

**OVERLAKE VILLAGE STATION
OPERATION AND MAINTENANCE AGREEMENT**

GA 0208-20

THIS OPERATION AND MAINTENANCE AGREEMENT (this “Agreement”) is entered into by and between the CITY OF REDMOND, a Washington municipal corporation (the “City”), the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY a regional transit authority organized under the laws of the State of Washington (“Sound Transit”), collectively “Parties” and individually “Party.”

RECITALS

- A. Sound Transit is constructing the East Link light rail project to extend light rail service between downtown Seattle and the Overlake area of Redmond. The East Link project includes a light rail station at Overlake Village (OV), a public transit facility owned by Sound Transit.
- B. The Parties entered into the Agreement (GA 0521-14) Between the City of Redmond and the Central Puget Sound Regional Transit Authority, for the Overlake Village Pedestrian-Bicycle Bridge (Pedestrian Bridge) and the Overlake Village Station Infiltration Vault on September 11, 2014 (the “OVS Agreement”) which provides for the funding of engineering, design and construction.
- C. As described in the OVS Agreement, the Parties believe that the Pedestrian Bridge serves an important function to provide a safer and more convenient way for pedestrians and cyclists to access public transit and the surrounding businesses and communities and desire to enter into this Agreement to establish clear roles and responsibilities for each Party for the ongoing maintenance, operations and repair of the Pedestrian Bridge, approach ramps, stairs or other infrastructure; and
- D. The OVS Agreement provides that, subject to the City’s final written acceptance and transfer of the completed Pedestrian Bridge, infiltration vault and other city owned infrastructure, the City shall own and have primary responsibility for the operation and maintenance of the infrastructure as shown in Exhibit A.
- E. Pursuant to the OVS Agreement, it is necessary for the Parties to enter into a separate agreement to establish responsibilities for operating and maintaining the following, but not limited to, the Pedestrian Bridge, Plaza street, station area, infiltration vault, or other infrastructure as appropriate;

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

1. PURPOSE

The Purpose of this Agreement is to establish roles and responsibilities related to the ownership, operations, inspections and maintenance of infrastructure components (see Exhibit A).

2. PARTY RESPONSIBILITIES

2.1. The City shall operate and maintain the entirety of the city owned infrastructure at the City's sole expense except for those areas described below and shown on Exhibit A as maintained by Sound Transit. The City shall maintain the infrastructure in good condition and repair in accordance with generally accepted public works principles, including, without limitation, performing custodial activities, routine maintenance and repair.

2.2. The City shall operate and maintain the structure and foundation of the Pedestrian Bridge and conduct periodic physical inspections of the Pedestrian Bridge structure on a twenty-four (24) month cycle, or more frequently, as determined by the City and review of the Pedestrian Bridge structure and all pier foundations. The City shall be responsible for all costs, labor, and materials relating to the maintenance, operation, and control of all infrastructure owned by the city, or identified below and shown on Exhibit A.

2.2.1. Within ROW dedication:

Street, curbs, non-decorative concrete sidewalk, asphalt sidewalks, curb ramps, tactile warnings, street trees & landscaping, benches, utility infrastructure (water & drainage), striping, signing, lighting,

2.2.2. Outside of ROW:

Drainage system – maintenance hole and pipes for infiltration vault, infiltration vault and footing in easement, pavement area for vector truck access, electrical utilities serving City infrastructure, irrigation system components serving City landscape areas.

Revocable turnaround (including lighting, paving, curb, sidewalk, and landscaping) until removed as defined in associated revocable easement.

2.2.3. Pedestrian Bridge and Ramp Easement:

Pedestrian Bridge, ramp and all supporting elements including, stairs, pavement, curb, railings, handrails, lighting, and drainage that serve the ramp and overpass, curb surrounding landscape area at base of ramp and fronting 152nd Ave NE.

Excluded are ST owned and maintained infrastructure – camera's, lighting, conduits, surface plaza area, ancillary spaces serving the station, infrastructure and elements of ancillary spaces that solely serve ST station uses.

2.3. Art Installation:

The Pedestrian Bridge includes an art installation commissioned by Sound Transit with input from the City (“Artwork”). The City will be responsible for maintaining the artwork in accordance with the artist’s specifications, as described in Exhibit B. Sound Transit will transfer its rights in the Artwork to the City in the Artist Agreement Assignment attached as Exhibit C. If the City requires additional rights to the Artwork beyond those granted to Sound Transit, it will seek those rights directly from the artist.

2.4. Sound Transit Responsibilities:

Sound Transit shall be responsible for maintaining and repairing the electrical/equipment room, storage room, and other infrastructure associated with ST facilities and furnishings, including all walls and elements that are not part of the Pedestrian Bridge structure, as shown in Exhibit A. Sound Transit is not responsible for maintaining any portion of the Pedestrian Bridge and structure.

2.5. Cooperation, Good Faith Efforts and Responsibility for Quality of Work:

The Parties understand and agree that the successful performance of this Agreement depends upon timely and open communication and cooperation between the Parties. Each Party shall be responsible for the quality, technical accuracy, timelines, and coordination of all services performed by such Party, its employees and contractors pursuant to this Agreement.

2.6. Pedestrian Bridge Hours of Operation:

The Pedestrian Bridge will be open to the public seven (7) days per week, twenty four (24) hours per day as required in the WSDOT Trail Lease except for periods when maintenance or repair of the Bridge requires its closure. The Parties agree that routine maintenance typically will not result in closure of the Pedestrian Bridge. Routine maintenance, such as sweeping, cleaning, graffiti removal, and normal trash collection, may require restricting use to portions of the Pedestrian Bridge in the immediate area of the work, but should allow for passage of pedestrians and bicyclists across the length of the Pedestrian Bridge. The City will not close access to the Pedestrian Bridge without first consulting Sound Transit.

2.7. Access and Notification of Work:

Each Party shall allow reasonable access by the other Parties to those portions of its property necessary to operate and maintain facilities and systems and to carry out the terms of this Agreement.

2.7.1 The Parties shall provide each other with prior written or electronic notice a minimum of 2 business days in advance of any maintenance activities or activities that require performing work on the other Party’s property and facilities. ST Track Access Procedures require a Track Access Permit Process is followed to ensure safe working conditions for all work performed on, near or adjacent to the trackway or any ST facilities. Trackway is the area extending 10 feet from the nearest rail or separated from the rail by a permanent fixed barrier which is not designated for public use. If any Party’s maintenance or repair activities will result in the need to close the Pedestrian Bridge, such Party will provide at least seven (7) days prior written or electronic notice of

such maintenance or repair work to the other Parties. The Parties agree to notify each other by phone or email as soon as is reasonably possible for emergency maintenance and operations activities that require immediate action or where snow and ice removal is necessary for safety reasons. The Parties shall conduct or direct their work so as not to unreasonably interfere with, obstruct, or endanger the operations of each Party's properties.

2.7.1. The primary point of contacts at each agency are:

ST: LCC (Link Control Center) OMF, Seattle 206-205-8177

Redmond: City Maintenance and Operations Center, 425-556-2800

2.8. Signage

The City shall be responsible at its sole expense for installing, cleaning, maintaining, repairing, and replacing, in whole or in part, all signage within the public right of way and public easements that apply to City operations.

2.9. Security

The City shall be responsible for providing fire and police services related to a 911 emergency response due to an incident on the Pedestrian Bridge and other public easement areas, provided that nothing in this subsection is intended to create any duty on the part of the City to any individual or class of individuals or to create any special relationship between the City and Sound Transit, or any other person or entity regarding such police services. The City makes no representations or warranties as to the safety or security of any person by entering into this Agreement and the parties agree that the City has no greater or lesser duty to provide police services to persons on the Pedestrian Bridge than it does with regard to the general public in providing police services throughout the City.

2.10. Future Cameras

The City may install cameras on the Pedestrian Bridge and Ramp in the future. Any installation within the easement area and the track operational area will be reviewed and coordinated with Sound Transit. The City will be responsible for obtaining any permits and approvals for the installation in advance. Sound Transit installation of any additional cameras within the City right of way or affixed to the Pedestrian Bridge or Ramp will be reviewed and coordinated with the City. Sound Transit will be responsible for obtaining any permits and approvals for the installation in advance.

3. DESIGNATED REPRESENTATIVES.

3.1. Each Party shall designate a representative who shall be responsible for coordination of communications between the parties regarding the matters set forth in this Agreement and who shall act as the primary point of contact for each Party. The Designated Representatives shall communicate as necessary to discuss the status of the tasks to be performed, identify upcoming decisions and provide any information or input necessary

to inform those decisions, and to identify and resolve disputes related to the operation and maintenance of the Bridge, Vault or other infrastructure in a timely manner. The name and contact information of a Designated Representative may be updated by a Party in writing by electronic mail to the other Parties. A change in the name and/or contact information of a Designated Representative shall not be considered an amendment to this Agreement.

SOUND TRANSIT	CITY OF REDMOND
Jim Glenn	Bridge Program Manager,
East Area Facilities Manager	Public Works
Operations Department	15670 NE 85 th Street
401 S. Jackson St.	Redmond, WA 98073-7910
Seattle, WA 98104-2826	425-556-2776
206-553-3741	

4. LEGAL RELATIONS

- 4.1. It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement. The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.
- 4.2. Each Party to this Agreement will defend, indemnify and save harmless any other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, each Party's negligent acts or omissions. No Party will be required to defend, indemnify or save harmless any other Party if the claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole negligence of another Party. Where such claims, suits, or actions result from concurrent negligence of the Parties, or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein will be valid and enforceable only to the extent of the Party's own negligence. Each Party agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. **For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.**
- 4.3. The indemnification provisions in this paragraph shall survive the expiration or termination of this Agreement.

5. DISPUTE RESOLUTION

5.1 The Parties agree that no Party shall take or join any action in any judicial or administrative forum to challenge actions of another Party associated with this Agreement or the Project, except as set forth herein. Neither Party will be required to complete the dispute resolution process if a Party may lose or forego a right, remedy, or cause of action that may be time barred before the dispute resolution process can be completed.

5.2 Any disputes or questions of interpretation of this Agreement that may arise between the Parties 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.

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

5.4 The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute escalation process should any such disputes arise:

A. Level One - Sound Transit's Designated Representative and the City's Designated Representative shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) days after referral of that dispute to Level One, any Party may refer the dispute to Level Two.

B. Level Two - Sound Transit's Executive Director of Operations and the City's Public Works Director, shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) days after referral of that dispute to Level Two, any Party may refer the dispute to Level Three.

C. Level Three - Sound Transit's Chief Executive Officer or Designee and the City Mayor or Designee, shall meet to discuss and attempt to resolve the dispute in a timely manner.

5.5 Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within twenty-one (21) 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 or arbitration. At all times prior to resolution of the dispute, the Parties shall continue to perform any undisputed obligations in the same manner and under the same terms as existed prior to the dispute. Notwithstanding anything in this Agreement to the contrary, no Party has an obligation to agree to refer the dispute to mediation, arbitration, 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.

6. NOTICES

6.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to the Designated Representatives.

6.2 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 Designated Representatives as listed herein, followed by delivery by methods (i) – (iii) above unless the recipient acknowledges receipt of the electronic communication.

7. FTA COMPLIANCE

7.1 The Parties acknowledge that the Pedestrian Bridge was funded by a Federal Transit Administration grant, ID number WA-95-X067-01, awarded to the City and transferred to Sound Transit to fund design and construction of the Pedestrian Bridge. The City acknowledges it is a recipient of an FTA funded asset and is responsible for compliance with any applicable federal requirements, including FTA provisions for settlement of any remaining federal interest of the FTA-funded Pedestrian Bridge should it be removed, changed and/or replaced.

8. GENERAL PROVISIONS

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

8.2 This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be King County, Washington.

8.3 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the City and Sound Transit.

8.4 This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

8.5 No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one Party shall be deemed, or represent themselves to be, employees of any other Party.

8.6 This Agreement has been reviewed and revised by legal counsel for all Parties and no presumption or rule that ambiguity shall be construed against the Party drafting the document shall apply to the interpretation or enforcement of this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by applicable law.

8.7 Each Party shall be responsible for all its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties.

8.8 The Parties shall not be deemed in default with provisions of this Agreement where performance was rendered impossible or impracticable by war or riots, civil disturbances, floods or other natural catastrophes beyond its control; the unforeseeable unavailability of labor or materials; or labor stoppages or slowdowns, or power outages exceeding available back-up power supplies; or other events beyond the control of the Parties. This Agreement shall not be revoked or a party penalized for such noncompliance, provided that such party takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, and integrity of all parties' employees or property, or the health, safety, and integrity of the public, public right-of-way, or public or private property.

8.9 This Agreement may be amended only by a written instrument executed by each of the Parties hereto. Except that Exhibits may be modified by mutual agreement of the Parties and documented by signed dated revisions.

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

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

8.12 All exhibits attached to this Agreement are hereby incorporated into this Agreement.

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

8.14 This Agreement may not be assigned by any of the Parties nor the obligations transferred without the consent of the other Parties in their sole discretion.

9. TERM

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This Agreement shall take effect as of the date Sound Transit transfers the Bridge, Vault or other infrastructure to the City by Bill of Sale or other instrument and remain in effect until such date as the Bridge, Vault or other infrastructure may be permanently decommissioned or removed from service by separate written agreement of the Parties, or by mutual agreement of the Parties.

**CENTRAL PUGET SOUND REGIONAL THE CITY OF REDMOND
TRANSIT AUTHORITY
(SOUND TRANSIT)**

By: _____
Kimberly Farley, Deputy Chief Executive
Officer

Date: _____

Authorized by Motion No. _____

Approved as to form:

By: _____
Mattelyn Tharpe, Legal Counsel

By: _____
Angela Birney, Mayor

Date: _____

Authorized by Ordinance _____

Approved as to form:

By: _____
James Haney, City Attorney

EXHIBIT A

ALLOCATION OF MAINTENANCE AREAS