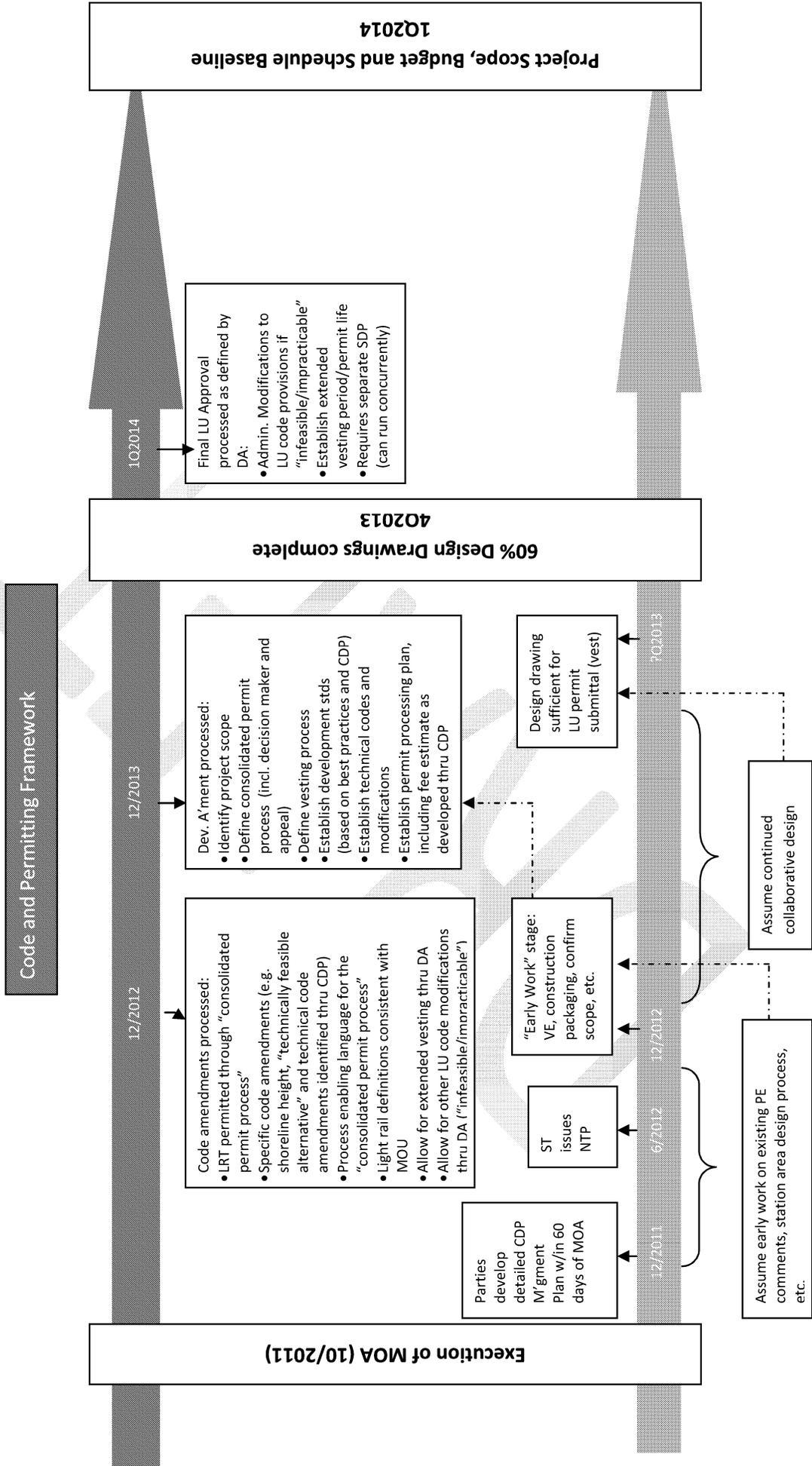
- Identify the project scope;
- Define the consolidated permitting process, including minimum notice and public participation requirements, identifying the decision-maker on the required land use permits, and establishing an appeal process, which may or may not include an administrative appeal;
- Define the vesting process for the consolidated permit process;
- Establish specific decision criteria for the consolidated permitting process and development standards for the project, considering existing elements of the City's comprehensive plan, the City's Light Rail Best Practices Manual and results and outcomes from the CDP established by this MOU;
- Provide for authority for the decision-maker on the consolidated permit process to allow for administrative modifications to LUC provisions, where compliance with such provisions is impracticable or infeasible; and
- Establish permit processing plan, including fee estimate, as developed through the CDP.

It is anticipated that any development agreement would be negotiated and considered by the Parties' respective legislative bodies through the requirements established by RCW ch. 36.70B by no later than **December 31, 2013** or as otherwise mutually agreed by the Parties.

Nothing in this Exhibit G is intended to waive or modify City of Bellevue permit processes or other powers or authorities. It is understood that at the appropriate stage of design, Sound Transit will submit to the City for required land use approvals and nothing in this MOU shall be construed as an approval of such permits or a pre-determination of compliance with applicable codes and standards.

Figure G-1 illustrates the Code and Permitting Framework established by this Exhibit G.

**FIGURE G-1
FOR ILLUSTRATIVE PURPOSES ONLY**



Notes:

- All dates anticipated
- Specific terms of MOU govern any conflict with this exhibit

Exhibit H: Designated Representatives

Draft 10/21/11

Sound Transit

Name

401 S Jackson Street
Seattle, WA 98104-2826
Phone (206) xxx-xxxx
Fax (206) xxx-xxxx
xxxxx@soundtransit.org

City of Bellevue

Name

Address
Bellevue, WA xxxxx
Phone (206) xxx-xxxx
Fax (206) xxx-xxxx
xxxxx@bellevuewa.gov

Attachment C

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 “finalized” 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

DWG. INFO:
 LISCALE: 1"=1'
 XREFS:
 -Attached:
 050600.dwg
 ELD.L75_KA-100
 ELD.L75_KA-100
 ELD.L75_PP-100
 ELD.L75_US
 ELD.L75_US
 SUB=FEIS
 ZC=2234H
 X010010
 X0834R
 X0834R
 X0834R
 X1131Sf
 X1134Sf
 X1134Sf
 -Unassociated:
 ELD.L75_CK-100
 ELD.L75_CL
 ELD.L75_DM-200
 ELD.L75_CS
 ELD.L75_J0-100
 ELD.L75_PP
 X0834R
 X1131Sf
 X1134R

SEE DWG D2AB-KP01

120TH AVE NE

120TH AVE STATION
 SIDE PLATFORM

124TH AVE NE

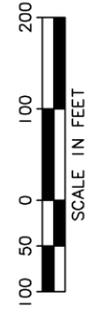
SIGNAL HOUSE

SEE DWG D2AB-KP03

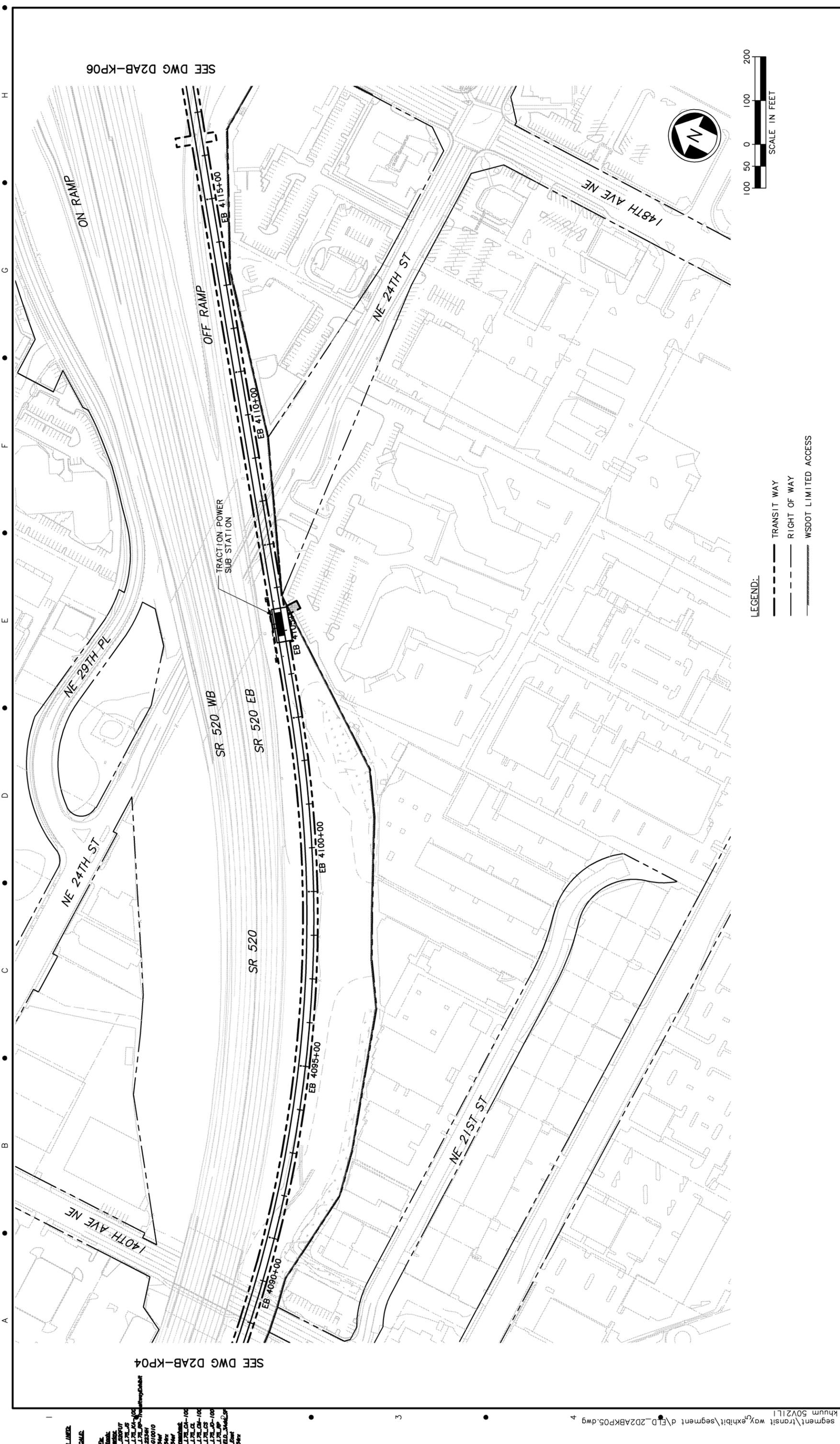


LEGEND:

- TRANSIT WAY
- RIGHT OF WAY
- ==== WSDOT LIMITED ACCESS



Drawing No.: D2AB-KP02		Sheet No.: 10		Rev.: 3-104	
LINK LIGHT RAIL PROJECT EAST CORRIDOR SEGMENT D - ALT D2A (PREFERRED)		H: 1" = 100' Filename: ELD_2D2ABKP02.dwg Contract No.:		Date: 10/11/11	
CH2MHILL		SOUNDTRANSIT		Approved:	
Submitted:		Date:		Approved:	
Designed By:	Drawn By:	Checked By:	Approved By:	Dsn.	App.
No.	Date	Chk.	App.	Revisions	



SCALE IN FEET
 0 50 100 200

LEGEND:
 - - - TRANSIT WAY
 _____ RIGHT OF WAY
 _____ WSDOT LIMITED ACCESS

SEE DWG D2AB-KP04
 SEE DWG D2AB-KP06

Drawing No.: D2AB-KP05		LINK LIGHT RAIL PROJECT EAST CORRIDOR SEGMENT D - ALT D2A (PREFERRED)	
Sheet No.: 13		TRANSIT WAY EXHIBIT (BASED ON PE PLANS FINAL SUBMITTAL NOVEMBER 24, 2010)	
Scale: H: 1" = 100' Filename: ELD_2D2ABKP05.dwg Contract No.:		Date: 10/11/11	
Submitted:	Approved:	Date:	Date:
Designed By:	Drawn By:	Checked By:	Approved By:
No.	Dsn.	Chk.	App.
Date	Date	Date	Date
Revisions	Revisions	Revisions	Revisions

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 10/11/11 15:07 : khum 50V21L1

Exhibit B: General Description of Light Rail Alignment, Station Locations, and Facilities

Draft 10/21/11

Segment B: South Bellevue (I-90 to SE 6th Street)

Route:

Elevated Structure from I-90 to north of the South Bellevue Park-and-Ride on the east side of S Bellevue Way

Retained cut from north of the South Bellevue Park-and-Ride to north of the intersection of S Bellevue Way and 112th Ave SE on the east side of S Bellevue Way and 112th Ave SE. The retained cut is lidded in front of the Winters House and at the driveway to the Winters House parking lot

At-grade from north of the intersection of S Bellevue Way and 112th Ave SE to SE 6th Street on the east side of 112th Ave SE and at-grade crossings at SE 15th Street and SE 8th Street

Station/Facility Locations:

South Bellevue Station (elevated) and park-and-ride structure at the South Bellevue Park-and-Ride

Traction power substation and signal house on east side of Bellevue Way at SE 30th Street

Segment C: Downtown Bellevue (SE 6th Street to BNSF Railway Corridor)

Route:

At grade crossing from the east to west side of 112th Ave SE at SE 6th Street, at-grade from SE 6th Street turning west onto the south side of Main Street from the west side of 112th Ave SE

Tunnel portal on south side of Main Street, west of 112th Ave SE

Tunnel from west of 112th Ave SE to NE 6th Street under Main Street, 110th Ave NE, and NE 6th Street

Tunnel portal in the center of NE 6th Street, west of 112th Ave NE

Elevated structure crossing from center to the north side of NE 6th Street, from west of 112th Ave NE to the BNSF Railway Corridor, crossing over 112th Ave NE, I-405, 116th Ave NE, and NE 8th Street

Station/Facility Locations:

East Main Station (at-grade) on the west side of 112th Ave SE south of Main Street

Bellevue Transit Center Station (tunnel) under 110th Ave NE south of NE 6th Street with entrances on the City Hall property and on the west side of 110th north of NE 2nd Place

Hospital Station (elevated) in the BNSF Railway Corridor north of NE 8th Street

Traction power substation near the southwest corner of Main Street and 112th Ave SE

Signal House on east side of I-405 north of future extension of NE 6th Street

Segment D: Downtown Bellevue to Overlake Transit Center (BNSF Railway Corridor to 148th Ave NE)

Route:

Elevated Structure from the Hospital Station, transitioning to at-grade in the BNSF Railway Corridor

Retained cut from east of the BNSF Railway Corridor to west of the West Tributary of Kelsey Creek, crossing under 120th Ave NE and 124th Ave NE

Elevated from east of 124th Ave NE to west of 130th Ave NE, crossing over the West Tributary of Kelsey Creek

At-grade from west of 130th Ave NE to SR 520 west of 140th Ave NE, at-grade crossings at 130th Ave NE, 132nd Ave NE, 134th Ave NE, 136th Ave NE, and NE 20th Ave

Elevated along the south side of SR 520 from west of 140th Ave NE to 148th Ave NE (Bellevue City Limits).

Station/Facility Locations:

120th Station (retained cut, subject to funding agreement with the property owner) between 120th Ave NE and 124th Ave NE

130th Station (at-grade) and park-and-ride lot between 130th Ave NE and 132nd Ave NE

Traction power substation near the 120th Station

Traction power substation underneath the elevated guideway at NE 24th Street

Storage tracks for trains in the former BNSF corridor north of NE 12th Street with a light maintenance facility on the east side of the former BNSF corridor

Exhibit C: Designated Representatives

Draft 10/21/11

Sound Transit

Name
401 S Jackson Street
Seattle, WA 98104-2826
Phone (206) xxx-xxxx
Fax (206) xxx-xxxx
xxxxx@soundtransit.org

City of Bellevue

Name
Address
Bellevue, WA xxxxx
Phone (206) xxx-xxxx
Fax (206) xxx-xxxx
xxxxx@bellevuewa.gov