

**TRANSIT WAY AGREEMENT FOR  
THE DOWNTOWN REDMOND LINK EXTENSION PROJECT  
CITY OF REDMOND, WASHINGTON**

**GA 0212-18**

This AGREEMENT is entered into by and between the City of Redmond, a Washington municipal corporation (the “City” as further defined below), and Central Puget Sound Regional Transit Authority (“Sound Transit” as further defined below) and is effective when signed by the City and Sound Transit (the “Parties”).

**RECITALS**

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

**WHEREAS**, Sound Transit is a governmental entity 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, including the right to construct and maintain facilities in public rights-of-way without a franchise pursuant to RCW 81.112.100 and 35.58.330;

**WHEREAS**, the City owns and operates city streets, Public Rights-of-Way, utilities, parks, and other infrastructure and improvements within city boundaries where Sound Transit proposes certain transit improvements and light rail;

**WHEREAS**, the Growth Management Act (RCW 36.70A) provides that regional transportation facilities are essential public facilities and the segments of the high capacity transit system to be constructed in the City (the “Project”), as further defined herein, is an essential public facility;

**WHEREAS**, in 1996, 2008, and 2016, pursuant to state law, Sound Transit proposed, and Central Puget Sound voters approved, financing for regional transit system plans known as Sound Move, ST2, and ST3, respectively;

**WHEREAS**, these regional transit system plans include, among other projects, the East Link Light Rail Extension Project (the “East Link Project”), connecting the cities of Seattle, Mercer Island, Bellevue, and Redmond;

**WHEREAS**, Sound Transit and the Federal Transit Administration of the United States Department of Transportation (“FTA”) have jointly planned the light rail transit projects pursuant to the National and State Environmental Policy Acts, and have completed environmental review of the Project in Redmond;

**WHEREAS**, on September 27, 2018, the Sound Transit Board selected the alignment and station locations for construction of the expansion of the East Link Project from Overlake Transit Center to downtown Redmond as set forth in Sound Transit Resolution R2018-32, incorporated by reference herein;

**WHEREAS**, Sound Transit is proceeding to design and build the East Link Project and will seek various right-of-way permits for construction and operation of the system within the City; and

**WHEREAS**, the City and Sound Transit want to agree on a grant of a non-exclusive Light Rail Transit Way, as defined below, for the East Link Project in the City with appropriate conditions that will satisfy the FTA’s continuing control requirements;

**NOW THEREFORE**, in consideration of mutual promises and covenants contained herein related to the grant of a non-exclusive use of a Light Rail Transit Way by the City to Sound Transit to construct, operate, maintain, and own a Light Rail Transit System in the City within and along the Light Rail Transit Way, the Parties agree to the terms and conditions as follows:

## **ARTICLE I**

### **SECTION 1. DEFINITIONS**

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

- 1.1 Agreement. Unless the context provides otherwise, “Agreement” means this Light Rail Transit Way Agreement approved by appropriate action of the City and Sound Transit.

- 1.2 City. “City” means the City of Redmond, a municipal corporation of the State of Washington, and any successor or assignee following an assignment that is permitted under this Agreement.
- 1.3 Director. “Director” means the current Director of Public Works of the City, or his or her designee.
- 1.4 Emergency. “Emergency” means, except as otherwise provided, a generally unexpected occurrence or set of circumstances demanding immediate action.
- 1.5 Final Construction Plans. “Final Construction Plans” means drawings or mutually acceptable electronic media showing, in detail, the proposed construction and specifications of the Light Rail Transit System, including alignment drawings showing the exact limits of the Light Rail Transit Way.
- 1.6 Final Right-of-Way Plans. “Final Right-of-Way Plans” means City and Sound Transit approved drawings or mutually acceptable electronic media showing the proposed limits of the Light Rail Transit Way mathematically tied to existing City monumentation.
- 1.7 Liability. “Liability” means all loss, damage, cost, expense (including costs of investigation and attorneys’ fees and expenses at arbitration, trial, or appeal and without institution of arbitration or suit), liability, claims, and demands of whatever kind or nature, including those arising under the Federal Employers Liability Act, arising out of an occurrence relating to this Agreement or occurring on or relating to the Light Rail Transit System.
- 1.8 Light Rail Transit Facility. “Light Rail Transit Facility” means a structure, rail track, related equipment, or other improvement of a Light Rail Transit System, including but not limited to traction power substations, signal bungalows, Light Rail Transit Stations and related passenger amenities, bus layover and inter-modal passenger transfer facilities, and station access facilities.
- 1.9 Light Rail Transit Station. “Light Rail Transit Station” means a Light Rail Transit Facility, whether at grade, above grade, or below grade, that provides pedestrian access to Light Rail Transit System vehicles and facilitates transfer from light rail to other modes of transportation. A Light Rail Transit Station may include mechanical devices such as elevators and escalators to move passengers and may also include such passenger amenities as informational signage, seating, weather protection, fountains, artwork, or concessions.
- 1.10 Light Rail Transit System. “Light Rail Transit System” means a public rail transit line, including Light Rail Transit Facilities, all infrastructure, transit-related passenger services, and transit system related communication equipment, that operates at grade level, above or below grade level, or in a tunnel, 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. Commuter rail and low capacity or excursion rail transit service are not included.

- 1.11 Light Rail Transit Way. “Light Rail Transit Way” means the areas within the Public Rights-of-Way occupied by Sound Transit for its Light Rail Transit System after construction pursuant to this Agreement, as shown on the record drawings of the Final Right-of-Way Plans approved by the Director and on file with the City Clerk.
- 1.12 Passenger. “Passenger” means any person who is not an employee of Sound Transit and who is aboard any Sound Transit Light Rail Transit System vehicle.
- 1.13 Project. “Project” means the segments of the Light Rail Transit System in the City as described in the Sound Transit Board Resolution R2018-32 and subsequently approved permits and agreements.
- 1.14 Public Rights-of-Way. “Public Rights-of-Way” means the areas above, below, on, and over public streets and easements for which, under the Redmond Municipal Code, city ordinances, and applicable laws, the City has authority to grant rights-of-way, permits, or licenses for use thereof or has regulatory authority therefor, including any property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, sidewalks, bikeways, and parking, whether improved or unimproved.
- 1.15 Routine Maintenance and Operation. “Routine Maintenance and Operation” means Sound Transit’s maintenance and operation of the Light Rail Transit System that does not require: (i) the excavation of soil that would alter or disturb Public Rights-of-Way; (ii) closure or other modifications of the Public Right-of-Way in a way that impedes the flow of pedestrian or vehicular traffic; or (iii) the use of heavy machinery within fifty (50) feet of or upon Public Rights-of-Way.
- 1.16 Sound Transit. “Sound Transit” means the Central Puget Sound Regional Transit Authority and any other entity to the extent that such entity that, pursuant to this Agreement, is exercising any rights to operate the Light Rail Transit System over any portion of the Light Rail Transit Way pursuant to a specific written grant of such rights by Sound Transit.
- 1.17 Third Party. “Third Party” means any person or entity other than the City or an employee of the City and any person or entity other than Sound Transit or an employee of Sound Transit.
- 1.18 Track Access Permit. “Track Access Permit” means the process for track access, the management, scheduling, and authorization of access to employees, third

parties, and contractors to perform work on, near, or adjacent to the Light Rail Transit System or any Light Rail Transit Facility.

## ARTICLE II

### SECTION 2. GRANT OF RIGHTS BY CITY

- 2.1 Grant of Non-Exclusive Use of a Light Rail Transit Way. The City grants to Sound Transit a non-exclusive use of portions of certain Public Rights-of-Way, the general locations of which are described and depicted on **Exhibits A and B** hereto, to be known as a Light Rail Transit Way, to construct, operate, maintain, and own a Light Rail Transit System in, upon, above, beneath, and along the Light Rail Transit Way in accordance with the terms and conditions of this Agreement. The Light Rail Transit Way shall be limited to the areas described generally in the plans and profile drawings contained in **Exhibit C** hereto and more fully described in the Final Right-of-Way Plans. The Director and Sound Transit's Deputy Executive Director of Design and Engineering shall, from time to time, jointly revise and modify **Exhibit C** to conform to the Final Construction Plans and the Final Right-of-Way Plans as long as the revisions are, in their judgment, within the scope and intent of **Exhibit C**. This grant shall take effect upon the filing with the City Clerk by the Director of approved Final Construction Plans and Final Right-of-Way Plans. Sound Transit expressly agrees that it will construct, operate, and maintain the Light Rail Transit System in compliance with this Agreement and all applicable City permits and ordinances and state and federal laws.
- 2.2 Rights Limited to Light Rail Transit System. The non-exclusive use of a Light Rail Transit Way is granted solely for the purpose of construction, maintenance, operation, and ownership of the Light Rail Transit System detailed in the Final Construction Plans and for no other purpose. Sound Transit intends to use, and shall have the right to use, the Light Rail Transit Way solely for Light Rail Transit System uses. Sound Transit agrees that it shall not, without the City's written consent, construct on or along the Light Rail Transit Way any additions to or expansions of the Light Rail Transit System subsequent to the construction done in accordance with the Final Construction Plans and the Final Right-of-Way Plans. Notwithstanding the foregoing, nothing contained herein shall prevent Sound Transit from replacing Light Rail Transit Facilities or equipment existing after construction.
- 2.3 Work Permitted in Light Rail Transit Way. Sound Transit understands and agrees that during the normal course of Light Rail Transit Way use, the City may engage in construction, maintenance, demolition, leasing, licensing, permitting, and similar activities that have the potential to cause interruption to the Light Rail Transit System. Sound Transit understands and agrees that such activities may be caused, from time to time, by reasons including but not limited to: (1) traffic conditions; (2) public safety; (3) Public Rights-of-Way construction; (4) Public

Rights-of-Way repair, including resurfacing or widening; (5) change of Public Rights-of-Way grade; and (6) construction, installation, or repair of sewer drains, water pipes, power lines, signal lines, traffic control devices, tracks, communication systems, public works, public facilities or improvements, or utilities. The City agrees that such activities, to the extent they are permitted or controlled by the City, shall not occur within the Light Rail Transit Way without written notice to Sound Transit. The City shall further exercise its reasonable best efforts to ensure that any such activities done by or for the City shall be undertaken in a manner that avoids or minimizes, to the extent practical given the nature of the activities and resources available, disruption to operation of the Light Rail Transit System. Before commencement of any work, that has the potential to cause interruption to the Light Rail Transit System, the City will apply for, and direct all Third Parties to apply for, a Track Access Permit in accordance with Sound Transit's then-current track access standard operating procedures, for which approval shall not be unreasonably withheld or delayed, taking into account the nature of the proposed entry.

In case of emergency, the City will call Sound Transit's Link Control Center at 206-205-8177 and will not enter the Light Rail Transit Way until receiving permission.

- 2.4 Non-Exclusive Use. Sound Transit understands that the rights granted herein are non-exclusive. The City shall retain the right to use the Public Rights-of-Way and shall have the right to agree to other non-exclusive uses or occupancies of the Light Rail Transit Way. The City agrees that such uses or occupancies shall not unreasonably impair the ability of Sound Transit to operate the Light Rail Transit System.
- 2.5 Use Restricted. This Agreement does not authorize the provision of any services by Sound Transit other than the services strictly related to the operation of the Light Rail Transit System. Sound Transit's use of the Light Rail Transit Way for anything other than a Light Rail Transit System shall require written permission from the City.
- 2.6 Ownership. Sound Transit shall own all tracks and other Light Rail Transit Facilities on the Light Rail Transit Way, including, without limitation, improvements constructed at the cost and expense of Sound Transit. Nothing in this Agreement shall be construed as granting to Sound Transit any interest or right in the Light Rail Transit Way or the improvements on the Light Rail Transit Way other than the rights expressly provided herein.
- 2.7 No Rights by Implication. No rights shall pass to Sound Transit by implication. Without limiting the foregoing, by way of example and not limitation, this Agreement shall not include or be a substitute for:

- (a) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;
  - (b) Any permit, agreement, or authorization required in connection with operations on or in public streets or property including, by way of example and not limitation, right-of-way use permits; or
  - (c) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Agreement.
- 2.8 Utilities Agreements. This Agreement shall not be read to diminish or in any way affect the authority of the City to control and charge for the location and use of light, electric, telecommunications, water, storm, solid waste and wastewater utilities. Therefore, if Sound Transit desires to use such utilities, it must obtain necessary agreements or consents for such uses, as may be required by the City, which agreements or consents shall not be unreasonably withheld.
- 2.9 Transfer of Real Property. In the event that Sound Transit acquires real property that the Parties mutually agree should be transferred to the City as Public Right-of-Way, such real property shall be transferred to the City without further compensation from the City; provided, however, that any such dedication shall be governed by applicable law, including federal grant requirements, and provisions of the Redmond Municipal Code and the Revised Code of Washington.

### **SECTION 3. CONSTRUCTION**

- 3.1 Approval of Construction. Sound Transit shall obtain the approval of the Director of all Light Rail Facility Final Construction Plans, for work in the Public Rights-of-Way before commencing any such work. Final Construction Plans must be accompanied by Final Right-of-Way Plans. Approval for Construction shall consist of the issuance of a construction permit or permits for each project section or contract to be constructed by Sound Transit within the Public Rights-of-Way.
- 3.2 Entry upon Light Rail Transit Way. Sound Transit employees and agents shall have the right, as defined and limited pursuant to Section 6 of this Agreement, to enter upon the Light Rail Transit Way for the purpose of constructing, operating, and maintaining the Light Rail Transit Facilities.
- 3.3 Record Drawings. As promptly as possible, but in no event later than six months after each segment of the Light Rail Transit System is installed, Sound Transit shall furnish to the City record drawings of the Final Construction Plans and Final Right-of-Way Plan. These record drawings shall be submitted in paper and associated electronic files prepared in accordance with the Request for

Proposals for Design-Build Services for the DRLE, Contract R200, Volume 2-01, Project Requirements Section 2.7.11.3.2, showing the as-built condition.

- 3.4 Temporary Use of Public Rights-of-Way. During construction of the Light Rail Transit System, Sound Transit, with the prior written agreement of the City, may fence portions of the Public Rights-of-Way for the temporary storage of construction equipment and materials provided that such structures and fences: (i) do not interfere with or disrupt in any way, other than ways approved in advance by the City, the ordinary use of the rights-of-way; (ii) do not interfere with or disrupt in any way, other than in ways approved in advance by the City, the ordinary access to property on either side of the Public Rights-of-Way; (iii) are not used for construction worker parking; and (iv) do not unnecessarily limit the public's right to travel within the right-of-way. Sound Transit shall not store or temporarily place any goods, materials, or equipment: (i) near a roadway, intersection, or crossing in such a manner as to interfere with the sight distance of persons approaching such crossing; or (ii) within such greater distance as prohibited by the City; provided, however, that fuel and other hazardous substances shall not be stored unless approved by appropriate officials of the City Fire Department. Upon completion of construction or such other period as mutually agreed, Sound Transit will remove all stored construction equipment, materials, and fences and to restore the Public Right-of-Way as provided in Section 3.12
- 3.5 Utilities During Construction. The City recognizes that the Light Rail Transit System is an essential public facility and public transportation improvement. The City will cooperate with Sound Transit by directing utilities with conflicting utility facilities on City owned rights-of-way to relocate when necessary at the utility's expense if provided for in applicable federal, state, or local laws or regulations, or in the utility's franchise agreement. Sound Transit will coordinate with all utilities to minimize utility relocation costs and related construction. Sound Transit shall fully indemnify the City for any claim and undertake the defense of any litigation directed at the City arising from the City's exercise of its authority to direct such relocation to accommodate the construction of the Light Rail Transit System. ST shall provide all exhibits, letters, documents, and materials reasonably needed to support the City's direction to any utilities to relocate. The City shall cooperate fully with Sound Transit in the defense of any such claim. Notwithstanding the foregoing, the Parties agree that Sound Transit shall pay for any relocation or protection of City-owned utilities that the City determines is necessary due to construction or operation of the Light Rail Transit System. The specific allocation of costs of such relocation shall be defined in a series of future agreements between the City and Sound Transit relating to the separate construction segments of the Light Rail Transit System, each agreement to be entered into before construction on the particular segment begins.



- 3.6 Compliance with Laws, Rules, and Regulations. Sound Transit, at Sound Transit's sole cost and expense, will furnish all materials, parts, components, equipment, and structures necessary to construct and operate the Light Rail Transit System, and all parts thereof, in accordance with this Agreement. Any and all work performed by Sound Transit shall be done in a good and workmanlike manner, in conformity with all applicable engineering, safety, and other statutes, laws, ordinances, regulations, rules, codes, orders, or specifications of any public body or authority having jurisdiction.
- 3.7 Installation. All facilities and installations must meet or exceed applicable specifications of the City and be in compliance with all existing federal, state, and local laws, ordinances, and regulations.
- 3.8 Track Support. During any work of any character by Sound Transit at locations of the Light Rail Transit Facilities, and in accordance with the Final Construction Plans, Sound Transit will support the tracks and roadbed of the Light Rail Transit System in such manner as is necessary for the safe operation of the Light Rail Transit System and ordinary use of the Public Rights-of-Way.
- 3.9 Imminent Danger. If, during construction, there is an Emergency or the Light Rail Transit System creates, or is contributing to, an imminent danger to health, safety, or property that Sound Transit is unable to immediately address, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Light Rail Transit System without prior notice, and charge Sound Transit for costs incurred. The City shall provide notice of such danger to Sound Transit as soon as practicable, taking into consideration the nature and complexity of the Emergency or other imminent danger.
- 3.10 Accommodation of Moving Structures. Sound Transit shall, on the request of any Third Party holding a valid permit issued by a governmental authority and a Sound Transit Track Access Permit, temporarily raise or lower its wires to permit the moving of buildings or other objects. Sound Transit may require that the expense of such temporary removal or raising or lowering of wires be paid in advance by the Third Party requesting the same.
- 3.11 Information Regarding Ongoing Work. In addition to providing notice to the public of ongoing work as may be required under applicable law, Sound Transit shall develop a comprehensive project-specific communication plan in coordination with the City to establish and maintain effective communication with residents and businesses to allow them to be fully informed about potentially significant disruptions, such as temporary street closures, changes in transit service, or parking availability. As part of the plan, Sound Transit will work with community and neighborhood groups prior to and through the construction process to identify types of impacts that would occur and communicate mitigation activities to address such impacts.

- 3.12 Restoration of Public Rights-of-Way. Sound Transit shall promptly repair any and all Public Rights-of-Way and public property that is disturbed or damaged during the construction of its Light Rail Transit System to substantially the same condition, or better condition if required by City code, or in the case of street surfaces, better condition, if reasonably necessary. In the event Sound Transit does not comply with the foregoing requirement, the City may, upon reasonable advance notice to Sound Transit, take actions to restore the Public Rights-of-Way or public property at Sound Transit's sole cost and expense.
- 3.13 Federal Grant Conditions. Sound Transit's design and construction of the Project is subject to a financial assistance contract between Sound Transit and the United States Department of Transportation and the FTA. Both parties recognize that the FTA may request a change to this Agreement to comply with its funding requirements. The Parties agree to consider any such request in good faith.

#### **SECTION 4. PERMITS**

- 4.1 Permits and Licenses. Sound Transit, at its sole cost and expense, shall (i) secure and maintain in effect all federal, state, and local permits and licenses required for the construction, operation, and maintenance of the Light Rail Transit System, including, without limitation, crossing, zoning, building, health, environmental, 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. The City shall cooperate with and assist Sound Transit in securing and maintaining any such permits or licenses. In the event that Sound Transit needs to perform maintenance and operation activities that are not defined as Routine Maintenance and Operation activities in Section 1.17, Sound Transit shall submit a street use permit to the City for such activities and City approval shall not be unreasonably withheld or delayed.
- 4.2 City Shall Not Hinder. The City shall not interfere with Sound Transit's ability 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, including streets, roads, or utility poles. 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.

#### **SECTION 5. ENTRY NOTICE**

- 5.1 Access. Sound Transit, and its employees and agents shall have access to the Public Rights-of-Way in connection with Sound Transit's construction, operation, and maintenance of the Light Rail Transit System as is reasonably necessary in

accordance with this Agreement and any permit conditions established under City-issued right-of-way permits; provided, however, that except to the extent expressly provided in this Agreement, this right of access shall not be deemed to require the City to take any actions or expend any funds to enable such persons to exercise such rights of access, and provided further that such access may not interfere with or disrupt, other than in ways approved in advance by the City, the use of the Light Rail Transit Way by the City or Third Parties.

- 5.2 Notice Prior to Initial Entry. During construction, Sound Transit shall give the City at least 14 calendar days' written notice before initial entry upon any portion of the Public Rights-of-Way for construction purposes.
- 5.3 Entry after Construction. After construction, any entry by Sound Transit onto the Public Rights-of-Way that is not pursuant to the Routine Maintenance and Operation of the Light Rail Transit System or for purposes relating to an Emergency shall require: (i) advance written notice from Sound Transit to the City not less than ten days before Sound Transit's planned entry; (ii) if entry involves any new connection or removal of any portion of the Light Rail Transit System, plans as required by direction of the Director showing in detail the proposed new construction, reconstruction, or removal; and (iii) approval by the City, through a right-of-way permit, which approval shall not be unreasonably withheld or delayed, taking into account the nature of the proposed entry.
- 5.4 Entry for Routine Maintenance and Operation. During Routine Maintenance and Operation, Sound Transit personnel may enter the Public Rights-of-Way without notice to the City, as long as such entry is for the sole purpose of Routine Maintenance and Operation.
- 5.5 Emergency Access. In the event of an Emergency that interrupts or significantly disrupts Operation of the Light Rail Transit System and for purposes of taking immediate corrective action, Sound Transit personnel may enter the Public Rights-of-Way without notice to the City, as long as such entry is for the sole purpose of addressing the Emergency; provided, however, that if any entry for such purposes is likely to require excavation of soil that would alter or disturb the Public Rights-of-Way, use of heavy machinery within fifty (50) feet of or upon the Public Rights-of-Way, or full closure of travel lanes or pedestrian facilities, Sound Transit shall give the City verbal or telephonic notice of the places where and the manner in which entry is required, prior to such entry, promptly followed by written notice.

## **SECTION 6. OPERATION, MAINTENANCE, AND REPAIR IN STREETS AND RIGHTS-OF-WAY**

- 6.1 Compliance with Laws, Rules, and Regulations. Sound Transit shall operate, maintain, and repair its Light Rail Transit System in compliance with all federal, state, and local laws, ordinances, departmental rules and regulations, and

practices affecting such system, which includes, by way of example and not limitation, the obligation to operate, maintain, and repair in accordance with the City's Municipal Code, and City street and utility standards. In addition, the operation, maintenance, and repair shall be performed in a manner consistent with industry standards. Sound Transit shall exercise reasonable care in the performance of all its activities and shall use industry-accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

- 6.2 Permits Required. Except in cases of emergency repairs, Sound Transit's operation, maintenance, or repair of its Light Rail Transit System shall not commence until all required permits have been properly applied for and obtained from the proper City officials and all required permits and associated fees paid, including, but not limited to the cost of permit application review and inspection. In case of emergency repairs, appropriate permits shall be applied for no later than the second business day following repairs.
- 6.3 Level of Operation/Maintenance. All facilities shall be operated and maintained in such a manner as to minimize disruption to other users of the Public Rights-of-Way. All facilities shall be maintained in a state of good repair as defined by the FTA in 49 CFR 625.
- 6.4 Appointment of Operator. Sound Transit may appoint an operator (referred to herein as an "Operator") as Sound Transit's agent to exercise some or all of Sound Transit's rights under this Agreement, subject to the terms and conditions of this Agreement.
- 6.5 Regulatory Approvals. Sound Transit and its Operator shall obtain and maintain all federal, state, and/or local regulatory approvals as may be required for the operation of the Light Rail Transit System.
- 6.6 Responsibility for Equipment. The City shall have no responsibility for inspecting, maintaining, servicing, or repairing any trains or other equipment used by Sound Transit as part of the Light Rail Transit System, but all such equipment shall at all times comply with applicable federal, state, and local governmental requirements.
- 6.7 Prompt Repair. Sound Transit shall promptly repair any and all Public Rights-of-Way, public property, or private property that is disturbed or damaged during the operation, maintenance, or repair of its Light Rail Transit System. Public property and Public Rights-of-Way must be restored to substantially the same or better condition if required by a City code or City standard, as before the disturbance or damage occurred, or in the case of street surfaces, better condition if reasonably necessary.

- 6.8 Imminent Danger. In the event of an Emergency, or where the Light Rail Transit System creates, or is contributing to, an imminent danger to health, safety, or property, the City will immediately notify Sound Transit's Link Control Center ("LCC") to address the situation.
- 6.9 No Crossing Gates Without Permission. Sound Transit will not install any crossing gates or other traffic control devices without the written consent of the City.
- 6.10 Maintenance of Landscaping. Except as otherwise agreed by the Parties, in accordance with City requirements, Sound Transit shall maintain all landscaping associated with the Project and located in the Public Rights-of-Way until the maintenance guarantee requirements are met and the City accepts responsibility for improvements belonging to the City.
- 6.11 Maintenance of Storm Water Facilities. Except as otherwise agreed by the Parties, in accordance with City requirements, Sound Transit shall maintain all storm water improvements associated with the Project and located in the Public Rights-of-Way until the maintenance guarantee requirements are met and the City accepts responsibility for improvements belonging to the City. The City shall maintain all stormwater and other "hard infrastructure" improvements associated with the Project and located in the Public Rights-of-Way and the Light Rail Transit Way pursuant to this Agreement upon completion of construction and compliance with maintenance guarantee requirements, except those facilities constructed solely for the Light Rail Transit Way. This provision shall not apply to the storm water facilities constructed for Sound Transit guideway and associated operational facilities, whether or not located within the Public Rights-of-Way. Subsequent agreements between the Parties may further define and clarify ownership and maintenance responsibilities of stormwater facilities located within the Public Rights-of-Way.

## **SECTION 7. FACILITY LOCATION SIGNS**

- 7.1 Sound Transit, at its sole cost, expense, and risk, shall furnish, erect, and thereafter maintain signs showing the location of all Sound Transit facilities. Signs shall be in conformance with applicable City and state codes and subject to applicable permit approvals.

## **SECTION 8. THIRD PARTY RIGHT-OF-WAY OWNERSHIP**

- 8.1 This Agreement is not intended to cover and does not cover any occupancies over: (i) rights-of-way or other land owned solely or jointly by any other person or entity; or (ii) any rights granted to the City by Third Parties. The City agrees to cooperate with Sound Transit to assist in its efforts to acquire rights to use any joint facilities or structure or such rights-of-way or land owned by others along the Light Rail Transit Way.

## **ARTICLE III GENERAL PROVISIONS**

### **SECTION 9.           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, expenses (including, without limitation, attorneys' fees) arising or growing out of or in connection with or resulting from, either directly or indirectly, the design, construction, maintenance, operation, repair, removal, occupancy, or use of the Light Rail Transit System in the Light Rail Transit Way by Sound Transit, except to the extent such claims arise from the sole negligence of the City, its employees, servants, or agents.
- 9.2     Consistent with Sound Transit's indemnification obligations herein, the City shall give Sound Transit prompt notice of any claims of which it is formally aware that affect Sound Transit. Sound Transit shall promptly assume responsibility for the claim or undertake the defense of any litigation on behalf of the City. The City shall cooperate fully with Sound Transit in the defense of any claim associated with this Agreement. The City shall not settle any claim associated with this Agreement directly affecting Sound Transit without the prior written consent of Sound Transit, which consent shall not be unreasonably withheld.
- 9.3     Sound Transit expressly assumes potential liability for actions brought by Sound Transit's employees and agents against the City and, solely for the purpose of this indemnification, expressly waives any immunity under the Industrial Insurance Law, Title 51 RCW. Sound Transit acknowledges that this waiver was entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnification obligations provided in this Section shall survive termination of this Agreement.

### **SECTION 10.       INSURANCE**

- 10.1    Sound Transit shall maintain, throughout the term of this Agreement and for six years after its termination, insurance adequate to protect the City against claims that may arise as a result of the construction, operation, or maintenance of the Light Rail Transit System in the Light Rail Transit Way, including, without limitation: (i) comprehensive general liability insurance; (ii) property damage liability insurance (including coverage for explosion, collapse, and instability); (iii) workers' compensation insurance (to the extent required by law); (iv) employer's liability insurance; (v) comprehensive auto liability coverage (including owned, hired, and non-owned vehicles); (vi) environmental liability insurance; and, (vii) during the construction phase, builder's risk. Such insurance shall be primary and non-contributory.

- 10.2 Sound Transit shall carry such insurance with responsible insurers licensed to do business in the State of Washington or self-insure or participate in an insurance pool or pools at levels of coverage or with reserves adequate, in the reasonable judgment of Sound Transit, to protect Sound Transit and the City against loss, and as are ordinarily carried by municipal or privately owned entities engaged in the operation of systems comparable to the Light Rail Transit System. Sound Transit shall require any professional services consultants or sub-consultants working on the 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 certificates of insurance reflecting evidence of the required insurance and naming the City as an additional insured where appropriate. The certificates will 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 as set forth in this Section, the City may order Sound Transit to stop operating or constructing the Light Rail Transit System in the Light Rail Transit Way until the required insurance is obtained.

## **SECTION 11. LIENS**

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

- 11.2 Nothing herein shall preclude Sound Transit's or the City's contest of a claim for lien or other encumbrance chargeable to or through Sound Transit or the City, or of a contract or action upon which the same arose.
- 11.3 Nothing in this Agreement shall be deemed to give, and the City expressly waives, any claim of ownership in and to any part or the whole of the Light Rail Transit Facilities except as may be otherwise provided herein.

## **SECTION 12. DISPUTE RESOLUTION; REMEDIES; ENFORCEMENT**

### **12.1 Dispute Resolution.**

- (a) Any disputes or questions of interpretation of this Agreement that may arise between Sound Transit and the City shall be governed under the dispute resolution provisions in this Section. The Parties agree that cooperation and communication are essential to resolving issues efficiently. The Parties agree to exercise their best efforts to resolve any disputes that may arise through this dispute resolution process, rather than in the media or through other external means.
- (b) The Parties agree to use their best efforts to prevent and resolve potential sources of conflict at the lowest level.
- (c) 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:
  - (1) Level One - Sound Transit's Deputy Executive Director of Engineering and Construction Management and the City Engineer 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.
  - (2) Level Two - Sound Transit's Executive Director of Design, Engineering and Construction Management 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) calendar days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.
  - (3) Level Three - Sound Transit's Chief Executive Officer or Designee and the Mayor or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner.
- (d) Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within fourteen (14) calendar days after referral



of that dispute to Level Three, the Parties are free to file suit 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 and make any undisputed required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

- 12.2 Notice of Default. Neither party shall be in default under this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) calendar days after written notice of default from the other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30)-day period, then the defaulting party shall initiate reasonable actions to cure within the thirty (30)-day period; provided, however, that such default shall not be deemed a cure unless and until the defaulting party diligently prosecutes such cure to completion.
- 12.3 Remedies. Either party hereto has the right to exercise any and all of the following remedies, singly or in combination, consistent with the dispute resolution and notice of default sections of this Agreement, in the event the other party violates any provision of this Agreement:
- (a) Commencing an action at law for monetary damages;
  - (b) Commencing an action for equitable or other relief; and
  - (c) Seeking specific performance of any provision that reasonably lends itself to such remedy.
  - (d) The prevailing party, or substantially prevailing party if no one party prevails entirely, shall be entitled to reasonable attorneys' fees and costs.
- 12.4 Cumulative Remedies. In determining which remedy or remedies for a party's violation are appropriate, a court may take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether the party has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.
- 12.5 Failure to Enforce. Neither party hereto shall be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure by the other party to enforce prompt compliance, and one party's failure to enforce shall not constitute a waiver of rights or acquiescence in the other party's conduct.

## **SECTION 13. TERM; TERMINATION**

- 13.1 This Agreement shall be effective as of the date the last party signs and, unless sooner terminated pursuant to the terms hereof, shall remain in effect for so long as the Light Rail Transit Way is used for public transportation purposes consistent with all permits and approvals.
- 13.2 Upon termination of this Agreement, Sound Transit agrees to prepare, execute and deliver to the City all documentation necessary to evidence termination of this Agreement or portion thereof so terminated. No such termination, however, shall relieve the parties hereto of obligations accrued and unsatisfied at such termination.
- 13.3 Upon the cessation of use of the Light Rail Transit Way for the Light Rail Transit System, to the extent any portion of it remaining in the Public Right-of-Way or on any other public property is not removed by Sound Transit, the City, as expressed by ordinance, may deem it abandoned and it shall become the property of the City. If the City does not desire such ownership, Sound Transit shall remove any remaining portion of the Light Rail System at its sole cost, including the City's administrative and actual costs any required oversight related to the removal.
- 13.4 Any order by the City issued pursuant to this Section to remove the Light Rail Transit System in whole or in part shall be sent as provided in the Notice section of this Agreement.
- 13.5 Sound Transit shall file a written removal plan with the City no later than sixty (60) calendar days following the date of the receipt of any orders directing removal, or any consent to removal, describing the work that will be performed, the manner in which it will be performed, and a schedule for removal by location. The removal plan shall be subject to approval and regulation by the City. The affected property shall be restored to as good or better condition than existed immediately prior to removal.

#### **SECTION 14. COVENANTS AND WARRANTIES**

- 14.1 By execution of this Agreement, the City warrants:
- (a) That the City has full right and authority to enter into and perform this Agreement and any permits that may be granted in accordance with the terms hereof, and that by entering into or performing this Agreement the City is not in violation of any law, regulation, or agreement by which it is bound or to which it is subject; it being understood, however, that the covenant and warranty contained in this Section does not constitute a warranty, expressed or implied, by the City, of the right or rights granted by the City to Sound Transit hereunder; and
  - (b) That the execution, delivery, and performance of this Agreement by the City has been duly authorized by all requisite corporate action, that the

signatories for the City hereto are authorized to sign this Agreement, and that, upon approval by the City, the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Agreement.

14.2 By execution of this Agreement, Sound Transit warrants:

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

## **SECTION 15. RECORDINGS, TAXES, AND OTHER CHARGES**

15.1 Sound Transit shall pay all transfer taxes, documentary stamps, recording costs or fees, or any similar expense in connection with the recording or filing of any permits that may be granted hereunder. Sound Transit further agrees that if it is determined by any federal, state, or local governmental authority that the sale, acquisition, license, grant, transfer, or disposition of any part or portion of the Light Rail Transit Facilities or rights herein described requires the payment of any tax, levy, excise, assessment, or charges (including, without limitation, property, sales, or use tax) under any statute, regulation, or rule, Sound Transit shall pay the same, plus any penalty and/or interest thereon, directly to said taxing authority and shall hold the City harmless therefrom. Sound Transit shall pay all taxes, levies, excises, assessments, or charges, including any penalties and/or interest thereon, levied or assessed on the Light Rail Transit Facilities, or on account of their existence or use, (including increases attributable to such existence or use, and excluding taxes based on the income of the City), and shall indemnify the City against payment thereof. Sound Transit shall have the right to claim, and the City shall reasonably cooperate with Sound Transit in the prosecution of any such claim for refund, rebate, reduction, or abatement of such tax(es); provided, however, that such obligation to cooperate shall not apply to claims for refunds, rebates, reduction or abatement of such taxes levied by the City, which such claims shall be processed in accordance with applicable law.

15.2 The City may, in its sole discretion but without any 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.

## **SECTION 16. ASSIGNABILITY; BENEFICIARY**

- 16.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assignees. No assignment hereof or sublease shall be valid for any purpose without the prior written consent of the other party, and any attempt by one party to assign or license the rights or obligations hereunder without prior written consent will give the other party the right, at its written election, immediately to terminate this Agreement or take any other lesser action with respect thereto. The above requirement for consent shall not apply to: (i) any governmental entity merger, consolidation, or reorganization, whether voluntary or involuntary; or (ii) a sublease or assignment of this Agreement, in whole or in part, to a governmental entity; provided, however, that no sublease or assignment under (i) or (ii) shall be permitted to a governmental entity not operating, constructing or maintaining a Light Rail Transit System on behalf of Sound Transit, and provided further that no unconsented assignment shall relieve Sound Transit of its obligations and liabilities under this Agreement.
- 16.2 Either party hereto may assign any monetary receivables due them under this Agreement; provided, however, that such assignment shall not relieve the assignor of any of its rights or obligations under this Agreement.

## **SECTION 17. NOTICES**

- 17.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to:

Central Puget Sound Regional Transit Authority  
Attention: Deputy Executive Director DECM  
401 South Jackson Street  
Seattle, WA 98104-2826

And to:

Mayor of the City of Redmond  
Mail Stop 4NEX  
P.O. Box 97010  
Redmond, WA 98073-9710

## **SECTION 18. MISCELLANEOUS**

- 18.1 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. The City and Sound Transit agree to work cooperatively with each other to achieve the mutually agreeable goals as set forth in this Agreement.
- 18.2 Time is of the essence in every provision of this Agreement. Unless otherwise set forth in this Agreement, the reference to “days” shall mean calendar days. If any time for action occurs on a weekend or legal holiday, then the time period shall be extended automatically to the next business day.
- 18.3 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.
- 18.4 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.
- 18.5 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.
- 18.6 Each party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties.
- 18.7 The Parties shall not be deemed in default with the provisions of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond their control; the unforeseeable unavailability of labor or materials; or labor stoppages or slowdowns, or power outages exceeding back-up power supplies. This Agreement shall not be revoked or a party penalized for such noncompliance, provided that such party takes immediate and diligent steps to return to compliance and to comply as soon as practicable under the circumstances without unduly endangering the health,

safety, and integrity of the Parties' employees or property, or the health, safety, or integrity of the public, Public Right-of-Way, public property, or private property.

- 18.8 This Agreement may be amended only by a written instrument executed by each of the Parties hereto.
- 18.9 This Agreement constitutes the entire agreement of the Parties with respect to the subject matters of this Agreement, and supersedes any and all prior oral and written negotiations, understandings, and agreements with respect thereto.
- 18.10 Section headings are intended as information only, and shall not be construed with the substance of the section they caption.
- 18.11 In construction of this Agreement, "or" is used in the inclusive sense in all cases where such meaning would be appropriate.
- 18.12 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.

## **SECTION 19. LEGAL FORUM**

- 19.1 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.

## **SECTION 20. INTERPRETATION**

20.1 This Agreement is executed by the Parties under current interpretations of applicable federal, state or local statute, ordinance, law or regulation.

## **SECTION 21. SEVERABILITY**

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

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

CENTRAL PUGET SOUND  
REGIONAL TRANSIT AUTHORITY  
(SOUND TRANSIT)

CITY OF REDMOND

By: \_\_\_\_\_  
Peter M. Rogoff, Chief Executive  
Officer

By: \_\_\_\_\_  
John Marchione, Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Authorized by Motion No. \_\_\_\_\_

Authorized by Ordinance/Resolution  
No. \_\_\_\_\_

Approved as to form:

Approved as to form:

By: \_\_\_\_\_  
Natalie Moore, Legal Counsel

By: \_\_\_\_\_  
City Attorney

Exhibit List:

- Exhibit A - General Description of Light Rail Alignment and Station Locations
- Exhibit B - Light Rail Alignment and Station Locations (Maps 1 – 20)
- Exhibit C - Link Light Rail Project Plans and Profile Drawings