

**FUNDING AGREEMENT
BETWEEN THE CITY OF REDMOND AND SOUND TRANSIT
FOR INTERSECTION IMPROVEMENTS AT 152ND AVENUE NE AND NE 24TH STREET
FOR THE EAST LINK LIGHT RAIL EXTENSION PROJECT**

THIS AGREEMENT ("Agreement") is entered into between the City of Redmond (the "City"), a Washington municipal corporation, and the Central Puget Sound Regional Transit Authority ("Sound Transit"), a regional transit authority, for the purposes set forth below. The City and Sound Transit are collectively referred to hereafter as "the Parties" or individually as a "Party."

RECITALS

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

WHEREAS, Sound Transit is a regional transit authority created pursuant to chapters 81.104 and 81.112 RCW, with all powers necessary to implement a high-capacity transit system within its boundaries in King, Pierce, and Snohomish Counties;

WHEREAS, Sound Transit completed environmental review for the East Link Light Rail Extension Project ("East Link") in accordance with the National and State Environmental Policy Acts ("NEPA" and "SEPA"). In July 2011, the Sound Transit Board adopted Resolution R2011-10 selecting the route, profile, and station locations. In November 2011, the Federal Transit Administration issued an environmental Record of Decision ("ROD") for the East Link project, which includes required mitigation commitments that are incorporated as part of the project definition;

WHEREAS, in March 2013, the Sound Transit Board adopted Resolution R2013-09 updating the selected route, profile, and station locations superseding R2011-10;

WHEREAS, the ROD identified an environmental commitment to add a southbound right turn pocket at 152nd Avenue NE and NE 24th Street, or a similar intersection improvement, ("Intersection Improvements Project") to be coordinated with the City to mitigate intersection impacts associated with East Link;

WHEREAS, the City has developed plans and a cost estimate for the construction of the Intersection Improvements Project, which will implement the ROD environmental commitment above; and

WHEREAS, the Parties have determined that the most efficient means of constructing the Intersection Improvements is for the City to construct these improvements and for Sound Transit to reimburse the City for a portion of the costs as described below.

NOW THEREFORE, in consideration of the terms, conditions, and covenants contained herein, it is mutually agreed that:

1. Purpose. This Agreement provides that Sound Transit funds one-half of the cost of the Intersection Improvements Project (“Project”), as described in **Exhibit A**, a fixed price of one million three hundred thirty-eight thousand eight hundred and twenty-two dollars (\$1,338,822). The Parties agree that this funding amount is fair and reasonable, and that the completion of the Project satisfies Sound Transit’s environmental mitigation requirements for this item. The City is responsible for the balance of funding for the Project.
2. Project Administration. The Parties acknowledge that the City will have sole responsibility for the design, construction, project and construction management including, but not limited to, procurement and construction administration, as well as ownership and maintenance of the facilities after construction. The City shall notify and consult with Sound Transit’s Designated Representative (identified in **Exhibit C**) before making any substantive changes to the Project.
3. Schedule. The City shall complete construction of the Project before December 31, 2023, unless otherwise mutually agreed by the Parties. The intersection Improvements will be located in the vicinity of the East Link project being constructed by Sound Transit’s selected contractor under its E360 contract and the City shall coordinate with Sound Transit and its contractor regarding potential lane closures or other traffic impacts in the vicinity of that contract to avoid impacts to that project’s scope, schedule and budget.
4. Signage. Any identification signage that is used during the construction of the Project shall identify Sound Transit as a funding partner.
5. Invoicing.
 - 5.1. The City shall submit invoices and supporting documentation for Sound Transit’s reimbursement contribution payments for work completed. The invoices must include the appropriate purchase order number, which Sound Transit will provide after execution of this Agreement, a cover memo including a description of services provided by the City as described in **Exhibit B**, and documentation of the expenses such as (1) verification of in-house labor costs and other relevant work records, (2) invoices for support services and materials, and (3) copies of original bills, invoices, expense accounts, and miscellaneous supporting data retained by the City including, but not limited to, work records, rates, material and equipment costs.

- 5.2. The City shall submit its invoices with the required documentation via email, AccountsPayable@SoundTransit.org, or by mail addressed to Sound Transit, Accounts Payable, 401 S. Jackson St., Seattle, WA 98104-2826. Invoices are payable thirty (30) days upon Sound Transit's receipt of the invoice and acceptable documentation.
- 5.3. If Sound Transit determines that an invoice lacks sufficient documentation to support payment, Sound Transit will notify the City of its determination and request that the City provide additional documentation. Sound Transit may withhold payment of the invoice until supporting documentation is provided; however, such approval shall not be unreasonably withheld.
6. Audit. The Parties shall each maintain accounts and records, including contract and financial records that 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 to the City by Sound Transit. These records shall 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 Office of the Archivist pursuant to RCW Chapter 40.14 and agreed to by the City and Sound Transit.
7. Designated Representatives. To ensure effective intergovernmental cooperation and efficient Project review, the Parties shall each designate a single representative responsible for communications between the Parties ("Designated Representative"). Each Party's Designated Representative is identified in **Exhibit C**.
8. Dispute Resolution.
 - 8.1. The Parties agree to work cooperatively and in good faith to resolve issues. The Parties agree that neither party shall take or join any action in any judicial or administrative forum to challenge the action of the other party associated with this Agreement or the Project, except as set forth herein.
 - 8.2. The Parties agree to use their best efforts to prevent and resolve potential sources of conflict at the lowest level possible.
 - 8.3. Any disputes or questions of interpretation of this Agreement or the performance of either Party under 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.
 - 8.4. Either Party may refer a dispute to the dispute resolution process by providing written notice of such referral to the other Party's Designated Representative. The Parties agree to use their best efforts to resolve disputes arising out of or related to

this Agreement or the Project using good faith negotiations by engaging in the following dispute resolution process should any such disputes arise:

- 8.4.1. Level One: Sound Transit's and the City's Designated Representatives identified in **Exhibit C** shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) days after referral of that dispute to Level One, either Party may refer the dispute to Level Two.
- 8.4.2. Level Two: Sound Transit's Senior Executive Project Director for East Link and the City's Public Works Director or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) days after referral of that dispute to Level Two, either Party may refer the dispute to Level Three.
- 8.4.3. Level Three: Sound Transit's Chief Executive Officer or Designee and the City's Mayor or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner.
- 8.5. Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within fourteen (14) days after referral of that dispute to Level Three, the Parties are free to file suit, seek any available legal remedy, or agree to alternative dispute resolution methods such as mediation. At all times prior to resolving the dispute, the Parties shall continue to perform any undisputed obligations and make any undisputed required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute. Notwithstanding anything in this Agreement to the contrary, neither party has an obligation to agree to refer the dispute to mediation nor 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.
- 9. Insurance. During the Project's construction phase, the City shall provide evidence of primary insurance coverage in the amounts that it deems necessary for construction work of similar size and cost. Such liability insurance shall name Sound Transit and the City, its officers, directors, agents, and employees as additional insured with respect to the work, including completed operations, under this Agreement. If the City is self-insured, it shall provide to Sound Transit's risk manager a certificate of self-insurance. The City shall require their contractor(s) to obtain and maintain insurance in amounts and types suitable to protect Sound Transit and the City from exposures presented by the work performed under this Agreement.

The minimum insurance requirements during the entire term of this Agreement are set forth below:

- (a) Commercial General Liability in the amount of one million dollars (\$1,000,000) each occurrence limit, two million dollars (\$2,000,000) general aggregate limit, covering bodily injury including death, personal injury, property damage, Employers' Liability and contractual coverage endorsements, and utilize insurers and coverage forms acceptable to Sound Transit.
- (b) Commercial Auto Liability coverage for bodily injury and property damage utilizing insurers and coverage forms acceptable to Sound Transit, with a limit of at least one million dollars (\$1,000,000) per accident/occurrence.
- (c) Worker's Compensation insurance coverage, where applicable, shall comply with State of Washington Labor and Industries requirements.
- (d) Builders Risk coverage in an amount acceptable to Sound Transit.
- (e) Pollution Liability (if there is any potential environmental liability exposure) in the amount of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

Certificates of insurance shall name Sound Transit and the City as "Additional Insureds," and shall reference the number and title of this Agreement. Certificates of Insurance will be provided to Sound Transit and the City prior to the start of any work performed under this Agreement.

All insurance coverage obtained by the City or their contractors and subcontractors shall name Sound Transit, its officers and employees as "additional insured's" and contain "severability of interest" (cross liability) provisions. The City's and the contractor's insurance policies shall be primary to and not contributing with any insurance or self-insurance that may be carried by Sound Transit.

10. Indemnity.

10.1. To the greatest extent allowed by law, the City agrees to hold harmless, indemnify, and defend Sound Transit, its elected officials, officers, agents, and employees, from and against any and all claims, losses or liability, for injuries, sickness or death of persons, including claims by the City's employees, or damages, arising out of any willful misconduct or negligent act, error, or omission on the part of or on behalf of the City, its officers, agents, or employees, in connection with the services required by this Agreement, provided, however, that:

10.1.1. The City's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death, or damage caused by or resulting from the sole willful misconduct or sole negligence of Sound Transit, its elected officials, officers, agents or employees; and

10.1.2. The City's obligations to indemnify, defend and hold harmless for injuries, sickness, death, or damage caused by or resulting from the concurrent negligence or willful misconduct of the City and Sound Transit, or of the City and

a third party other than an elected official, officer, agent, or employee of the City, shall apply only to the extent of the negligence or willful misconduct of the City, its elected officials, officers, agents, or employees.

- 10.2. Each Party agrees to bear full responsibility for any and all tax liabilities owed that may arise in relation to this Agreement, and each Party shall fully indemnify and hold the other Party, its officers, agents and employees harmless from any tax liability owed by other Party arising from or related to the transactions set forth herein, including, but not limited to, any taxes, penalties, fines, and/or interest that are assessed by any tax authority against the indemnifying Party and further including all attorneys' fees and costs incurred in response to any claims or assessments by any tax authority against indemnifying Party, its officers, agents and employees.
- 10.3. The obligations in this Section shall survive termination or completion of this Agreement as to any claim, loss or liability arising from events occurring prior to such termination or completion.

11. Warranties.

11.1. By execution of this Agreement, the City warrants:

- 11.1.1. 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; and
- 11.1.2. 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.

11.2. By execution of this Agreement, Sound Transit warrants:

- 11.2.1. 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; and
- 11.2.2. 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.

12. Default. Sound Transit may terminate this Agreement if construction of the Project is not completed within timeline established in this Agreement, unless otherwise mutually agreed by the Parties. If this Agreement is terminated under this Subsection, the City shall reimburse Sound Transit the full amount of all payments associated with the incomplete improvements made to the City pursuant to this Agreement within ninety (90) days of the date of termination.

13. Duration. This Agreement shall take effect upon the last date of signature by the Parties as set forth below. This Agreement shall remain in effect until the Project is completed and open to the public, unless this Agreement is extended by mutual agreement of the Parties pursuant to Section 19, superseded by a future agreement, or suspended or terminated pursuant to Section 12.
14. Administration of Agreement.
 - 14.1. This Agreement will be jointly administered by Sound Transit's Designated Representative and the City's Designated Representative.
 - 14.2. Each party shall be responsible for its own public records and public records requests.
 - 14.3. Pursuant to RCW 39.34.040, each Party shall list this Agreement on its website by subject matter and shall post a copy in an electronically retrievable source for public viewing.
15. Assignment of Beneficiaries. Neither Party may assign all or any portion of this Agreement without the express written consent of the other Party. 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.
16. Notices.
 - 16.1. Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to the Designated Representative.
 - 16.2. Unless otherwise provided herein, all notices shall be either: (i) delivered in person, (ii) deposited with the U.S. Postal Service with postage prepaid and certified/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 12, Suspension and Termination, must be delivered in person or by certified mail, return receipt requested.
17. General Provisions.
 - 17.1. 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 such actions or documents must be first approved by vote of the Sound Transit Board or Redmond City Council, such actions are recognized to be legislative actions. The Parties agree to work cooperatively with each other to achieve the mutually agreeable goals as set forth in this Agreement.

- 17.2. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be King County, Washington.
- 17.3. Time is of the essence in every provision in this Agreement. Unless otherwise set forth in this Agreement, the reference to “days” shall mean calendar days unless otherwise noted. 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.
- 17.4. 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.
- 17.5. Neither Party shall 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. Such failure to enforce shall not constitute a waiver of rights or acquiescence in the other Party’s conduct.
- 17.6. This Agreement has been reviewed and revised by legal counsel for each party 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.
- 17.7. 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. If either Party brings any claim or lawsuit arising from this Agreement, each Party shall pay all its legal costs and attorney’s fees and expenses incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; however, nothing in this paragraph shall be construed to limit the Parties’ rights to indemnification.
- 17.8. 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.

17.9. This Agreement may be amended only by a written instrument executed by both Parties. The Designated Representatives may, by mutual agreement, revise or replace the Exhibits as necessary.

17.10. 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.

Each of the Parties has executed this Agreement by having its authorized representative affix his/her name in the appropriate space below and the effective date shall be the last date written below:

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

SOUND TRANSIT

CITY OF REDMOND

By: _____
Peter M. Rogoff, Chief Executive
Officer

By: _____
_____, Mayor

Date: _____

Date: _____

Approved as to form:

Approved as to form:

By: _____
Stephen G. Sheehy, Senior Legal
Counsel

By: _____
James E. Haney, City Attorney

Exhibit List:

Exhibit A: Intersection Improvements Plans and Estimate

Exhibit B: Invoice Form

Exhibit C: Designated Representatives

Exhibit A
Intersection Improvements Plans and Estimate

EXHIBIT A

City of Redmond Overlake Village

Conceptual Cost Estimate of Constructing a SB Right Turn Lane from 152nd Ave NE to 24th St NE

Prepared by Parsons Brinckerhoff Inc., updated per 2017 152nd Project Information

ITEMS	QTY	UNIT	UNIT COST	AMOUNT	SUBTOTAL
SECTION 1 - PREPARATION					
MOBILIZATION (10%)	1	LS	\$51,732.70	\$51,733	
Temporary Traffic Control	1	LS	\$60,000.00	\$60,000	
TREE REMOVAL	15	EA	\$500.00	\$7,500	
SIDEWALK REMOVAL	186	SY	\$36.00	\$6,696	
CURB REMOVAL	681	LF	\$7.00	\$4,767	
ASPHALT CONCRETE PAVEMENT REMOVAL	1112	SF	\$10.00	\$11,120	
CLEARING AND GRUBBING	0.2	ACRE	\$16,000.00	\$3,200	
SAWCUT	408	LF	\$5.00	\$2,040	
REMOVE FIRE HYDRANT	1	EA	\$700.00	\$700	
Remove existng storm	1	LS	\$20,000.00	\$20,000	
SUBTOTAL SECTION 1					\$167,756
SECTION 3 - DRAINAGE/STORMWATER					
CATCHBASIN TYPE 2 48 IN DIAMETER	2	EA	\$3,000.00	\$6,000	
12' CONCRETE PIPE	30	LF	\$50.00	\$1,500	
Replace PS Business Detention 36" Storm pipe	530	LF	\$150.00	\$79,500	
Typee 2 control structure	2	EA	\$5,000.00	\$10,000	
SUBTOTAL SECTION 3					\$97,000
SECTION 4 - UTILITIES					
FIRE HYDRANT ASSEMBLY	1	EA	\$5,000.00	\$5,000	
6" DUCTILE IRON PIPE	20	LF	\$100.00	\$2,000	
SUBTOTAL SECTION 4					\$7,000
SECTION 6 - SURFACING					
CRUSHED SURFACING BASE COURSE	93	TON	\$35.00	\$3,255	
CRUSHED SURFACING TOP COURSE	28	TON	\$38.00	\$1,064	
SUBTOTAL SECTION 6					\$4,319
SECTION 7 - PAVEMENT					
HMA CL. 1/2" PG 64-22	242	TON	\$100.00	\$24,200	
CEMENT CONCRETE SIDEWALK	246	SY	\$70.00	\$17,220	
CONCRETE CURB RAMP	2	EA	\$3,000.00	\$6,000	

EXHIBIT A

SUBTOTAL SECTION 7	\$47,420
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SECTION 8 - EROSION CONTROL AND PLANTING

LANDSCAPING - ACCENT TREE	25	EA	\$450.00	\$11,250
LANDSCAPING - SHRUB/GROUND COVER	1180	SF	\$15.00	\$17,700
TESC	1	LS	\$5,000.00	\$5,000

SUBTOTAL SECTION 8	\$33,950
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Modular Block Wall	700	SF	\$20.00	\$14,000	\$14,000
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SECTION 9 - TRAFFIC ITEMS

CEMENT CONC. TRAFFIC CURB AND GUTTER	363	LF	\$25.00	\$9,075
PLASTIC TRAFFIC ARROW	2	EA	\$120.00	\$240
PLASTIC CROSSWALK LINE	130	LF	\$10.00	\$1,300
ROADWAY ILLUMINATION	1	EA	\$25,000.00	\$25,000
SIGNAL POLE	1	EA	\$25,000.00	\$25,000
CONTROLLER CABINET + WIRING	1	EA	\$40,000.00	\$40,000
ELECTRICAL SERVICE	1	EA	\$5,000.00	\$5,000
RELOCATE TERMINAL CABINET	1	EA	\$2,000.00	\$2,000

SUBTOTAL SECTION 9	\$107,615
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SECTION 10 - PSE

Relocate PSE facilities	250	LF	\$600.00	\$150,000
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SUBTOTAL SECTION 10	\$150,000
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TOTAL	\$629,060
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Design ALLOWANCE (30%)	\$188,718
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Allocated CONTINGENCY (20%)	\$125,812
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PSE RISK CONTINGENCY	\$75,000
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Construction Subtotal	\$1,018,590
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Escalation at 3.5% to 2020 Construction	\$110,739
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CONSTRUCTION TOTAL	\$1,129,328
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ROW ACQUISITION	5530	SF	\$76.00	\$420,280	\$420,280
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PSE Easement	2000	SF	\$38.00	\$76,000	\$76,000
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Parking stalls	22	ea	\$10,000.00	\$220,000	\$220,000
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ROW Subtotal					\$716,280
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EXHIBIT A

ROW CONTINGENCY (40%)						\$286,512
ROW TOTAL						\$1,002,792
Design Engineering (25%)						\$282,332
Construction Engineering (20%)						\$225,866
Storm fee	3.2	IU	\$8,539.00	\$27,325		\$27,325
PROJECT TOTAL						\$2,667,643

Assumption:

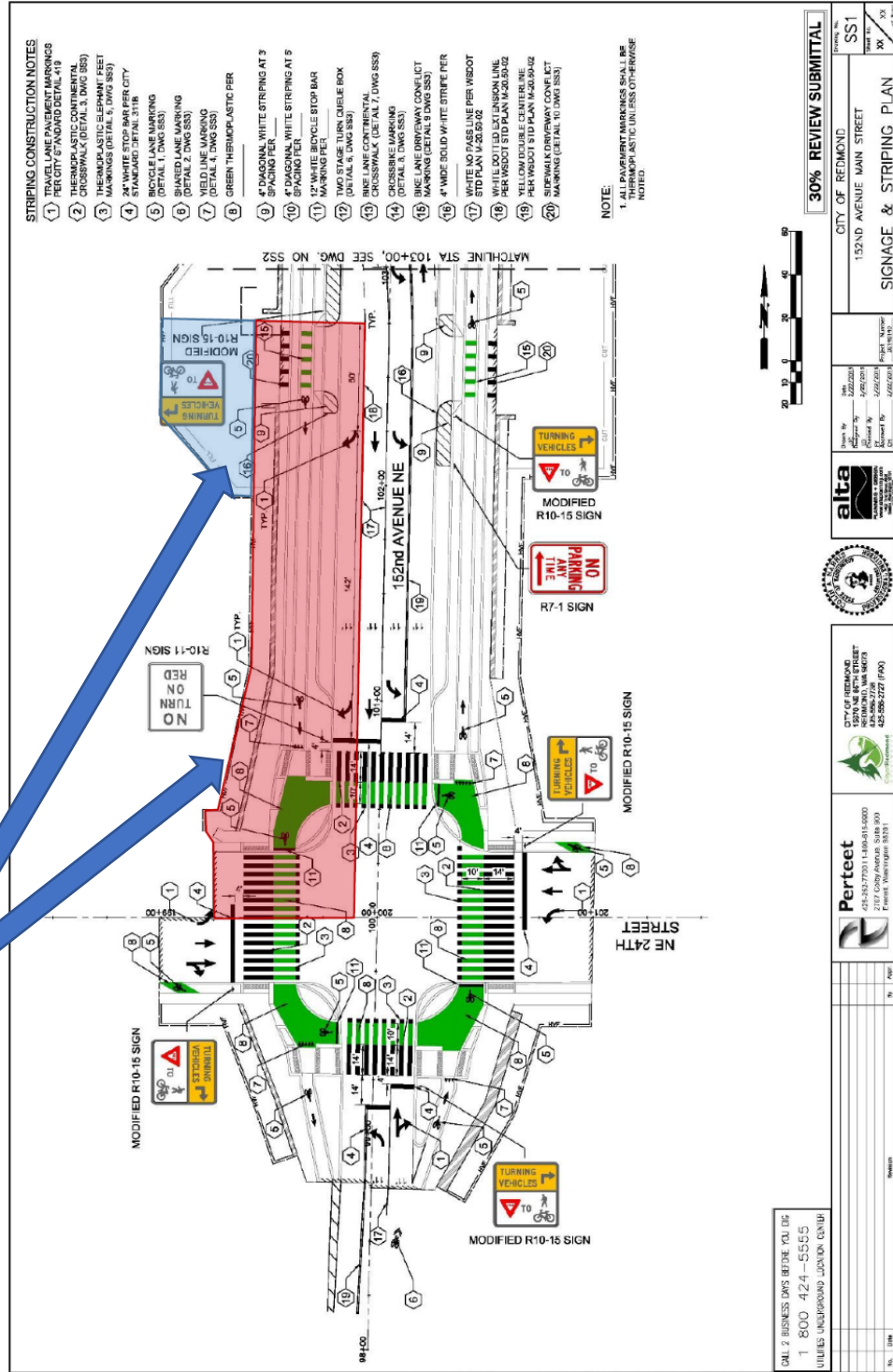
12' Lane x 150' of Storage x 160' of Deceleration Lane (includes taper length)

Price per SF from Overlake Village Final Implementation Summary Costs spreadsheet, and confirmed with other ROW acquisition in the area

EXHIBIT A

EXHIBIT A

Red and Blue shaded areas are the impact areas used to calculate this estimate



**Exhibit B
Invoice Form**

Invoice No. _____ Dated: _____

TO: Sound Transit
Accounts Payable
401 S Jackson Street
Seattle, WA 98104

accountspayable@soundtransit.org

Attention: Accounts Payable and [Sound Transit's Designated Representative]

Re: Redmond NE 152nd Intersection Improvements: East Link, PO# _____

The City's authorized representative certifies that the amount of \$ _____ is due and payable to the City in accordance with the provisions of the Agreement, as supported by the attached invoice and supporting documentation.

[Identify the phase(s), and the amounts by phase, for which the amount due applies]

The City makes the following representations and warranties to Sound Transit in connection with the Invoice:

- All work performed to date has been, unless otherwise specifically stated by the City, performed in accordance with the terms and conditions of this Agreement.
- The amount specified above has been computed in accordance with, and is due and payable under, the terms and conditions of the Agreement, has not been the subject of any previous invoice (unless disputed or rejected for payment) and is not the subject of any pending invoice from the City.

Any liability of Sound Transit arising from these representations and warranties are governed by the terms and conditions of the Agreement.

City of Redmond

By: _____ Date: _____

[Name, Position]

Exhibit C
Designated Representatives

Sound Transit:

John Arnesen
E360 Project Manager
401 S. Jackson Street
Seattle, WA 98104-2826
Email: john.arnesen@soundtransit.org
Telephone: 206-398-5418

City of Redmond:

Peter C. Dane
Title Planner, City of Redmond
15670 NE 85th Street
Redmond, WA 98052
Email: pb Dane@redmond.gov
Telephone: 425-556-2816