

**AGREEMENT  
BETWEEN CITY OF REDMOND AND THE CENTRAL PUGET SOUND  
REGIONAL TRANSIT AUTHORITY  
FOR THE FUNDING, DESIGN, AND CONSTRUCTION OF  
DOWNTOWN REDMOND LINK EXTENSION BETTERMENTS**

THIS AGREEMENT, effective upon the date of the latest signature, is entered into by and between the CITY OF REDMOND, a Washington optional municipal code city (the “City”) and 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. The Sound Transit Regional Transit Long-Range Plan identifies the Downtown Redmond Link Extension Project (“Project”) within the City’s jurisdiction and was funded as part of the 2016 voter-approved regional transit system plan, Sound Transit 3 Plan, (“ST3”).

B. The Project will add two new light rail stations beyond the Redmond Technology Station (currently called Overlake Transit Center) with one station and 1,400 parking stalls at Southeast Redmond and the other in Downtown Redmond.

C. [recital about the DA]

D. Sound Transit will deliver the Project as a design-build procurement (“Design Build”) and has been coordinating with the City in preparation for Project design and construction. As part of that coordination the City and Sound Transit have identified improvements to City infrastructure that are not required to execute the construction of Project, but would provide a public benefit and promote an efficient use of public funds if included as part Sound Transit’s Design Build scope of work (“Betterments”).

E. Sound Transit issued the DRLE Design-Build Request for Proposals (“DRLE RFP”) in November 2018. Following the issuance of the DRLE RFP, Sound Transit engaged the City to inform the design of the Betterments. Sound Transit intends to enter into the DRLE Project Design Build Contract (“DRLE Contract”) with its Design-Build contractor (the “Design Builder”) and issue the Notice to Proceed under that contract in September 2019.

F. The Parties desire to enter into this Agreement to set forth their respective responsibilities, define the City’s funding commitment for the Betterments, develop a protocol for sharing information in a timely manner and at stages appropriate to ensure adequate consideration of issues raised by the Parties, and decision-making standards that maximize transparency and efficiency in decision-making and build effective cooperation between the Parties.

In consideration of the recitals, terms, conditions, and covenants contained herein:

**IT IS MUTUALLY AGREED AS FOLLOWS:**

**SECTION 1 GENERAL**

**1.1 Incorporation of Recitals.** The above recitals are incorporated as part of this Agreement.

**1.2 Cooperation of the Parties.** The provisions contained in this Agreement depend upon timely and open communication and cooperation between the Parties. In this regard, communication of issues, changes, or problems that arise should occur as early as possible in the process. Each Party will work cooperatively and in good faith toward resolution of issues in a manner that ensures adequate time for each Party to consider and address the issues. This Agreement contemplates the execution and delivery of a number of future documents, instruments, and permits, the final form and contents of which are not presently determined. The Parties will provide the necessary resources and work in good faith to develop in a diligent and timely manner the final form and content of such documents, instruments, and permits.

**SECTION 2 SCOPE OF WORK**

**2.1** In accordance with the terms of this Agreement, Sound Transit agrees to include in its DRLE Contract and the City agrees to pay costs to perform the work described below. The Parties acknowledge that, due to the nature of design-build contracting, the Design Builder will complete the design for the Betterments in a manner consistent with the general scope described below, pursuant to the DRLE Contract.

- (a) **NE 51st Street PRV and Water Main (“PRV”)**, fully described in Exhibit X. Generally, Sound Transit will design and construct an additional 175 feet of 12" water main along with required appurtenances to support the installation of a new 8" pressure reduction valve (PRV) station and vault for the City.
- (b) **NE 70th Street & State Route 202 (“70th Street”)**, fully described in Exhibit X. Generally, Sound Transit will design and construct an additional northbound left turn lane on SR 202 at the intersection of SR 202 and NE 70th Street; a widened SR 202 to the northeast to accommodate the additional left turn lane; a realignment of the through lanes along SR 202 east and west of NE 70th Street required because of the additional left turn lane; modified storm water and drainage facilities required to accommodate the additional left turn lane; and modified traffic signals and lighting for the additional left turn lane.
- (c) **NE 76th Street & State Route 202 (“76th Street”)**, fully described in Exhibit X. Generally, Sound Transit will design and construct an additional eastbound left turn lane and northbound receiving/through lane on NE 76th St from SR 202 to the traffic signal serving Fred Meyer and Target; a new curb, gutter, pavement, and lane restriping on NE 76th Street from SR 202 to the Fred Meyer/Target traffic signal, a total distance

of about 1,100 feet; remove the sidewalk on the existing SR 202 bridge over Bear Creek; a revised curb taper on SR 202; a new curb and sidewalk on the south side of SR 202 near Creekside Crossing; and a new channelization from the existing SR 202 bridge to the driveway of Creekside Crossing.

**(d) Redmond Central Connector Improvements (“RCCI”)**, fully described in Exhibit X. Generally, Sound Transit will design and construct improvements to the Redmond Central Connector, which will include improvements to the corridor beyond the scope of this Agreement that are the sole financial responsibility of Sound Transit. The RCCI betterment will consist of all improvements to the Redmond Central Connector east of 166th Avenue NE, except for landscaping. The Parties will share the costs of the RCCI equally.

## **2.2 Change Process.**

**2.2.1 City Requested Changes.** Sound Transit has selected a design-build project delivery method for the Project. Because of the nature of a design-build contract, scope changes that occur after contract award are strongly discouraged. If the City has an interest in changing the confirmed Betterment scope, Sound Transit will consider such requests based on their anticipated impact to Project scope, schedule, budget, and long-term operations and maintenance costs. After consultation with the City, Sound Transit in its sole discretion will determine whether to approve such a scope change and the associated adjustments and impacts to Project scope, schedule, budget, operations, and costs.

**2.2.2 Change Orders.** Any change orders related to design or construction of the Betterments will be provided to the City for review and approval. If the City fails to respond within seven (7) days or other such time as the Parties agree in writing, Sound Transit may proceed with that specific change if Sound Transit determines that it is in the best interest of the Project. The City will not unreasonably withhold approval of any change. Sound Transit may request verbal approval of any change order from the City and may request to proceed with the work immediately in order to avoid delay cost, and the City may grant such verbal approval. Any such action will be documented immediately and written confirmation of approval will be obtained from the City if necessary. If a changed condition is found or the Design Builder requests an adjustment that increases the cost or time of performance, Sound Transit will consult with the City to agree whether a changed condition is present or if a request for adjustment as to time and money is appropriate.

## **SECTION 3 ROLES AND RESPONSIBILITIES**

**3.1 Roles and Responsibilities Generally.** Sound Transit will be solely responsible for administering the engineering, design, contracting, and construction process for the Betterments and for communicating with all consultants and contractors. The City will participate in decisions regarding the Betterments as provided in this Section 3 and pay all costs as prescribed in Section 4.

**3.2 City's Participation in Engineering and Design.** The City has dual roles concerning the Project and Betterments, as the land use regulator for the entire DRLE Contract scope of work within city limits, and as the owner of the Betterments. When exercising its rights under this Agreement, the City will participate in design reviews and approvals for work related to the Betterment scopes of work. City will expedite reviews and responses to all requests, and shall not unreasonably withhold approval or responses to reasonable requests. The City will respond within 14 calendar days for major design submittals and 7 days for issued for construction submittals, unless otherwise agreed. The City may request a time extension for review. If the City fails to timely respond, or such time as otherwise agreed in writing, Sound Transit may proceed with that specific submittal or review if it has determined that it is in the best interest of the Project. However, all project correspondence and communications with the construction package designers will be by and through appropriate Sound Transit personnel.

**3.2.1 Land Use Oversight.** When acting as the Project land use regulator, the City will review and respond to requests as agreed to in the Permitting Framework, approved as part of the Project Administration Agreement executed January 22, 2019.

**3.3 Permitting and Environmental Review.** The Parties agree that compliance with the State Environmental Policy Act (SEPA) has been satisfied for the Betterments as currently described in this Agreement. (The Betterments were included in the Downtown Redmond Link Extension 2018 SEPA Addendum to the East Link Project Final Environmental Impact Statement.) Sound Transit will include impacts to critical areas from the Betterments as currently described in this Agreement in the Environmental permit applications for the Project. Sound Transit's Design Builder will include the Betterments as necessary in other Project permit submittals. The City will rely on the SEPA compliance referenced above in issuing City permits for the Betterments and will not require additional environmental review or mitigation. The City will be responsible for any additional environmental review, permitting, or mitigation resulting from any revision to or change in scope of the Betterments as currently described in this Agreement and for any unanticipated costs beyond what Sound Transit would otherwise incur for its own Project permits as a result of including the City's Betterments.

**3.4 Procurement.** Sound Transit has included all City Betterments in its DRLE RFP. The City may participate as an advisor for the Sound Transit DRLE RFP, and will be invited to all discussions with Proposers related to the Betterments to be performed on behalf of the City. The City will be invited to participate in such meetings and negotiations that are related to the City Betterments. Sound Transit will maintain the right, at its sole discretion, to request best and final offers, and the right to meet or negotiate with the proposers and make all procurement determinations.

**3.5 Termination of Betterments Prior to Award.** One week before the Sound Transit Board authorizes the Sound Transit Chief Executive Officer to execute the DRLE Contract, the City may, at the City's sole discretion, provide a written notice to Sound Transit requesting that Sound Transit remove any or all of the Betterments from the DRLE Contract, and from this Agreement. Sound Transit will give the City as much prior notice as possible before the Board meeting where the DRLE Contract will be acted upon. Upon such timely notice, Sound Transit

agrees to withdraw the work from the scope of the DRLE Contract, and this Agreement will be amended in accordance with Section 8.

**3.6 Utility Relocation.** In the event construction of any of the Betterments requires the relocation of any utility which was not otherwise required to be relocated by the Project, the City will bear full responsibility for relocating those utilities.

**3.7 Observance of Construction Work.** The City may observe the performance of any construction work related to the Betterments, and request through Sound Transit, additional quality verification or testing of Betterments work beyond that required by a City code, standard, or permit condition, at the City's expense. In exercising its right to inspect the Betterments work, the City will not be deemed or construed to be in control of the Betterments.

**3.8 City to Act in Timely Manner.** The City will perform its obligations under this Agreement in a timely manner. If the City fails to perform any of its obligations within the express timeframes set forth in this Agreement or a reasonable timeframe where no express timeframe is established and such delay causes Sound Transit to incur additional costs under the DRLE Contract, the City will be liable for all costs owed to the Design Builder by Sound Transit due to the City's failure to timely perform.

## SECTION 4 FUNDING

**4.1 Cost Estimate.** The parties have agreed to an "Estimated Total Betterments Amount" that the City will pay to Sound Transit for the Betterments under this Agreement that is attached as **Exhibit X**. The Parties acknowledge that the Estimated Total Betterments Amount will be replaced with the bid item price in the DRLE Contract after award.

**4.2 City Pays Actual Costs.** This estimated total is an estimate of the amount of reimbursement of Sound Transit's incurred costs for administering, procuring, designing and completing construction of the Betterments, including sales tax. The City acknowledges that it has funding available for the Estimated Total Betterments Amount, and that it will provide funding for any valid increases to this amount in accordance with this Agreement. Sound Transit agrees to notify the City in writing if it anticipates that the total reimbursement amount for all costs the City is required to pay under this Agreement will exceed the then-current Estimated Total Betterments Amount identified in **Exhibit X**, as may be amended in writing by the Parties. Notwithstanding any estimated cost, the City agrees to pay costs arising out of or related to the Betterments, as defined in this Agreement.

**4.2.1 City Pays Fixed Administrative Costs.** The estimate for the Betterments in Exhibit X includes fixed administrative costs which will cover Sound Transit's administrative costs related to the Betterments established in Section 2.1 and any scope change to the Betterments initiated by Sound Transit or the Design Builder. The administrative costs include costs for Sound Transit staff oversight and consultant fees. The City will pay 50% of the administrative costs as a lump sum within 30 days after the execution of this Agreement. The remaining 50% will be paid proportionately with the completion of the work performed on each Betterment by the Design Builder in accordance with Section 4.3.

**4.3 Invoicing and Payment Schedule.** The City will pay Sound Transit for all actual and valid costs incurred by Sound Transit for final design and construction of the Betterments, and related sales tax, pursuant to the following terms:

(a) **Invoicing.** Sound Transit will invoice the City quarterly, and the City will pay within 30 days of receipt of an adequately supported invoice. The City will have access to all support documentation for all invoiced amounts.

(b) **Invoice Contents.** Invoices for the Betterments will include:

- (i) Actual payments made by Sound Transit to the Design Builder for confirmed progress on activities billed to the Betterments work;
- (ii) Sound Transit's property acquisition costs associated with the Betterment work;
- (iii) Sound Transit's administrative costs in accordance with Section 4.2.1;
- (iv) Any other costs incurred as agreed herein; and
- (v) Supporting documentation to support the invoice amount.

(c) **RCCI Payments.** The City and Sound Transit will share the costs of the RCCI scope of work as described in Exhibit D. Sound Transit will invoice the City for its share of the RCCI work performed during each invoicing period.

**4.4 Payment for Changes.** If the City requests changes to the work (design or construction) and such changes are accepted by Sound Transit pursuant to Section 2.2.1 of this Agreement, the City will pay for all additional costs associated with the altered scope, including Sound Transit administrative costs. For City initiated change orders, Sound Transit will add an administrative fee of 16% to the total cost of the change as charged by the Design Builder. For all changes orders other than those initiated by the City, the City will pay for all costs associated with approved changes to the Betterments, without any additional Sound Transit administrative costs.

**4.5 Payment for Claims.** The City will pay Sound Transit its reasonable defense costs (attorney's fees and consultant's fees, expenses, and costs; alternative dispute resolution and court costs and expenses), and any settlements, judgments, or awards attributable to the City ("Actual Costs") arising out of contractor disputes and claims against Sound Transit related to the Betterments, including those that have been settled through the dispute resolution processes set forth in the DRLE Contract, provided Sound Transit includes the City in the claims process, the City approves the settlement, and provided further that such disputes and claims were not caused by the negligent acts or omissions of Sound Transit. If such claims result in legal action, including, but not limited to, any alternative dispute resolution processes, Sound Transit will defend, in coordination with the City, against such claims. To the extent such claims were not caused by the negligent acts or omissions of Sound Transit or its contractor, the City will pay Sound Transit for its Actual Costs. For claims which relate to the RCCI, the Parties will split the Actual Costs evenly.

Sound Transit must demonstrate that a Betterment contributed to the claim before the City is obligated to pay. In the event claims include both Betterment and other DRLE Contract scope,

the City will be liable only for the Betterments' contributions to Sound Transit's Actual Costs as determined by the final value of the claims.

**4.6 Late Payments.** If the City fails to pay any undisputed invoice amount due hereunder for 45 days after receiving a past due notice from Sound Transit, and if such late payment is not excused by Sound Transit, then the City will pay interest on such undisputed past due amount at an interest rate of 1 percent per month commencing 10 days after the date such undisputed amount is due, until paid. Payment of such default interest will not excuse or cure any default by the City under this Agreement and will not affect Sound Transit's suspension rights under Section 8.1 of this Agreement.

## **SECTION 5 ACCEPTANCE OF WORK, TRANSFER OF TITLE, & WARRANTIES**

**5.1 Acceptance of Work, Transfer of Title, & Warranties.** Given reasonable notice by Sound Transit, the City will attend acceptance walk-through inspections and participate in creating punch-lists for the Betterments, consistent with the terms of the DRLE Contract. If the City fails to attend such inspections, the City loses its right to inspect the Betterments except to the extent such inspections are required by City codes, standards or permits. When all punch-list items are addressed or corrected to the DRLE Contract requirements or the City's satisfaction, the City will issue Sound Transit a letter of acceptance giving final approval for each Betterment. Upon acceptance of the Betterments by the City and Sound Transit, Sound Transit will accept the Betterment from the contractor and then convey any and all interest of Sound Transit in the Betterments to the City by an appropriate bill of sale or other conveyance instrument. Sound Transit will also assign any and all warranties to the Betterments to the City in order to enable the City to address directly with the Design Builder any defects in workmanship or materials. Acceptance of the Betterments shall occur at the end of the Project unless the Parties agree that earlier acceptance would benefit the Parties. As a condition of early acceptance, the City may require that the Design Builder be responsible for and repair any damage to the Betterment occurring while the Betterment area is under traffic control or similarly under the Design Builder's control. Sound Transit makes no warranties, express or implied, for the Betterments, beyond those set forth in Section 17.2 of this Agreement.

## **SECTION 6 MAINTENANCE AND OPERATION**

**6.1 All Betterments.** The City will be responsible for all maintenance, repair, and operation of the Betterments upon transfer of title, unless the parties mutually agree in writing that Sound Transit will perform certain maintenance activities. All operation and maintenance will meet City standards and also be consistent with Sound Transit maintenance standards for that Betterment that is located on Sound Transit property and with WSDOT requirements for structures within WSDOT right-of-way.

## **SECTION 7 PROPERTY RIGHTS**

**7.1 Property Map.** Attached to this Agreement as Exhibit F is a drawing showing the various property rights necessary for the construction and operation of the Betterments as referred to in this Section 7.

**7.2 PRV.** The PRV will be constructed within rights-of-way owned either by WSDOT or the City. The City will grant the Design Builder all rights necessary on City property for the construction of the PRV. If the Parties agree that additional property is needed beyond that owned by WSDOT and the City to complete construction of the PRV, Sound Transit agrees to acquire all real property rights necessary for construction and the City will reimburse Sound Transit for the actual costs of acquiring the necessary property. The City will be responsible for acquiring any additional real property necessary for the operation and maintenance of the PRV.

**7.3 70th Street.** The City agrees to acquire and convey to Sound Transit all real property rights necessary for construction of 70th Street in accord with the following:

**7.3.1** The City will acquire possession and use of all property identified by the Parties as necessary for 70th Street (“70th Street Property”), as shown in Exhibit X, and convey the necessary access rights to Sound Transit no later than December 31, 2020. If the City has not acquired possession and use of the 70th Street Property by December 31, 2020, the City will be liable to the Sound Transit for all change order costs incurred due to the delay. If the City is unable to deliver possession and use of the 70th Street Property to Sound Transit by January 31, 2022, the 70th Street scope of work will be terminated pursuant to Section 8.2 of this Agreement.

**7.3.2** If the Parties agree that additional property is needed beyond that already owned or acquired by the City in accordance with Section 7.3.1 to complete construction of 70th Street, Sound Transit agrees to acquire all real property rights necessary for construction and the City will reimburse Sound Transit for the actual costs of acquiring the necessary property.

**7.4 76th Street.** The Parties have concluded, based on preliminary design, that no additional property rights are needed to construct the 76th Street Betterment. If the Parties agree that additional property is needed, Sound Transit agrees to acquire and convey to the City all real property rights necessary for construction, operation, and maintenance of 76th Street. In addition to the actual costs for the design and construction of the 76th Street, the City will reimburse Sound Transit for the actual costs of acquiring the necessary property. The parties agree that this sum is full compensation to Sound Transit for all property rights to be conveyed to the City.

**7.5 RCCI.**

**7.5.1 Park mitigation.** Sound Transit agrees to acquire and convey to City the “Cleveland Street Properties”, more clearly denoted as properties RL 190, RL 191, RL 194, and RL 195. These properties or a portion of them will be encumbered with a protective covenant with King County as a replacement for impacts to other City of Redmond park property. The exact area and delineation of the covenant will be determined after the impacts are fully known. The Parties intend to execute a Letter of Concurrence to more-fully document this process.



**7.5.2 RCC Reconfiguration.** Sound Transit agrees to acquire and convey to the City a portion of property on the east side of 166th for purposes of the realignment of the RCC. The City agrees to reimburse Sound Transit for half of the cost of the actual ROW purchase costs.

## **SECTION 8 ADDITIONAL BETTERMENTS**

**8.1 40th Street Underpass.** Sound Transit has also included a pedestrian underpass beneath NE 40th Street adjacent to the light rail guideway to the west of 156th Avenue in the DRLE Contract (“Underpass”), fully described in Exhibit X. The City will participate in the Underpass in the same capacity as the Betterments. All terms and provisions of this Agreement will apply to the Underpass with the exclusion of Sections 3.3, Permitting and Environmental Review; 3.5, Termination Prior to Award; 3.6, Utility Relocation; 4, Funding; 5, Acceptance of Work, Transfer of Title, & Warranties; 6, Maintenance and Operation; 7, Property Rights; 9, Suspension and Termination; 10, Ownership and Use of Deliverables; and 12.2 Environmental Matters.

**8.2 Future Agreement Necessary.** Sound Transit has entered into a betterment funding agreement with Microsoft for the design and construction of the Underpass. While Microsoft has agreed to fund the design and construction of the Underpass, the Parties agree that the Underpass must be owned, operated, and maintained by a public entity due to its integration with the public right-of-way and other public facilities. Because the proper ownership, operation, and maintenance will be driven by final design, the construction of the Underpass is contingent upon a future ownership, operation, and maintenance agreement. The City agrees it will participate in the negotiations of the future ownership, operation, and maintenance agreement for the Underpass and acknowledges it may own and/or have a role in maintaining the Underpass facility after construction. The Parties shall determine the owner of the Underpass prior to the commencement of construction of the Underpass. The Parties will consider addressing those matters that are the subject of the excluded sections in 8.1 above in the future ownership, operation, and maintenance agreement.

## **SECTION 9 SUSPENSION AND TERMINATION**

**9.1 Suspension for Non-Payment.** Sound Transit may suspend or terminate performance of any of the authorized Betterments if the City fails to make timely payment of any invoice from Sound Transit. If Sound Transit has not received payment from the City within thirty (30) days following receipt of invoice, or by any later date specified in such invoice, Sound Transit may suspend performance of all or any part of the work after giving the City twenty-five (25) days’ written notice of Sound Transit’s intent to suspend. If the City makes payment within the twenty-five (25) day period, the work will not be suspended. If the City fails to make payment, Sound Transit may suspend the work at any time after the twenty-five (25) day period expires. Such suspension will remain in effect until payment is made in full, at which time the suspension will be lifted. The City will pay or reimburse Sound Transit for all amounts Sound Transit is obligated to pay the Design Builder as compensation for any suspension or termination of work caused by the City’s non-payment, including all non-cancelable obligations. The City will also be responsible to repay any grant funding for the Betterment, if required by the terms of the grant,

and to reimburse Sound Transit for costs associated with redesign of the construction package to the extent, but only to the extent, that such costs are the direct result of the removal of the Betterment as an element of the package.

**9.2 Termination for Cause.** Either Party may terminate this Agreement as to any or all Betterments, for cause in the event that the other Party fails to fulfill its material obligations under this Agreement in a timely manner or breaches any material provision of this Agreement. The Party wishing to terminate this Agreement for cause will provide the other Party with notice of its intent to terminate and will give the other Party an opportunity to correct the failure to perform or breach within thirty (30) days of the notice. If the failure or breach is not corrected or cured, this Agreement may be terminated by the aggrieved Party by giving seven (7) days' written notice to the other Party. If Sound Transit terminates this Agreement for the City's failure or breach, the City will reimburse Sound Transit for all Betterments work satisfactorily completed up to the date of termination and for all construction contract closing costs, and will reimburse Sound Transit for any costs incurred by Sound Transit for redesign of the construction package to the extent, but only to the extent, that such costs are the direct result of the removal of the Betterments as an element of the package.

**9.3 Termination by City for Material Alteration.** The City may also terminate this Agreement as to any of the Betterments in the event the City determines that the specifications for the Betterment described in the documents produced by the Design Builder, while remaining within the DRLE Contract requirements, materially alter the functionality, design/appearance, or ease or costs of maintenance of the Betterment. Upon termination under this Subsection 8.3, the City will pay for all services provided by the Design Builder prior to termination and will pay all costs incurred by Sound Transit associated with the termination of the Betterment scope of work. Sound Transit will, if the City so requests, (i) assign to the City any and all intellectual property rights that Sound Transit owns specifically relating to the Betterments engineering and design work, and (ii) permit the City to pursue design and construction of the Betterment without Sound Transit's participation. If the City terminates its participation in any Betterment under this Subsection, Sound Transit's participation will also terminate.

**9.4 Termination by City for Cost Reasons.** The City may terminate this Agreement as to any Betterment if the Design Builder encounters a Betterment site condition that will result in construction of that Betterment's scope of work significantly exceeding the bid price amount and a means to reduce the cost through modification of design cannot be satisfactorily achieved, then the City may terminate that Betterment that will significantly exceed the contract amount. The City will pay all costs incurred by Sound Transit associated with the termination of the Betterment scope of work.

**9.5 Termination by Sound Transit for Cost Reasons.** Sound Transit may terminate this Agreement as to any Betterment, if the Design Builder encounters a Betterment site condition that will result in construction of any of the Project scope of work significantly exceeding the contract amount and a means to reduce the cost through modification of design cannot be satisfactorily achieved, then Sound Transit may terminate that Betterment that will cause Project scope to significantly exceed the contract amount.

**9.6 Additional Termination Rights of Sound Transit.** Sound Transit may terminate this Agreement if, in the reasonable determination of Sound Transit, any Betterment design or construction would prevent or significantly impair Sound Transit's ability to complete construction of the Project within the project schedule. If any granting agency requires repayment of the grant funding due to Sound Transit's termination under this Section 8.5, Sound Transit will repay the grant funds. Sound Transit will also refund any monies paid by the City for easements or other property rights in the Sound Transit Property that will not be utilized as the result of the termination or convey such property rights to the City.

**9.7 Procedure Prior to Termination.** Prior to Sound Transit terminating this Agreement as provided for in Section 9.5 or Section 9.6, Sound Transit shall first notify the City of its intent to terminate and engage the City and Design Builder in good faith efforts to develop a solution that avoids termination. Consistent with Section 1.2 of this Agreement, Sound Transit's notice of intent to terminate shall be as early as possible in the process, and the Parties shall work expeditiously to determine whether a mutually agreeable solution exists. If Sound Transit decides to terminate after such a process, the termination procedures of Section 9.8 apply unchanged.

**9.8 Termination by Mutual Agreement.** This Agreement will also terminate with the mutual consent of both parties.

**9.9 Procedure upon Termination.** If this Agreement is terminated for any of the reasons set forth in above, the Parties will proceed as follows:

**9.9.1** Sound Transit will assign to the City any and all intellectual rights that Sound Transit owns specifically related to the Betterments engineering and design work in order to enable the City to proceed with completion of design and construction of the Betterments if the City so desires. The assignment will disclaim all express and implied warranties by Sound Transit including but not limited to, the implied warranties or merchantability, fitness for a particular purpose, and sufficiency and completeness of design.

**9.9.2** Sound Transit will be reimbursed for any costs or charges incurred by Sound Transit design, engineering, and construction work satisfactorily completed prior to such termination unless otherwise specified in this Agreement.

**9.9.3** The invoicing provisions in Section 4.3 will continue to apply for all costs incurred related to the Betterments prior to termination.

**9.10 No Release of Liability.** Except as provided in this Section 8, a termination by either Party will not extinguish or release either Party from liability, claims, or obligations to third parties existing as of the date of termination, including consultant and contractor claims and costs incurred by said Party in relation to the Betterments work and any requirement contained in the terms of any grant for repayment of the grant funds. Any costs incurred prior to proper notification of termination will be borne by the Parties in accord with the terms of this Agreement. The Parties agree to work together cooperatively to develop a coordinated plan for termination, including the determination of reasonable redesign and costs associated with the Project work.

## SECTION 10 OWNERSHIP AND USE OF DELIVERABLES

Sound Transit will assign its rights to the engineering and design work related to each Betterment prepared and developed under this Agreement to the City upon acceptance of that Betterment by the City and payment by the City in full of all amounts owed under this Agreement for that Betterment, subject to the obligation of Sound Transit to assign its intellectual property rights in that work to the City in the event that this Agreement is terminated as provided in Section 8. This assignment will disclaim all warranties by Sound Transit including but not limited to, the implied warranties of merchantability, fitness for a particular purpose, and sufficiency of design.

## SECTION 11 INSURANCE

Sound Transit, and its contractors, subcontractors and consultants will maintain insurance as required by Sound Transit in its standard construction contracts, and name the City as an additional insured on all work and operations associated with the Betterments. Such insurance will be primary and non-contributory and will include, but not be limited to, Commercial General Liability Insurance, Commercial Automobile Liability Insurance, Workers Compensation, Builders Risk, and Professional Liability insurance. In addition, Sound Transit shall require its contractors and subcontractors to indemnify and hold harmless the City in the same manner and to the same extent as Sound Transit, including the waiver of any industrial insurance immunity, for the Betterment scopes of work.

## SECTION 12 INDEMNITY

**12.1 General Indemnity.** Each Party to this Agreement will defend, indemnify and save harmless the 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 the 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 the other 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.**

**12.1.1 City Inspection Personnel.** The City's obligation to indemnify Sound Transit under this paragraph does not extend to claims, demands, and/or causes of action based on or arising from allegations of negligent or improper inspection by City inspection personnel while such inspection personnel are engaged in construction inspection in the normal course of the City's permitting and code compliance process as a regulatory agency. The City acknowledges that the City inspections under this Agreement are not for

permitting and code compliance purposes and are undertaken by the City as a participant in the development of the Betterments. The Parties acknowledge that the City's inspections for permitting and code compliance purposes are outside the scope of this Agreement. The City shall not be required to indemnify Sound Transit from claims for injuries to City inspection personnel while engaged in construction inspection and the City's waiver of its immunity under Title 51 RCW shall not apply to such claims.

**12.2 Environmental Matters.** Sound Transit will be responsible for any fines or penalties, and will indemnify the City for reasonable related costs, caused by failure by Sound Transit to obtain or comply with required environmental permits, and for consequences and any required remediation resulting from Sound Transit's failure to handle hazardous substances or waste with due care during the performance of the City Betterment scopes of work. The Parties will each have the right to participate in settlement or abatement discussions related to environmental citations or enforcement actions.

The City will indemnify Sound Transit, its agents, the Design Builder, and employees for any environmental liability of any type, related to existing known or unknown conditions on the site of the Betterments, whether on the City right of way or other property. To the extent allowed by law, the City agrees to release Sound Transit and its agents, employees, and contractors from any continuing obligations, responsibility or liability related to known or unknown environmental conditions that were existing at the time of work performed under this Agreement, provided that this liability is not the result of Sound Transit or the Design Builder's failure to handle new or pre-existing hazardous substances with due care and provided that the negligent actions of Sound Transit, the Design Builder, or their agents, employees, and contractors, do not exacerbate any such pre-existing environmental conditions. To the extent allowed by law, the City will reimburse Sound Transit for the cost of any environmental investigations, disposal, or cleanup activities conducted by Sound Transit to the extent the need for said investigation resulted from the City hazardous substances. The City will provide Sound Transit with notices of any inspections related to the Betterments during the term of this Agreement.

**12.4 Survival.** The indemnification obligations provided in this Section 11 will survive termination of this Agreement.

## **SECTION 13 DISPUTE RESOLUTION**

**13.1 Exclusivity.** Neither Party will take or join any action in any judicial or administrative forum to challenge actions of the other Party associated with this Agreement or the Betterments, except as set forth herein.

**13.2 Scope-Cooperation.** Any disputes or questions of interpretation of this Agreement that may arise between the Parties will 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 at the lowest level possible.

**13.3 Process.** The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement, and the Designated Representatives will use their best efforts to resolve any conflicts before initiating the dispute escalation process. If the Designated Representatives are unable to resolve the issue, the Parties will undertake good faith negotiations by engaging in the following dispute escalation process should any such disputes arise:

**13.3.1 Level One** - Sound Transit's DRLE Executive Project Director and the City's Light Rail Project Director will 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, either Party may refer the dispute to Level Two.

**13.3.2 Level Two** - Sound Transit's Executive Director of Design, Engineering and Construction Management and the City's Public Works Director will 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, either Party may refer the dispute to Level Three.

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

**13.4 Legal Action.** 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 will continue to perform any undisputed obligations and make any undisputed required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute. Neither 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.

## **SECTION 14 REMEDIES AND ENFORCEMENT**

**14.1 Reservation of Rights.** The Parties reserve the right to exercise any and all of the following remedies, singly or in combination, and consistent with the dispute resolution and default Sections of this Agreement, in the event the other violates any provision of this Agreement:

**14.1.1** Commencing an action at law for monetary damages;

**14.1.2** Commencing an action for equitable or other relief related to the Betterments;

**14.1.3** Seeking specific performance of any provision that reasonably lends itself to such remedy; and/or

**14.1.4** The prevailing party (or substantially prevailing party if no one party prevails entirely) will be entitled to reasonable attorney fees and costs.

**14.2 Remedies Cumulative.** All remedies set forth above are cumulative and the exercise of one will not foreclose the exercise of others.

**14.3 No Waiver.** Neither Party will be relieved of its obligations to comply promptly with any provision of this Agreement by reason of any failure by the other Party to enforce prompt compliance, and such failure to enforce will not constitute a waiver of rights or acquiescence in the other Party's conduct.

## **SECTION 15 CITY'S PERMITTING AND REGULATORY AUTHORITY**

**15.1 No Waiver of Authority.** Nothing in this Agreement will be deemed a waiver of the City's regulatory or permitting authority as to any of the permits required for the Project, nor a predetermination of the compliance of any work with applicable codes and regulations. The City retains the right to approve, disapprove, or condition any City permits required for the Betterments and the Project within the bounds of the City's legal authority.

## **SECTION 16 DURATION OF AGREEMENT**

**16.1 Duration.** This Agreement will take effect upon the last date of signature by the Parties as set forth below. This Agreement will remain in effect until all obligations of both Parties have been performed, unless this Agreement is sooner terminated as provided in Section 8 above.

## **SECTION 17 COVENANTS AND WARRANTIES**

**17.1 The City's Warranties.** By execution of this Agreement, the City warrants:

**17.1.1** That the City has the full right and authority to enter into and perform this Agreement, and that by entering into or performing this Agreement the City is not in violation of any law, regulation or agreement by which it is bound or to which it is bound or to which it is subject; and

**17.1.2** 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.

**17.2 Sound Transit's Warranties.** By execution of this Agreement, Sound Transit warrants:

**17.2.1** That Sound Transit has the full right and authority to enter into and perform this Agreement, and that by entering into or performing this Agreement Sound Transit is not in violation of any law, regulation or agreement by which it is bound or to which it is bound or to which it is subject; and

**17.2.2** That the execution, delivery and performance of this Agreement by Sound Transit has been duly authorized by all requisite corporate action, that the signatories for Sound Transit hereto are authorized to sign this Agreement, and that upon approval by Sound Transit, 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.

## **SECTION 18 ADMINISTRATION OF AGREEMENT**

**18.1 Joint Administration.** This Agreement will be jointly administered by Sound Transit's Designated Representative and the City's Designated Representative.

**18.2 Costs.** Each Party will bear its own costs of administering this Agreement.

## **SECTION 19 ASSIGNMENT AND BENEFICIARIES**

**19.1 Consent Required.** Neither Party may assign all or any portion of this Agreement without the express written consent of the other Party.

**19.2 Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the successors and assigns of the City and Sound Transit.

**19.3 No Third-Party Beneficiaries.** 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 will have any right of action based upon any provision of this Agreement.

## **SECTION 20 DESIGNATED REPRESENTATIVES**

**20.1 Designated Representatives.** To provide for consistent and effective communication, each Party will designate a representative ("Designated Representative") to be responsible for coordination of communications between the Parties and to be the primary point of contact for each Party. The Designated Representatives will communicate regularly to discuss the status of the Work, identify upcoming decisions and provide any information or input necessary to inform those decisions. All notices and interagency correspondence related to this Agreement will be sent to the following Designated Representatives. The Designated Representatives are identified in **Exhibit A**. Either Party may replace its Designated Representative by providing written notice to the other Party's Designated Representative.

**20.2 Communication.** Communication of issues, changes, or problems that may arise with any aspect of the Betterments should occur as early as possible in the process, and not wait for specific due dates or deadlines. The Designated Representatives will use reasonable efforts to provide up-to-date and best available information to the other party promptly after such information is obtained or developed.

**20.3 Communication with Design Builder.** Any correspondence or communications related to the Betterments except correspondence or communications arising from the City's



permitting authority will be made exclusively by and through Sound Transit's Designated Representative.

## SECTION 21 NOTICES

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

**21.2 Delivery.** Unless otherwise provided herein, all notices will 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 5, Suspension and Termination, must be delivered in person or by certified mail, return receipt requested.

## SECTION 22 AUDITS

**22.1 Records to be Maintained.** Sound Transit will maintain accounts and records, including contract and financial records, which sufficiently and properly reflect all direct and indirect costs of any nature expended for work performed under this Agreement so as to ensure proper accounting for all monies paid by the City to Sound Transit. These records will be maintained for a period of six (6) years after termination or expiration of this Agreement unless permission to destroy the records is granted by the City and the Office of the Archivist pursuant to RCW Chapter 40.14. The City will have the right to inspect, review, and audit Sound Transit's records on the Betterments at all reasonable times during regular business hours.

## SECTION 23 GENERAL PROVISIONS

**23.1 Governing Law and Venue.** This Agreement will be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement will be King County, Washington.

**23.3 Time.** Time is of the essence in every provision of this Agreement. Unless otherwise set forth in this Agreement, the reference to "days" will mean calendar days. If any time for action occurs on a weekend or holiday observed by either Party, then the time period will be extended automatically to the next business day.

**23.4 No Joint Venture.** No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party will be deemed, or represent themselves to be, employees of any other party.

**23.5 Construction.** This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity will be construed against the party drafting the document will 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.

**23.6 Costs.** Each Party will be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties.

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

**23.8 Amendments.** This Agreement may be amended only by a written instrument executed by each of the Parties hereto. The Designated Representatives may agree upon amendments to the design for the Betterments and such amendments will be binding upon the parties without the need for formal approval by the Sound Transit Board and the Redmond City Council as long as the amendments do not materially alter the functionality or design of the Betterments, do not cause the cost of the Betterments to exceed those set forth in Exhibit X, or materially increase the maintenance costs of the Betterments.

**23.9 Entire Agreement.** 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. However, the Parties will negotiate and execute such ancillary agreements as may be required to implement this Agreement.

**23.10 Headings.** Section headings are intended as information only, and will not be construed with the substance of the section they caption.

**23.11 Grammar.** In construction of this Agreement, words used in the singular will 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.

**23.12 Exhibits.** All exhibits attached to this Agreement are hereby incorporated into this Agreement.

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

## **SECTION 24 SEVERABILITY**

**24.1 Severability.** If any of the terms and conditions of this Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and

conditions thereby will remain in full force and effect. The Parties agree to negotiate in good faith to reform the Agreement to replace any invalid or unenforceable term and/or condition with a valid and enforceable term and/or condition that comes as close as possible to the intention of the stricken term or condition.

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

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

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

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

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

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

Authorized by City Council  
Motion on \_\_\_\_\_

Approved as to form:

Approved as to form:

By: \_\_\_\_\_  
Mattelyn L. Tharpe, Legal Counsel

By: \_\_\_\_\_  
James E. Haney, City Attorney

**EXHIBITS:**

- Exhibit A: NE 51st St. PRV and Water Main Scope and Conceptual Design
- Exhibit B: NE 70th and SR202 Scope and Conceptual Design
- Exhibit C: NE 76th St. and SR202 Scope and Conceptual Design
- Exhibit D: Redmond Central Connector Scope and Conceptual Design
- Exhibit E: Cost Estimate
- Exhibit F: Property Rights Map
- Exhibit G: Designated Representatives