

AMENDED AND RESTATED

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 AMENDED AND RESTATED UMBRELLA MEMORANDUM OF UNDERSTANDING (“MOU”), effective this _____ day of _____, 2015, 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, and (c) 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. On November 14, 2011, ~~The parties intend to~~ entered into a separate Transit Way Agreement ~~which will~~ to 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; ~~and~~

WHEREAS, the parties desire to cooperatively identify design modifications for the Project to appropriately reduce costs, 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

Explanatory Note to Reader: Underline and Strikedraft text in this document reflects modifications to the November 15, 2011 Umbrella Memorandum of Understanding, as previously amended by the First Amendment to Umbrella MOU dated June 2013

standards that maximize transparency and efficiency in decision making, and build effective cooperation between the parties; ~~and~~

WHEREAS, on November 15, 2011, the City and Sound Transit entered into the Umbrella MOU to construct, operate and maintain the East Link Project pursuant to the authority granted in City Resolution 8322 and Sound Transit Motion No. M2011-77;

WHEREAS, on February 25, 2013, the City, pursuant to the terms of the MOU adopted amendments to its Land Use Code;

WHEREAS, pursuant to the Umbrella MOU the Parties engaged in a collaborative process for design and development of the East Link Project, including identifying potential cost savings and alignment modifications;

WHEREAS, on March 26, 2013 Sound Transit completed and published the East Link Extension 2013 SEPA Addendum evaluating the potential modifications;

WHEREAS, on April 22, 2013 the Bellevue City council passed Resolution No. 8576 endorsing modifications for inclusion in the East Link Project and approving the East Link Project alignment location and general profile;

WHEREAS, on April 25, 2013, the Sound Transit Board adopted (1) Resolution No. R2013- 09 selecting the route, profiles, and station locations for the East Link Project, including the City's endorsed modifications, thereby necessitating amendments to the Umbrella MOU and (2) Motion 2013-27 authorizing the chief executive officer to execute amendments to the Umbrella MOU;

WHEREAS, the Parties executed the First Amendment to the MOU on June 21, 2013 pursuant to the authority granted in City Resolution 8576 and Sound Transit Motion No. M2013-27;

WHEREAS, the MOU dated November 15, 2011 contemplated that the City and Sound Transit would confirm the MOU Baseline and make any adjustments to the City Contingency in writing when all required costs of the Project were available;

WHEREAS, through the Collaborative Design Process the Project design is now between 60-100% complete, Sound Transit has prepared the Baseline Project Cost estimate, and after reviewing the costs of the Project the City and Sound Transit have determined that elimination of the City Contingency is appropriate at this time;

WHEREAS, the "Up-Front Contribution" as identified in the MOU dated November 15, 2011 has been updated in this Amended and Restated MOU as the "City Contribution" and is detailed in Exhibit D-1;

WHEREAS, pursuant to Motion No. M2014-51, on July 24, 2014 the Sound Transit Board identified a site in the Bel-Red corridor as the preferred alternative for a new Link Operations and Maintenance Satellite Facility (OMSF) to be evaluated in a

Final Environmental Impact Statement and that the City and Sound Transit acknowledge that the review of alternatives is still ongoing and that the Sound Transit Board has not made a final decision regarding the OMSF site, but that a number of items of mutual concern should be addressed in the Umbrella MOU at this time in the event that the Sound Transit Board ultimately selects an OMSF site in Bellevue after completion of the Final EIS;

WHEREAS, the parties have worked through the Collaborative Design Process to identify projects to be completed jointly for reduced impacts to the public, and overall cost savings and efficiencies; and

WHEREAS, this MOU is specifically authorized by the Interlocal Cooperation Act set forth in chapter 39.34 of the Revised Code of Washington.

NOW THEREFORE, in consideration of mutual promises and covenants contained herein, the Parties hereby agree that this Amended and Restated MOU and its following terms and conditions shall supersede and replace the terms of the Umbrella MOU dated November 15, 2011 and the First Amendment to the MOU dated June 21, 2013, and 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. [Intentionally deleted].~~

- 1.4 City Contribution. ~~The “City Contribution” consists of the elements described in Exhibit D-1 attached hereto and incorporated herein. was based on sharing 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, advances in design, and elimination of a project reserve. 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), attached and incorporated herein. 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’ and expert witness 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. [Intentionally deleted].~~

- 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.
- 1.11 ~~Portal to Portal Costs. “Portal to Portal Costs” means those certain construction costs, as identified on Exhibit B (Portal to Portal Costs), attached and including the NE 6th Street station, attached and incorporated herein, against which the City Contingency may be applied. [Intentionally deleted].~~
- 1.12 Project. “Project” means the segments of the light rail system in the City of Bellevue as described in Exhibit C-1 (Project Description), attached and incorporated herein, and as may be modified as described in this MOU.
- 1.13 ~~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. [Intentionally deleted].~~
- 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 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.
- 1.15 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.
- 1.16 ~~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), attached and incorporated herein, and which together are valued as a \$100 million (2010\$) credit toward the City Contribution, as calculated and adjusted in Section 4. [Intentionally deleted].~~
- 1.17 Operation and Maintenance Satellite Facility (“OMSF”): is a type of essential public facility, and refers to a regional light rail transit facility component used for overnight storage and maintenance of an expanded fleet of up to 96 light rail vehicles as described in the Sound Transit “Link Operations and Maintenance Satellite Facility Environmental Scoping Information Report” dated September 2012, and other related documents.

1.18 Transit Oriented Development (“TOD”): “Transit-oriented development” (TOD) is high density, mixed-use, pedestrian-oriented development that maximizes the functional relationship between land use and transit.

1.19 Additional City Property: “Additional City Property” means those property interests in the Lincoln Plaza property, and additional property interests in the City Hall and the City-owned Metro property identified after ST Preliminary Engineering and therefore not included in the Umbrella MOU dated November 15, 2011, which will be transferred to Sound Transit subject to the terms and conditions of this MOU. Those property interests are described in more detail

_____.

1.20 130th Street Parcels: [To be inserted prior to execution].

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 parties~~ may apply for grants to supplement ~~Sound Transit~~ either party’s funds as contemplated by this MOU. Upon request, ~~Sound Transit~~ each party will provide letters of support for and otherwise cooperate fully in grant applications made by ~~the City~~ either party.

2.4 Attached to this MOU is Exhibit E-1 (Collaborative Design Process), attached hereto and incorporated herein, adopted and incorporated herein by this reference, explaining in further detail the Collaborative Design Process (CDP) the parties have followed and will continue to utilize through completion of design as further defined in this MOU. ~~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, together with any subsequent environmental documents issued by the lead agency, comprise the “Project Environmental Documents,” incorporated herein by reference:

- (a) East Link Project Draft Environmental Impact Statement, December 12, 2008 (“DEIS”).
- (b) East Link Project Supplemental Draft Environmental Impact Statement, November 12, 2010 (“SDEIS”).
- (c) East Link Project Final Environmental Impact Statement, July 15, 2011 (“FEIS”).
- (d) East Link Extension 2013 SEPA Addendum, March 25, 2013 (Addendum)
- (e) The related documents referenced in the DEIS, SDEIS, or FEIS, or Addendum, including but not limited to those submitted by the City.

3.2 Sound Transit acknowledges that it has ~~not~~ applied for, or is in the process of applying for, the 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 ~~€9T~~ DOWNTOWN TUNNEL

~~(a)~~ 4.1 Description of City Contribution. The City shall provide a City Contribution up to \$160 million (2010\$) toward the cost of the Project, as set forth in Exhibit D-1 attached hereto and incorporated herein, ~~as further described in this Section 4.1, and as adjusted as described in Section 4.2.~~ Up-front Contribution. ~~Subject to Section 4.2(b),~~ The Up Front ~~The City 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\$).~~

~~(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. [Intentionally deleted].~~

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

~~The adjustment procedures described below will require in some cases adjustment from 2010 dollars to “year of expenditure” (YOE) dollars. 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, attached and incorporated herein.~~

~~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	-\$83.6
Interim MOU Baseline	\$1,357.54
Bellevue—Final Design Award Authority**	+TBD
MOU Baseline	TBD

* Cost estimates in millions of 2010\$

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~~*** Sound Transit will award the contract for final design in a manner that will allow for segregation of costs for design of those portions of the East Link project within the Bellevue city limits. Once the contract is awarded and Bellevue costs segregated, Sound Transit will track expenditures in the same manner. At the time of 60% updated cost estimating, Sound Transit will provide an accounting of expenditures to date, as well as a written estimate of projected costs through final design.~~

~~The MOU Baseline is a portion of the PE cost estimate, calculated as follows: the total of construction costs for the Project (including design allowance) with allocated contingency, right of way costs within the City with allocated contingency, and City plan and permit review and inspection fees PLUS the complete 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 along 112th Avenue SE and/or Main Street 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. Within forty five (45) days of Sound Transit providing the City with the 60% updated Project cost estimate, either party may terminate this MOU with no further obligation; provided, however, if the City so terminates, the real property components described in Exhibit D that are owned by the City as of the date of this MOU shall be due and owing to Sound Transit. In the event of a termination under this provision, the parties shall work cooperatively to identify appropriate revisions to the Project scope, schedule and budget as described in Section 14.3. If neither party exercises such option, the parties shall confirm in writing any adjustment to the City Contingency and associated terms regarding final cost reconciliation, and the availability of the City Contingency at Project close-out, as further described in Sections 4.2 and 4.3.~~

~~e) Adjustment of City Contingency. Upon confirmation of agreement, the parties shall make the following adjustments:~~

~~(i) If the cost of the Project included in the 60% updated Project cost estimate, based on the same elements as included in the MOU Baseline, are lower than the MOU Baseline, then the City Contingency 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 60% updated Project cost~~

~~estimate. 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.~~

~~(ii) If the cost estimate for Professional Services costs designated “80.03” and “80.08” on Exhibit F at the time of the 60% updated cost estimate have together resulted in a decrease in estimated costs compared to the PE cost estimate, then fifty percent (50%) of such savings shall be added to the Sound Transit resources available for Portal to Portal Costs as shown on Exhibit B.~~

~~(iii) At the time the amount of City Contingency is confirmed and Exhibit B (“Portal to Portal Costs”) is updated, 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 adjusted City Contingency and provide an unconditionally binding agreement including an irrevocable pledge to pay the funds consistent with this MOU and the terms of that agreement.[Intentionally deleted].~~

4.3 Timing and Application of City Contribution.

- a) ~~The credit value of the property components of the City Up-Front Contribution is permanently set at the preliminary engineering cost estimates with contingency as shown in Exhibit D-1. 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 City Up-Front Contribution will be due for each component as set forth in Exhibit D-1. 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 or along Main Street 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 and the adjustments described in 4.2(c)(ii); provided, however, that the portion of construction unallocated contingency reflected in Exhibit B shall not be reduced. 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.[Intentionally deleted].~~
- 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 B 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. In addition, if actual expenditures for construction management (designated as the collective costs designated as "80.04" and "80.07" on Exhibit F) are less than the award authority for such costs within Bellevue city limits, fifty percent (50%) of such savings shall be applied 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 one hundred twenty (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 one hundred twenty (120) days of the Project close out and final reconciliation, including City's financing costs, if any, for the overpayment.~~

~~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 and the City's rights to audit Sound Transit and its contractors' records associated with Portal to Portal Costs. [Intentionally deleted].~~

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) An elevated crossing of 112th Avenue SE, from the east to the west side, at approximately SE 15th and then continuing along the west side of 112th Avenue SE, and such other revisions as indicated in "Option B: Flyover to Trench" in the 112th Avenue SE Alternatives Technical Memorandum dated October 2011,~~
- ~~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, and~~
- ~~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. [Intentionally deleted].~~

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; and~~
- ~~f) Resolve identified technical code conflicts~~

~~6.2 For purposes of this MOU and Exhibit G (Code and Permitting), attached and incorporated herein, 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 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. [Intentionally deleted, this provision of the MOU dated November 15, 2011 has been satisfied by adoption of Part 20.25M LUC on February 25, 2013].~~

7.0 SUBSEQUENT FUTURE AGREEMENTS

7.1 The parties contemplate that additional agreements, subsequent to execution of this MOU, may be necessary to fully implement the Project. The parties agree to work cooperatively to negotiate in good faith to develop the final form and contents of such agreements as needed, including but not limited to, development agreement(s) as described in Section 20.0 and project coordination agreements set forth in Section 21.0 ~~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 and OMSF 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. Nothing in this Section is intended to prevent the City's participation in the review procedures of such other governmental agencies or authorities to the fullest extent provided by law, including commenting on impacts and mitigation, so long as such comments are consistent with the Project Description, ~~as modified in Section 5.~~
- 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, the OMSF, or projects identified in Section 21.0 with applicable codes and regulations.
- 8.4 Sound Transit's design and construction of the Project and OMSF 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' and expert witness 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 OMSF or 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 (6) 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 OMSF or 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 OMSF or the Light Rail Transit System. Sound Transit shall also require any contractors or subcontractors working on the OMSF or 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 OMSF or 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 thirty (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 OMSF or 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 in this MOU.
- 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 Executive Director of Design, Engineering and Construction Management, or Designee and the City's Development Services Director, or Designee 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 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;
 - (c) Seeking specific performance of any provision that reasonably lends itself to such remedy; and
 - (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 later of the completion of Project closeout or (1) five (5) years after commencement of Project operation, or (2) the parties successful completion of the terms and commitments set forth in this MOU, 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. [Intentionally deleted. The Parties agree that this section of the November 15, 2011 MOU has been satisfied].~~
- 14.3 In the event that a portion of the Project to be constructed in the City is for any reason determined by the Sound Transit Board or by the City of Bellevue, to be unaffordable due to increased cost or insufficient revenue legally available

under the Project financial plan or without additional voter approval to the party responsible for contributing the revenue, or to be impractical or infeasible to accomplish due to changed or unforeseen conditions, legal prohibition, or force majeure events, the parties are excused from further performance under this MOU. In the event the parties are excused from further performance, the parties will work cooperatively to identify appropriate revisions to the Project's scope; schedule or budget, provided however, any final decisions regarding revisions to the Project's scope, schedule or budget will be made by the Sound Transit Board consistent with the policies in the approved ST 2 Plan. The parties shall also cooperatively address Sound Transit's need for and use of city-owned properties. In the event the Project alignment is revised, and certain properties conveyed by the City as part of this MOU are no longer needed for the Project, Sound Transit shall convey such property rights back to the City at no additional cost.

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 OMSF or 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

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-1, attached and incorporated herein.

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.

20.0 OPERATIONS AND MAINTENANCE SATELLITE FACILITY

20.1 The parties acknowledge that environmental review of the OMSF sites is ongoing and that the Sound Transit Board has not made a final decision regarding the OMSF site. Upon execution of this MOU, Sound Transit shall incorporate the design elements contained in Section 20.2 in its environmental review of the OMSF. The parties agree to the terms in this Section to address items of mutual concern in the event that the Sound Transit Board ultimately selects an OMSF site in Bellevue after completion of the Final EIS.

20.2 The design elements described in this Section 20, which support and complement the Bel-Red Subarea Plan vision, and which also work to sustain the value of Sound Transit's potential future surplus property and encourage timely TOD in furtherance of the Bel-Red Subarea Plan vision, will be included in the appropriate phases of engineering design of the OMSF. If an OMSF site in Bellevue is selected, the following design elements will be included as a part of the OMSF project scope:

(a) Water, sewer, storm sewer, electrical, natural gas, communications (e.g. fiber, cable) utilities , sized adequately to serve the future development identified through the process described in Section 20.4. The utilities will be designed and constructed by Sound Transit, at the appropriate phase of engineering and development, with stub-outs to each of the future development parcels as generally depicted and described in the Development Scenario – Phase 1, attached and incorporated herein as Exhibit I-1.

(b) Allow future TOD construction on Parcels 1-5 with minimal disruption to OMSF, as generally depicted and described in the Development Scenario Phases 1 and 2, attached and incorporated herein as Exhibits I-1 and I-2 including, without limitation: (i) a structural shear wall between the maintenance building and wash bay designed to allow development of a partially cantilevered structure on Parcel 5; (ii) providing points of access to such development parcels from 120th Ave NE; (iii) designing traction power system such that segments can be powered off temporarily; and (iv) other such items identified as necessary during design to allow future TOD construction.

(c) Design the OMSF site to accommodate construction and location of the future street network within and adjacent to the OMSF to support all the potential TOD parcels (Phases 1 and 2), the raised vehicle and pedestrian access roadway south of TOD Parcels 1 and 2, and provide access from 120th Ave NE to permanent parking on the OMSF site for Sound Transit employees in the approximate locations shown on Exhibit I-1 and I-2

consistent with City standards, including curb (regular and raised), gutters, sidewalks, surface water drainage, landscaping, and street and pedestrian lighting, and supporting the potential future relocation of 120th Avenue NE.

- (d) Design Integration of the OMSF with surrounding architecture and future potential TOD development, as shown on Development Scenario Phases 1 and 2, Exhibit I-1 and I-2, including permanent parking for Sound Transit employees with access from 120th Ave NE. Such design integration must be consistent with the then applicable Bel-Red zoning and design guidelines and standards, and include accommodation of screening the OMSF along 120th Ave. NE. At a minimum, and without modifying any of the requirements of the Land Use Code, design integration will require:
- (i) An appropriate TOD edge, with any structures architecturally compatible with urban TOD design and anticipated Bel-Red development as a Phase 1 condition along 120th Ave NE, including the maintenance building interface with 120th Ave NE.
 - (ii) Separation between the OMSF development and the current alignment of 120th Avenue NE sufficient to allow the future TOD Parcels 1-5 as generally depicted in Exhibits I-1 and I-2, with interim conditions for this area established by the design standards and guidelines applicable to Bel-Red.
 - (iii) Site design to ensure visual relief and pedestrian safety, through fencing and landscaping, along boundary with the ERC to complement the regional recreational experience of the ERC trail contemplated in subsection (h) below.
 - (iv) Temporary outdoor storage shall have visual screening from 120th Ave. NE, the ERC, and adjoining properties provided by perimeter fencing and/or landscaping.
 - (v) All heavy maintenance, major repair activities, and exterior vehicle washing shall occur inside enclosed structures.
- (e) 120th Avenue NE frontage improvements, which will be limited to a 14-foot wide asphalt or pervious pavement interim multipurpose path, separated from the roadway, along the western edge of the current alignment of 120th Avenue NE and landscaping along 120th Avenue NE. Notwithstanding the foregoing, Sound Transit acknowledges that future overlay of the roadway may be required as condition of the ROW use permit.
- (f) Upon completion and acceptance by the City of the frontage improvements and landscaping described above, the City may request the “Sound Transit Property” be dedicated to the City in fee simple. In

exchange for such dedication, the City shall transfer the “City Parcel #1099100104” to Sound Transit pursuant to any applicable requirements. The “Sound Transit Property” and “City Parcel #1099100104” referred to herein are as generally depicted and described in the Property Exchange Exhibit J, attached and incorporated herein.

- (g) Bike and pedestrian connections between the future East Side Rail Corridor (ERC) trail system to 120th Avenue NE, consistent with City standards, as depicted in Exhibit I-1. The trail on the north side of OMSF shall be constructed at the same time and in the same manner as the ERC interim trail described in subsection h below. The south trail, which is a raised facility, shall be built concurrent with the street network on the south side of the OMSF identified in subsection (c) above. Public easements over both trail connections shall be provided subject to terms acceptable to the City and Sound Transit.
- (h) Collaborate with King County to designate a location within the ERC where an interim trail may be developed from the pedestrian connection between the Hospital Station and 116th Ave to SR520. Consistent with existing legal relationships within the corridor, facilitate and finance construction of the interim trail generally consistent with the crushed rock development method in the City of Kirkland interim trail. Sound Transit shall use its best efforts to obtain the approvals necessary from King County and any other necessary approvals in order to facilitate construction of the interim trail concurrent with development of East Link Project and the OMSF facility. It is acknowledged that Sound Transit may be required to actually construct the improvements in order to meet this objective.
- (i) The City of Bellevue acknowledges the extensive work completed to date by Sound Transit to identify and evaluate suitable and feasible wetland mitigation sites in Kelsey Creek basin for East Link and further acknowledges that additional feasible mitigation sites in the West Tributary Kelsey Creek basin are lacking. Accordingly, if further design, development and environmental review of the OMSF project, including all of the design and other features described herein identify wetland impacts, mitigation for such impacts shall be provided pursuant to the requirements of the City of Bellevue Land Use Code provisions, including Section 20.25H.105, while considering prior efforts as described above.
- (j) Accommodate future daylighting of the creek, as depicted and generally described in Exhibit I-2.
- (k) Design the interim employee surface parking located at the southern end of the OMSF site in a manner that allows the area to be integrated into a future development as part of a permanent parking solution associated with the future TOD Development Parcel 3, Phase 1.

(l) The EIS for the OMSF shall include analysis of construction noise and vibration impacts to Children’s Hospital and Bellevue Clinic and Surgery Center.

(m) Sound Transit agrees that the OMSF is subject to the requirements of Chapter 9.18 BCC and that the motor vehicle exemptions set forth in BCC Section 9.18.020.A.7 and 9.18.020.B.5 do not apply and that noise from trains at the OMSF shall be kept at a minimum.

20.3 The City will initiate the code amendment process to consider allowing the OMSF under a Process II permit as described in Exhibit K, attached and incorporated herein, within 30 days of the Sound Transit Board’s selection of the OMSF project to be built, provided the design elements described in Section 20.2 are included as part of the project scope for the OMSF. The legislative action identified in this section is subject to final decision by the Bellevue City Council, and nothing in this MOU shall constitute a waiver of that authority or a commitment to any particular final decision.

20.4 Within 60 days of selection of an OMSF site in Bellevue, the parties shall commission a market analysis to consider future TOD for Phase 1 of attached Exhibit I-1 including the items of mutual concern set forth in this Section 20.4. The market analysis shall be completed at Sound Transit’s sole cost and expense, but both parties shall be in agreement as to the scope of work and consultant selection.

Based on the results of the market analysis, the parties shall work cooperatively and expeditiously to negotiate in good faith the final form and contents of a development agreement that identifies the type of development envisioned for the Phase 1 parcels, so as to create marketable lots, including the appropriate mixture of Sound Transit and private uses, housing affordability, and amenities that support that vision. Both parties share a common interest in creating TOD opportunities that provide certainty for developers, the City and community, facilitate acquisition of the Phase 1 Parcels at market rates for development consistent with the Bel-Red Subarea Plan standards and that can be achieved efficiently within the timeframe referenced in 20.4(h) below.

The development agreement must set forth the development standards and other provisions that shall apply to, govern and vest development, use, and mitigation required for the TOD parcels. Development standards include, but are not limited to:

(a) Project elements such as residential densities, and nonresidential densities and intensities or building sizes;

(b) Mitigation measures and development conditions;

- (c) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, green factors, FAR transfer provisions, and other development features; and
- (d) Review procedures and standards for implementing decisions in a timely and predictable manner.

In addition, the development agreement must set forth the roles and responsibilities of each party with respect to the following items of mutual concern:

- (e) Developer access plan: Sound Transit to document how TOD developers would be able to access the OMSF site for TOD development during OMSF operations, consistent with the design developed in Section 20.2 above. Such access plan to be approved by the City, which approval shall not be unreasonably withheld.
- (f) Define parcel lot boundaries: Sound Transit shall take the steps necessary to define and create the new parcels and air rights necessary for disposition or lease of the properties, the dimensions of which shall be as consistent with Phase 1 and Phase 2 depicted in Exhibits I-1 and I-2. Sound Transit shall develop a schedule for implementing lot boundary adjustments or other necessary approvals. Such schedule to be approved by the City pursuant to applicable codes and regulations.
- (g) OMSF employee parking and access. Parking and access described in 20.2 will be integrated into OMSF and TOD development.
- (h) Milestone schedule: Establish a schedule and set milestones for surplus property declarations. The milestone schedule will include identification of the timing of disposition of the Phase 1 parcels consistent with the parties' overall goals of ensuring timely development of TOD concurrent with or as close in time as practicable with commencement of East Link operations.
- (i) Disposition of surplus property: Develop appraisal assumptions for the sale or lease of the TOD parcels that takes into consideration the complexity of development on each parcel.
- (j) Development Requirements: The development agreement may also set forth other standards and guidelines governing the TOD project, including those items described in Section 20.2 above that are not constructed as part of the OMSF project, including:
 - (i) Roads, as identified in 20.2(c). Upon completion and acceptance by the City, the street network (and related improvements)

referenced in Section 20.2(c) may be required to be dedicated at the City's option pursuant to the procedures provided in the BCC.

- (ii) Bicycle and Pedestrian paths, as identified in 20.2(g). Upon completion and acceptance by the City of the bike and pedestrian connections referenced in Section 20.2(g), Sound Transit will grant all necessary rights for use of such connections by the general public.

20.5 The parties contemplate that the subsequent development agreement referenced in Section 20.4 would be completed and executed by the parties concurrent with OMSF project baselining during final design (e.g., Phase Gate 5).

20.6 The parties and King County have entered into the Three Party Agreement Between the City of Bellevue, King County and Sound Transit for the Future Realignment of 120th Ave NE (Three Party Agreement), whereby these three agencies agree to work together collaboratively to plan a future project that would re-align 120th Avenue NE north of the 120th Link Station. The City and Sound Transit acknowledge that the development of the Phase 2 parcels (Parcels 4 and 5) are dependent on the actions of others and events which are contemplated in the Three Party Agreement. In the event 120th Avenue NE is relocated, Sound Transit shall not object to, and shall not claim compensation from the City for extension of utilities or driveways from the relocated roadway.

20.7 Sound Transit agrees that the boundaries of the OMSF and number of cars stored and maintained at the OMSF will not be expanded, and that no additional light-rail maintenance or bus storage/maintenance facilities will be located in the City of Bellevue.

21.0 PROJECT COORDINATION

The Parties have worked cooperatively through the Collaborative Design Process established by the MOU to identify City projects that will be constructed by Sound Transit and reimbursed by the City and certain aspects of the East Link Project that will be constructed by the City and reimbursed by Sound Transit. These projects are described in the attached Project Coordination Exhibit M attached hereto and in a series of scope concurrence documents given Clerk's Receiving No. _____, all of which are incorporated herein by this reference.

21.1 Sound Transit Performing Work for City – Lump Sum Agreements

- (a) Purpose. The parties shall work cooperatively to complete the tasks for the projects identified in the attached Exhibit M, Section A in accordance with the scope concurrence documents given Clerk's Receiving No. _____.

- (b) Payment. In consideration for Sound Transit performing such work, the City shall pay Sound Transit that amount listed in Project Coordination Exhibit M, Section A within sixty (60) days of invoice following completion of the Timing of Expenditure milestones set forth in Section A. The payments set forth in this section shall constitute the City's full and final payment for the work outlined in this section. Sound Transit shall assume the sole risk and receive the full benefit for any differences between the estimated and actual costs. Failure to pay within sixty (60) days of the date such payment is due will be deemed a failure to perform and subject to the provisions of Section 12.0 Default of the MOU.
- (c) Changes to Scope Concurrence Documents. The parties acknowledge that the work identified in this section may require additional design and engineering and may require local, state and federal approvals, and the obligations of the parties described in this MOU shall not be modified or adjusted as the result of necessary refinements of design and conditions of approvals to complete the identified scope of work; provided however, that if Sound Transit is unable to perform the work identified in the scope concurrence documents due to failure to receive required approvals or due to unforeseen circumstances, the parties are relieved of their obligations set forth in this section and shall work together in good faith to bring forward an amendment to this MOU to address such changes. The Designated Representatives shall have final approval to determine whether necessary changes are consistent with the scope concurrence documents. In the event Sound Transit fails to complete a project following payment by the City, Sound Transit shall reimburse the City the lump sum paid for that project within thirty (30) days of demand by the City.

21.2 Sound Transit Performing Work for City – Actual Costs

- (a) The Project is designed to cross under the future Spring Blvd. Zone 1 between 116th Avenue NE and 120th Avenue NE as depicted and further described in the scope concurrence documents given Clerk's Receiving No. _____ and identified in Exhibit M, Section B. The City has identified Zone 1 of Spring Blvd in its Capital Investment Program Plan (CIP Plan Project PW-R-172) for design and construction. Upon execution of this MOU, Sound Transit shall authorize its GC/CM to amend preconstruction services to include the City's Spring Blvd. Zone 1 project. The City will work, through Sound Transit's resident engineer with the GC/CM through the project design process and will obtain at City cost a project construction cost estimate for the work. In the event the City elects to have the GC/CM complete the work, Sound Transit shall include in the GC/CM's scope of work for its Project and the City shall be responsible for obtaining all necessary permits and approvals not required to be obtained by the GC/CM, and any required environmental review and mitigation for the roadway. The City and Sound Transit shall work

cooperatively to minimize overall costs to address GC/CM fee increases. All of the GC/CM's costs related to this work, including any increases to the GC/CM fee associated with added scope of Spring Blvd Zone 1 work, shall be the responsibility of the City, and the City shall reimburse Sound Transit for actual costs incurred in accordance with the Spring Blvd Zone 1 (116th Avenue NE to 120th Avenue NE) Within thirty (30) days of successful completion of negotiations with the GC/CM contractor selected by Sound Transit for this segment, the Parties shall enter into a construction agreement for Spring Blvd Zone 1 (116th Avenue NE to 120th Avenue NE).

21.3 City Performing Work for Sound Transit – Lump Sum Agreements

- (a) Purpose. The parties shall work cooperatively to complete the tasks for the projects identified in the attached Exhibit M Section C in accordance with the scope concurrence documents given Clerk's Receiving No. _____.
- (b) Payment. In consideration for the City performing such work, Sound Transit shall pay the City that amount listed in Project Coordination Exhibit M, Section C within sixty (60) days of invoice following completion of the Timing of Expenditure milestones set forth in the Section C. The payments set forth in this section shall constitute Sound Transit's full and final payment for the work outlined in this section. The City shall assume the sole risk and receive the full benefit for any differences between the estimated and actual costs. Failure to pay within sixty (60) days of the date such payment is due will be deemed a failure to perform and subject to the provisions of Section 12.0 Default of the MOU.
- (c) Changes to Scope Concurrence Documents. The parties acknowledge that the work identified in this section may require additional design and engineering and may require local, state and federal approvals, and the obligations of the parties described in this MOU shall not be modified or adjusted as the result of necessary refinements of design and conditions of approvals to complete the identified scope of work; provided however, that if the City is unable to perform the work identified in the scope concurrence documents due to failure to receive required approvals or due to unforeseen circumstances, the parties are relieved of their obligations set forth in this section and shall work together in good faith to bring forward an amendment to this MOU to address such changes. The Designated Representatives shall have final approval to determine whether necessary changes are consistent with the scope concurrence documents. In the event the City fails to complete a project following payment by Sound Transit, the City shall reimburse Sound Transit the lump sum paid for that project within thirty (30) days of demand by Sound Transit.

21.4 Utility Relocation Reimbursement

- (a) The Project will require the relocation and undergrounding of franchise utilities along Bellevue Way extending from the S. Bellevue Park and Ride to the vicinity of the 112th Ave SE. Sound Transit shall complete the work identified in the scope concurrence documents given Clerk's Receiving No. _____ related to undergrounding. The City shall use best efforts to negotiate and enter into a Schedule 74 Agreement with Puget Sound Energy (PSE) providing that such relocation and undergrounding work be covered under Schedule 74, and providing that for projects identified in the City's CIP that necessitate the relocation and undergrounding of utilities, PSE shall bear 60% of such costs and the City shall bear 40% of such costs.
- (b) Pursuant to arrangements made between Sound Transit and PSE, Sound Transit will perform the undergrounding civil work on behalf of PSE, and bill PSE 100% of the civil work costs. PSE will bill the City 40% of its undergrounding costs including the Sound Transit civil work pursuant to the Schedule 74 Agreement. Upon completion of the work and receipt of a complete invoice from PSE, the City shall invoice Sound Transit for the actual costs incurred for the relocation and undergrounding. Sound Transit shall reimburse the City for such costs within thirty sixty (60) days of a complete invoice received from the City. Failure to pay within sixty (60) days will be deemed a failure to perform and subject to the provisions of Section 12.0 Default of the MOU. Pursuant to a concurrence memo between Sound Transit and the City, Sound Transit will provide joint trenching and restoration work on behalf of the City and the cost of the joint trenching and restoration work will be borne by Sound Transit as a project cost.
- (c) In the event the City is unsuccessful in entering into a Schedule 74 agreement with PSE, Sound Transit shall work directly with PSE for such relocation and the City shall have no further obligations under this Section 21.4.

21.5 Shared Cost Agreement

The Project is designed to cross under two existing roadways, 120th Avenue NE and 124th Avenue NE, which will require elevating the profile of the roadway as identified in Exhibit M, Section E. The City has identified 120th Ave NE, between NE 12th Street and NE 16th Street (CIP Plan Project PW-R- 168), and 124th Ave NE, between NE Spring Boulevard and NE 18th Street (CIP Plan Project PW-R-166) for widening and other improvements. The City and Sound Transit desire to coordinate and share the costs for the design, right-of-way acquisition and construction of the two projects to improve efficiencies and reduce costs. Upon execution of this MOU, the Parties shall enter into the Funding, Right-of-Way Acquisition and Construction Administration Agreement for

Roadway and East Link Project Improvements at 120th Ave NE and 124th Ave NE attached hereto as Exhibit N and incorporated herein by this reference.

21.6 Performance of work.

Each party shall ensure such work identified in this Section is performed in compliance with all applicable state, federal, and local regulations and including but not limited to Bellevue City Code, Department of Ecology, Department of Fish and Wildlife, and Federal Transit Administration. The City agrees to comply with the federal funding requirements described at http://www.fta.dot.gov/12831_6195.html by incorporating the applicable federal clauses and requirements into its contracts with third party contractors and their subcontractors. Sound Transit agrees to work cooperatively with the City to ensure compliance with funding requirements as may be procured from Federal Highway Administration (FHWA) or Puget Sound Regional Council (PSRC) by the City for design, property acquisition and construction. The parties will work cooperatively to determine which federal clauses and requirements are applicable to which contracts before either party initiates its procurement process for each contract. Sound Transit agrees to assist the City to work with appropriate funding partners in the event of contradictory requirements.

21.7 Right of Entry.

The City hereby grants Sound Transit and Sound Transit grants the City, and their respective employees, representatives, agents, and contractors, temporary construction and construction access easements upon, over, across and under property owned by each respective agency to complete the work identified in this Section 21.0.

21.8 Ownership of Improvements.

Upon completion and final acceptance of the work identified Exhibit M Sections A and C, the improvements identified in this Section and constructed on City owned property shall become the property of the City.

21.9 Insurance and Liability

The provisions of this Section 21.10 shall be limited to those project identified in Exhibit M, Sections A and C.

- (a) Projects Performed by Sound Transit. The projects contemplated to be performed by Sound Transit under this Section 21.0 shall be considered part of the Light Rail Transit Way for purposes of Section 9.0 Liability, Indemnification and Section 10.0 Insurance. Sound Transit's contract for the work under this Section shall require that the City be indemnified and held harmless and named as an additional insured in the same manner and to the same extent as Sound Transit.

- (b) Projects Completed by City of Bellevue. The projects contemplated to be performed by the City shall comply with Section 10.5 of this MOU and shall be subject to comparable liability, indemnification and insurance requirements as those set forth in Section 9.0 Liability, Indemnification. The City's contract for the work under this Section shall require that Sound Transit be indemnified and held harmless in the same manner and to the same extent as the City.

22.0 130th Street Parcels

22.1 Consideration. In consideration of the City's conveyance to Sound Transit of the Additional City Property pursuant to Section 24 of this MOU and the terms of this Section 22 and the City's development of a 300 stall park-and-ride facility at the 130th Street Station, Sound Transit shall, upon completion of the Project's civil construction in the Bel-Red corridor, convey property interests in the 130th Street Parcels to the City. The parties acknowledge that Sound Transit has not yet acquired the 130th Street Parcels but will do so as a part of its property acquisitions for the Project.

22.2 Transit-Oriented Development. The objective of both Parties is to establish a mixed use, urban TOD development including a mix of market and affordable housing utilizing public and private resources in concert with light rail construction at the 130th Street station, to support Sound Transit ridership, and to establish an appropriate urban development form consistent with the City's vision for Bel-Red concurrent with the Project's start of revenue service. Except as set forth in this Section 22, the type of uses, mix of housing affordability, and density of development on the 130th Parcels shall be determined in the sole discretion of the City.

22.3 Property Conveyance and Construction Documents. Within 60 days of execution of this MOU, the parties shall begin to work cooperatively and expeditiously to negotiate in good faith the final form and contents of a property conveyance and construction agreement to ensure development of TOD including at least the features described in Section 22.3 below, consistent with Sound Transit's policies and procedures for TOD and property disposition and consistent with applicable state and federal requirements including, but not limited to, continuing control, surplus property disposition, and public works development. The parties' goal is to complete negotiations on the property conveyance and construction agreement by May 1, 2016. The City Manager and the Sound Transit's Chief Executive Officer or their respective designees are authorized to enter into such agreement so long as in their professional judgment the agreement is within the scope and intent of this MOU.

The parties acknowledge that the final property conveyance and construction agreement is subject to FTA approval. In the event FTA imposes conditions on approval of the agreement, the parties commit to work toward cash neutral solutions. In the event FTA declines to approve the property conveyance and construction agreement, or the parties fail to reach the agreement described in this Section 22 by October 1, 2016, Sound Transit shall pay the City the lesser of the (a) appraised value of the Additional City

Property less the \$8.6 million previously paid under Section 24.7 of this MOU or (b) \$7 million. The property conveyance and construction agreement must set forth the property interests to be conveyed, timelines for conveyance and construction, construction requirements and processes. The essential elements of the agreement include, but are not limited to:

(a) Agreed transaction structure that provides Sound Transit sufficient and timely transit parking capacity of 300 parking stalls, appropriate continuing control over use of and access to such parking stalls, and assurances regarding the TOD development and provides the City the remainder of the property rights.

(b) Descriptions of property interests to be conveyed and any interests to be retained by Sound Transit for the purposes described in subsection (a) (e.g., condominium structure, easements, covenants for TOD) together with agreed conveyance documents.

(c) Applicable FTA requirements for Sound Transit's property disposition, including any necessary valuations and approvals, applicable federal and state requirements for the development of the transit parking facility.

(d) Timelines and process for property conveyance, including Sound Transit and FTA surplus and disposition processes, details regarding the required condition of the land at the time of conveyance (i.e., that Sound Transit is responsible for demolition on the 130th Street Property and will deliver a cleared site to the City at the time of conveyance). Specifically, the parties will establish a date by which Sound Transit needs to provide the City access to the 130th Street Property for purposes of constructing the TOD and parking facility in order that it will be available for full use at the Project's start of revenue service (the "Turnover Date").

(e) Design requirements consistent with ST's design criteria manual for Eastlink for the Sound Transit 300- stall transit parking facility and bike parking facility and process for Sound Transit review and approval at appropriate points during the TOD RFP and contracting processes, construction of the transit parking facility, inspection and acceptance procedures and conditions. It is understood that the 300-stall transit parking facility may be provided through either an at-grade or structured facility and will be constructed at no cost to Sound Transit.

(f) Joint establishment of TOD objectives and requirements, consistent with each party's adopted TOD policies.

(g) Timeline, process, and documentation for solicitation of TOD developer to ensure the proposal and developer's capacity is consistent with each party's interests as well as completion of Sound Transit transit parking facility by a date that allows its full use at the Project's start of revenue service.

(h) The parties agree that Sound Transit will not be required to implement street improvements on 130th and 132nd Avenue NE north of the intersections with Spring Boulevard which would have been a requirement if Sound Transit were to construct the parking facility.

22.4 Sound Transit Interim Parking. It is the goal of the parties to ensure that the TOD described in this Section 22 is constructed and available for occupancy as of the start of Sound Transit's revenue service for the Project. The parties recognize that they cannot control the timing of such development, and that unforeseen circumstances, issues with East Link construction and Sound Transit's use of the 130th Street Parcels, market conditions or other forces may prevent such occupancy as of the start of revenue service. In the event that the delay in providing parking on the 130th Street Parcels is a result of Sound Transit failing to deliver access to the site by the Turnover Date, Sound Transit shall be responsible for providing the 300 parking stalls it requires for its 130th street station as of the start of revenue service for a period equal to the period of such delay. In all other events, City shall be responsible for providing such interim parking. The parties agree that such interim parking will be developed to the minimal level necessary to comply with law and may be provided through a combination of stalls in proximity to both the 130th Street Station and 120th Street Station.

23.0 PERMITTING, PROJECT CERTAINTY, AND MITIGATION

The East Link Project shall be designed and constructed to the greatest extent practicable to minimize disruptions to City businesses and residents during construction and operation. To achieve that result, Sound Transit and the City shall continue to work cooperatively with representatives of businesses and neighborhoods affected by the Project. In addition to working cooperatively and satisfying all local, state and federal requirements, including but not limited to Chapter 20.25M LUC, Sound Transit agrees to provide the mitigation identified in the Mitigation Map Exhibit O, attached hereto and incorporated herein by this reference. Without limiting the foregoing, the parties agree to the following additional requirements in specific areas. In the event of a conflict between the below requirements and a specific state or federal code requirement, the more restrictive provision will prevail.

23.1 Noise. In addition to implementing all noise mitigation required by the FTA Record of Decision, City issued permits, and the Mitigation Map Exhibit, Sound Transit agrees as follows:

(a) The permanent noise walls (other than those that are required on the light rail guideway) shall be given priority in the sequence of construction and installed as early as technically feasible and practical in the construction process in order to ensure that the permanent noise walls also provide some benefits during construction of the Project. The City, Sound Transit and their contractors will consult on the appropriate sequence and timing for installation of permanent noise walls. Alternative solutions that achieve an effective level of noise mitigation may be considered. The

final timing of installation of the noise walls or alternatives shall be established in the clearing and grading permit for each related contract package.

- (b) At least 6 months prior to commencing vehicle testing and system start-up, Sound Transit shall submit for approval by the Director of the Development Services Department (“DSD”), a 3-year noise and vibration monitoring program for the Project to confirm that operating light rail train noise levels meet FTA ROD criteria and DMP requirements applicable at the time of DMP approval. Such program shall also include a noise complaint and resolution process to be approved by the Director of DSD. The 3-year period shall begin at the start of vehicle testing and system start-up prior to revenue service. Sound Transit will monitor once during vehicle testing and system start-up and once each year for two years after revenue service begins for a total of three rounds of monitoring. Monitoring will be conducted at representative locations where impacts and mitigation have been identified in the Design and Mitigation permit process.

If measured levels show that noise or vibration attributable to the Project exceed FTA criteria or DMP requirements applicable at the time of DMP approval, and track or light rail vehicle modifications are not sufficient to bring the Project within compliance, Sound Transit shall submit a mitigation plan within 60 days with appropriate reasonable mitigation for approval by the Director of DSD to achieve compliance. Such mitigation techniques may include, but shall not be limited to, adjustments to bells and auditory devices at stations, increase in the height or length of existing noise walls where feasible, installation of noise walls along the guideway, rights-of-way or property boundaries, installation of track lubricators or noise insulation packages, acoustic grinding of rails or installation of rail dampers. Upon approval of such mitigation plan by the Director of DSD, Sound Transit shall work to expedite installation of the approved corrective mitigation. One additional round of monitoring will be conducted to confirm compliance at the location of any exceedances if identified in the last year of the monitoring program.

23.2 Outreach. The Parties acknowledge that community outreach is critical to ensure that local residents and businesses are fully informed about potentially significant disruptions, such as temporary street closures, changes in transit service, and parking availability. The parties agree to the following:

- (a) Sound Transit will lead, in consultation with the City, all construction outreach to residents and businesses directly and indirectly impacted by construction, including coordination meetings with the contractor, city and key stakeholders throughout construction.

- (b) Sound Transit acknowledges that the City has a robust Neighborhood Traffic Safety Services group (NTSS) with existing neighborhood history, contacts, outreach and toolbox of methods for implementation. Use of the city's resources will allow for a more streamlined process for the contractor. The NTSS shall work with affected neighborhoods to address traffic related impacts during construction of the Project and to identify mitigation measures to be implemented. Such mitigation measures to be limited to those types of projects identified in Exhibit P. Sound Transit shall be required, at its sole cost and expense to install the measures as mutually agreed and consistent with standard practices of the NTSS.
- (c) To further compliment Sound Transit's outreach work, the City shall lead, in consultation with Sound Transit, a regional public relations and marketing campaign focused on the message that "Bellevue is open for business" through construction.

23.3 Maintenance of Traffic. Sound Transit and the City will collaborate with the Project's construction contractors to develop maintenance of traffic plans that to the greatest extent practical minimize disruptions to City businesses and residents during construction. These maintenance of traffic plans shall be finalized and approved through the City's Right of Way Use permit process. ST shall provide notice across a variety of methods in advance of closures, detours and major construction activities and work with the City to provide rapid response to traffic issues and concerns. Without limiting the foregoing, Sound Transit shall specifically seek opportunities to minimize impacts to Bellevue Way SE, 112th Ave SE/road over rail, 110th Ave NE/north portal and the NE 20th Street/136th Avenue NE intersection through a variety of techniques, including:

- (a) Value engineering construction proposals. (VECP). ST will review VECP's with the City of Bellevue Transportation Department.
- (b) Evaluating the inclusion in contract documents of interim milestones for completion and opening of roadways and liquidated damages for delays.
- (c) Sound Transit and their contractors will consult on reasonable opportunities to minimize the duration and scope of any lane closures.

23.4 South Bellevue Park-and-Ride Closure. Sound Transit will minimize the duration of the closure to the extent practical. At least 60 days prior to the closure Sound Transit will identify and implement alternate parking and transit access for the commuters who utilize the existing park and ride in consultation with the Transportation Department Director and King County Metro. Sound Transit shall provide contract milestones for completion of the garage and liquidated damages for delays. Sound Transit and their contractors will consult on reasonable opportunities to make portion(s) of the Park-and-Ride available to commuters prior to completion of the South Bellevue Station.

23.5 Permits.

- (a) Fixed Fee. In order to facilitate coordinated permit review and approval of the Project, Sound Transit will pay the City a fixed fee of \$16.4 million for permit review beginning January 1, 2015, and construction inspection over the life of the Project. Fixed fee paid in installments over the life of the Project. The parties will work cooperatively to develop an agreed upon schedule and determine the appropriate documentation to support such installment payments.
- (b) Scope of Work. The fixed fee amount includes all work involved in providing permit application review, processing, permit issuance, and field inspection services for the 2015 baseline scope of the Project. The anticipated permits needed to complete the work are outlined in Exhibit Q, attached hereto and incorporated herein.
- (c) This fixed fee amount also includes:
 - (i) Construction submittal review.
 - (ii) Review of plan revisions related to permit plans.
 - (iii) Review of materials certifications.
 - (iv) Review and responses to Requests-for-Information (RFIs).
 - (v) Manage resolution of design, permitting, and construction issues.
 - (vi) Providing a coordinated point of contact.
 - (vii) Coordinating the notification of private utilities.
 - (viii) Work approved by City to occur outside normal hours allowed by City Noise Code Chapter 9.18 BCC (evening, night, morning, or weekends).
 - (ix) The City to work with Sound Transit for the most cost effective delivery of inspection services outside normal work hours as describe in 23.6(c)(viii) above.
- (d) This fixed fee amount does not include:
 - (i) Hourly fees already paid to Development Services from July 2013 through December 31, 2014.

- (ii) Special inspection services (to be provided by Sound Transit with documentation to the City)
 - (iii) Materials testing services (to be provided by Sound Transit with documentation to the City)
 - (iv) Utility fees, usage charges and connection charges for water, sewer, and storm.
 - (v) Franchise Utility relocation permits.
 - (vi) Time for Project related work performed by City of Bellevue staff from Police, Fire, Parks, or Streets Maintenance that is not included as part of the City's normal permit review and inspection services
 - (vii) Force majeure (e.g. earthquake, labor strike) affecting project shall justify renegotiation of sum.
- (e) Hourly Billing. In addition to this Fixed Fee, hourly billing shall be charged for City staff time that is caused by or related to any of the following:
- (i) Work beyond the 2015 baseline scope of the Project.
 - (ii) Acts or failures to act by contractors or Sound Transit resulting in City enforcement actions.
 - (iii) Re-inspections beyond 3 attempts for the same inspection.
 - (iv) Escort of oversize vehicles within City limits.
- (f) Collaborative Construction Program. Within 180 days of this MOU, Sound Transit and the City will develop a Collaborative Construction Program (CCP) to be approved by the Steering Committee to define the expectations, policies and process for permitting, and inspections. It understood the intent of the CCP will be to provide coordinated permit reviews and construction inspections so as to facilitate completion of the Project in a timely manner within the Baseline Project Budget.

24.0 PROPERTY CONVEYANCES

- 24.1 The parties have identified various City and Sound Transit property rights that will be conveyed to each other as described in the Property Conveyance Exhibit R, attached and incorporated herein. Compensation shall be as set forth in Ex. D-

1. No other compensation for property rights shall be required except as set forth specifically in this MOU.
- 24.2 Upon sixty (60) days' notice from Sound Transit, the City shall transfer the property rights as described in Exhibit R to Sound Transit consistent with this MOU, and upon terms and conditions mutually agreeable to the parties; provided, however, the parties acknowledge that neither party can transfer property rights until acquisition of those rights from third parties are complete.
- 24.3 Upon sixty (60) days' notice from the City, Sound Transit shall transfer the property rights as described in Exhibit R to the City pursuant to the procedures provided in Bellevue City Code, consistent with this MOU, and upon terms and conditions mutually agreeable to the parties.
- 24.4 The City Manager and Sound Transit's Chief Executive Officer, or their respective designees, are authorized to enter into such conveyance documents as may be necessary to convey the City and Sound Transit property described in Exhibit R and Section 24.5 below, as long as such conveyance documents are, in their professional judgment, within the scope and intent of this MOU.
- 24.5 Right-of-Entry for Future City Projects. The City anticipates future development on the remainder of at least two of the properties identified in Exhibit M to be partially conveyed to Sound Transit. As a result, the City may need to acquire temporary construction and access rights from Sound Transit to complete such development. Sound Transit agrees to work cooperatively with the City to grant such rights at no additional cost, provided that such rights do not interfere with construction and operation of the Project.
- 24.6 Sound Transit agrees to cooperate with the City regarding the future extension of NE 6th Street by conveying the necessary property rights across Sound Transit property on terms and conditions as mutually agreed by the parties at that time.
- 24.7 Before October 1, 2015, the City shall convey rights to the City Hall property described in Exhibit R and Sound Transit shall pay the City \$8.6 million dollars as partial compensation for the City Hall property with the balance of compensation for the Additional City Property addressed through conveyance of the 130th Street Parcels as described in Section 22.0. In the conveyance documents for the City Hall property, the City shall retain until May 1, 2016 such temporary property rights as necessary for the City to complete construction of its parking garage project.

205.0 GENERAL PROVISIONS

- 205.1 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.

- 205.2 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.
- 205.3 This MOU shall be binding upon and inure to the benefit of the successors and assigns of the City and Sound Transit.
- 205.4 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.
- 205.5 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.
- 205.6 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.
- 205.7 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.
- 205.8 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.
- 205.10 This MOU, including its exhibits, may be amended only by a written instrument executed by each of the parties hereto.
- 205.11 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.
- 205.12 Section headings are intended as information only, and shall not be construed with the substance of the section they caption.

Explanatory Note to Reader: Underline and ~~Striked~~ text in this document reflects modifications to the November 15, 2011 Umbrella Memorandum of Understanding, as previously amended by the First Amendment to Umbrella MOU dated June 2013

205.13 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.

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

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

CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY
(SOUND TRANSIT)

THE CITY OF BELLEVUE

By: _____
Michael Harbour, Acting Chief Executive
Officer

By: _____
Brad Miyake, City Manager

Date: _____

Date: _____

Authorized by Motion No. _____

Authorized by Ordinance _____

Approved as to form:

Approved as to form:

By: _____
Stephen G. Sheehy, Senior Legal Counsel

By: _____
Monica Buck, Assistant City Attorney

Exhibit List

- A ~~Inflation of City Contribution~~[Intentionally deleted]
- B ~~Portal to Portal Costs~~ – [Intentionally deleted]
- C Project Description – Replaced with Exhibit C-1 [First Amendment]
- D Up Front Contribution – Replaced with Exhibit D-1
- E Collaborative Design Process – Replaced with Exhibit E-1
- F ~~Cost within Bellevue~~ – [Intentionally deleted]
- G ~~Code and Permitting~~ – [Intentionally deleted]
- H Designated Representatives – Replaced with Exhibit H-1
- I-1 OMSF Development Scenario – Phase 1
- I-2 OMSF Development Scenario – Phase 2
- J OMSF Property Exchange Exhibit
- K OMSF Proposed Code Amendment
- L [Intentionally omitted]
- M Project Coordination
- N Cost Sharing Agreement for 120th/124th
- O Mitigation Map
- P Neighborhood Traffic Mitigation Measures
- Q Permit Matrix
- R Property Conveyance Exhibit