DEVELOPMENT AND TRANSIT WAY AGREEMENT

for

SOUND TRANSIT CENTRAL
LINK LIGHT RAIL AIRPORT LINK PROJECT

between

CITY OF SEATAC, WASHINGTON

and

SOUND TRANSIT

Date: FEBRUARY 16, 2006
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This Development and Transit Way Agreement ("Agreement") is entered into, by and between the CITY OF SEATAC, a Washington municipal corporation ("City"), and the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY ("Sound Transit"), a regional transit authority. For and in consideration of the mutual covenants contained herein, the City and Sound Transit do hereby agree as follows regarding the Sound Transit Central Link Light Rail Airport Link Project.

RECITALS

A. 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 development and right-of-way agreements to promote the health, safety and welfare of its citizens.

B. 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, including the right to construct and maintain facilities in public rights of way without a franchise (RCW 81.112. 100 and RCW 35.58. 330).

C. This agreement is authorized by RCW 36.70B.170 through .210. In addition, the City has adopted regulations governing development agreements, as set forth at SMC 15.22.055, and those regulations allow a property owner to apply to the City to enter into a development agreement to address project development standards including, design standards, mitigation measures, project phasing, review procedures, vesting, and other appropriate development requirements; and

D. On November 5, 1996, central Puget Sound area voters approved local funding for Sound Move, the ten-year regional transit system plan. Sound Move includes three new types of regional transportation - light rail, commuter rail, and a regional express bus/HOV system - which will be integrated with local transit systems and use a single or integrated regional fare structure.

E. One component of Sound Move is the Central Link Light Rail System ("Central Link"), an electric light rail project connecting some of the state’s largest employment and education centers, highest density residential areas, and highest regional transit ridership areas.

F. On July 14, 2005, Sound Transit approved the alignment for construction of the Airport Link Project ("Project") from the Tukwila International Boulevard Station in Tukwila to 200th Street South in the City as set forth in Sound Transit Resolution R2005-16, incorporated by reference herein.
G. The City owns and operates city streets and other infrastructure improvements within the City boundaries where Sound Transit proposes certain Project improvements. As described in this Agreement, Sound Transit will apply to the City for temporary right-of-way use permits for construction of the Project and the City will grant Sound Transit a non-exclusive use of a Light Rail Transit Way in the City for the Project’s long term needs.

H. The Growth Management Act (RCW 36.70A) requires that the City plan for and encourage regional high capacity transportation facilities such as Central Link (RCW 36.70A.020) and accommodate within the City such essential public facilities (RCW 36.70A.200). Likewise, the Growth Management Act grants authority to the City to impose reasonable permitting and mitigation conditions on the Project.

I. In anticipation of the Project, the City has engaged in station area planning efforts to identify capital improvements necessary to increase safe and efficient accessibility to light rail stations. Sound Transit has supported the City in these efforts over the past several years. The commitments contained in this Agreement regarding capital improvements are intended by the Parties to fully satisfy Sound Transit’s financial contribution toward such station area improvements.

J. Sound Transit is proceeding to design and build the Project, and will seek various land use, administrative and right-of-way approvals for construction and operation of the system within the City. In recognition of the multiple development permits and separate review processes, and the continuing potential for conflict, overlap and duplication between such processes, the City and Sound Transit desire to consolidate permit and environmental review processes for the benefit of both parties and the public pursuant to the development agreement authority provided in RCW 36.70B.170-.210 and SMC 15.22.

K. Extensive environmental analysis of the Project has been completed. An Environmental Assessment was issued on May 13, 2005 and the FTA issued an Amended Record of Decision ("ROD") on September 13, 2005. The ROD states the FTA’s decision, identifies the alternatives considered by the FTA in making its decision, and concludes that the federal environmental process is complete for the Central Link Light Rail Transit and the Airport Link Project. Prior to these actions, the following occurred: in November 1999, U.S. Department of Transportation Federal Transit Administration ("FTA") and Sound Transit completed an Environmental Impact Statement for the entire Central Link Light Rail Project; on November 18, 1999, Sound Transit approved the alignment for construction of the Central Link Light Rail System from 200th Street in the City to Northgate in Seattle (Sound Transit Resolution R99-34); on September 27, 2001, Sound Transit identified the preferred Initial Segment extending from South 154th to Westlake, subject to completion of environmental review (Sound Transit Motion M2001-103); on November 16, 2001, the Final Supplemental EIS and a
SEPA Addendum for the Initial Segment was issued ("Tukwila SEIS"); on November 29, 2001, the Sound Transit Board adopted the Initial Segment (Sound Transit Resolution R2001-16); on February 5, 2002, an Environmental Assessment for the Initial Segment was issued; on May 8, 2002, the FTA issued an Amended Record of Decision ("ROD") for the Initial Segment; on August 5, 2004, a SEPA Addendum to the Tukwila SEIS was issued.

L. Sound Transit has adopted real property acquisition and relocation procedures and guidelines that comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646, 84 Stat. 1894), as amended by the Uniform Relocation Act Amendments of 1987 (PL 100-17, 101 Stat. 246-256) and as implemented by the United States Department of Transportation (49 CFR 24), all of which establish a uniform policy for the expedient and consistent treatment of owners subjected to land acquisition practices and provide for the fair and equitable treatment of persons displaced as a result of public works programs or projects of a local public body (hereinafter the "Federal Regulations"). Pursuant to these policies and its statutory authority, Sound Transit has acquired or will acquire, such real property interests as are necessary to construct, maintain and operate the Project, as described in Resolution 2005-16, Exhibit "A", attached and incorporated herein.

M. Pursuant to RCW 36.70B.200 and SMC 15.22.055 and 16.07.030, the City held a properly noticed public hearing, and the City Council finds: that the proposed Project is generally consistent with the City development regulations and that any departures therefrom provided by this Agreement are offset by the benefits to be received from the Project including, increased transit service, transit oriented development opportunities, infrastructure improvements, and enhanced mitigations; and that the proposed Project conforms with the criteria provided in SMC 15.22.055. The City Council authorized the City Manager to enter into this Agreement pursuant to Resolution No. 06-002.

NOW THEREFORE, in consideration of mutual promises and covenants herein contained related to the approval of various development permits and a grant of a non-exclusive use of a City right of way by the City to Sound Transit to construct, operate, and maintain the Project, the Parties hereto agree to the terms and conditions as follows:
1.0 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 sense 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 shall include laws, ordinances and regulations now in force or hereinafter enacted or amended.

1.1 Agreement. “Agreement” means this Development and Transit Way Agreement approved by appropriate action of the City and of Sound Transit.

1.2 Approved Building Permit Plans. “Approved Building Permit Plans” means prints 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, and further described in the building permits approved by the City.

1.3 City. “City” means the City of SeaTac and any successor or assignee following an assignment that is permitted under this Agreement.

1.4 Emergency. “Emergency” means, except as otherwise provided, a sudden, unexpected occurrence or set of circumstances demanding immediate action.

1.5 Final Right-of-Way Plans. “Final Right-of-Way Plans” means prints showing the proposed limits of the Light Rail Transit Way mathematically tied to existing City monumentation.

1.6 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 described herein.

1.7 Light Rail Transit Facility. “Light Rail Transit Facility” means a structure, rail track, equipment, maintenance base or other improvement related to the Light Rail Transit System, including but not limited to ventilation structures, traction
power substations, Light Rail Transit Stations and related passenger amenities, bus layover and inter-modal passenger transfer facilities, park-and-ride lots, and transit station access facilities.

1.8 Light Rail Transit System. “Light Rail Transit System” means a public rail transit line that operates at grade level or above grade level, and that provides high-capacity, regional transit service owned or operated by a regional transit authority authorized under chapter 81.112 RCW. A Light Rail Transit System may be designed to share a street right-of-way although it may also use a separate right-of-way.

1.9 Light Rail Transit Way. “Light Rail Transit Way” means the areas of the Public Right-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 City’s Director of Public Works and on file with the City as part of the Conditional Use Permit – Essential Public Facility application.

1.10 Parties. “Parties” means the City of SeaTac and the Central Puget Sound Regional Transit Authority.

1.11 Passenger. “Passenger” means any person who is not an employee or agent of Sound Transit, and who is aboard any Sound Transit Light Rail Transit System vehicle.

1.12 Project. “Project” or “Airport Link Project” means the light rail system as described in Exhibit “B”, attached and incorporated herein, and as approved by the City pursuant to the approvals described in this Agreement.

1.13 Public Right-of-Way. “Public Right-of-Way” means the areas above, below, on and over public streets and easements which, under the SeaTac 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 therefore.

1.14 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 the Public Right-of-Way; or (ii) the use of heavy machinery within fifty (50) feet of or upon the Public Right-of-Way.

1.15 SeaTac/Airport Station. “Airport Station” or “Station” means the Light Rail Transit Facility located at SeaTac International Airport near the intersection of International Boulevard and South 176th Street that provides pedestrian access to Light Rail Transit System vehicles and facilitates transfer from light rail to other
modes of transportation. The Station may include mechanical devices such as security cameras, elevators and escalators to move passengers, and passenger amenities such as informational signage, seating, weather protection, drinking fountains, artwork, concessions and parking areas.

1.16 **Sound Transit.** "Sound Transit" means the Central Puget Sound Regional Transit Authority, and any other entity to the extent such entity, as permitted under this 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 other than the City or an employee of the City and any person other than Sound Transit or an employee of Sound Transit.

2.0 **COOPERATION AND GOOD FAITH EFFORTS**

2.1 The Parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. In this regard, communication of issues, changes, or problems that arise in the acquisitions, in identifying the parcels or property rights to be transferred, or with any aspect of the work should occur as early as possible in the process, and not wait for explicit due dates or deadlines. Each party agrees to work cooperatively and in good faith toward resolution of any such issues.

2.2 The Parties acknowledge that 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 agree to provide the necessary resources and to work in good faith to develop the final form and contents of such documents, instruments and permits, and to execute and deliver the same promptly.

2.3 Within 30 days of execution of this Agreement, a Policy Committee consisting of two members each from the Sound Transit Board and the City Council shall be designated by each respective body. The Policy Committee shall be available to coordinate and review policy matters related to the Project. The Policy Committee shall meet on an as needed basis.
3.0 SEPA COMPLIANCE

3.1 Sound Transit is the “lead agency” for purposes of Project compliance with the State Environmental Policy Act, RCW Chapter 43.21C (“SEPA”). The City agrees that the Project has been subject to full and complete procedural and substantive SEPA review through issuance of the following environmental documents, which taken together comprise the “Project Environmental Documents,” incorporated herein by reference:

(a) Central Link Light Rail Transit Project Final EIS (November 1999);
(b) Addendum to the Final EIS for the Initial Segment (November 16, 2001);
(c) Tukwila Freeway Route Final Supplemental EIS (November 2001);
(d) Initial Segment Environmental Assessment (February 2002);
(e) Addendum to the FSEIS (August 2004);
(f) Environmental Assessment (May 13, 2005); and
(g) Record of Decision (September 13, 2005)

3.2 The Parties agree that pursuant to WAC 197-11-600, the Project Environmental Documents will be used by the City unchanged for its review and decisions on permit applications related to the Project, unless (i) the applicant makes changes to the Project that are likely to have significant adverse environmental impacts not previously analyzed; or (ii) new information is discovered regarding the Project that indicates a probable significant adverse impact not previously analyzed.

3.3 The Parties agree that the mitigation measures described in this Agreement and required by the Hearing Examiner’s decision on the Conditional Use Permit-Essential Public Facility application submitted to the City on September 12, 2005 (Application number CUP 05-00005) and issued on January 17, 2006, (CUP-EPF), and incorporated by reference herein, shall constitute the full and complete exercise of the City’s substantive SEPA authority. The City has carefully considered the environmental impacts associated with the Project and the mitigation measures contained in the Project Environmental Documents. Pursuant to the authority granted in RCW 43.21C.060 and the SeaTac Municipal Code, the Parties agree that the mitigation measures included as part of the Project are necessary to mitigate specific adverse environmental impacts and are deemed sufficient to mitigate such impacts, are reasonable, and are capable of being accomplished.
3.4 The City shall be responsible for performing any necessary environmental review related to the City's construction of capital improvements, and the kiss-and-ride facility if this option is exercised, as contemplated in this Agreement, in the event that such construction projects exceed the scope of environmental analysis contained in the Project Environmental Documents.

4.0 DEVELOPMENT STANDARDS

4.1 The property subject to this Agreement is currently zoned CB-C (Community Business in Urban Center) and AVO (Aviation Operations) as defined at SMC 15.11.140. The proposed Project shall be allowed as a permitted use within the CB-C and AVO zones, subject to issuance of an CUP-EPF as provided in SMC 15.22.035. Any development approvals or permits issued for development within the Project shall be consistent with the provisions of this Agreement. Except as provided in this Agreement, the Project shall be governed by the City’s development regulations or standards as such regulations or standards existed on October 10, 2005, or as regulations and standards may be determined inapplicable because of the non-preclusive requirements for essential public facilities provided in RCW 36.70A.200. As provided in RCW 36.70B.170(4), the City shall reserve its authority to adopt new or different regulations to the extent required by a serious threat to public health and safety, after notice and an opportunity to be heard has been provided to Sound Transit, and such regulations shall apply to the Project. The City regulations or standards contained in the SMC shall prevail unless superseded by the terms of this Agreement.

4.2 The vesting described in this Agreement shall apply throughout the “Construction Buildout Period” for the Project, which the Parties have established as ten years following execution of this Agreement. During the Construction Buildout Period, the City shall neither modify nor impose new or additional development regulations or standards for the Project beyond those set forth in this Agreement. To the extent this Agreement does not establish or define development regulations or standards covering a certain subject, element or condition, the Project shall be governed by the City development standards and regulations in effect on October 10, 2005.

4.3 The City has determined that construction of a pedestrian bridge from the west side of International Boulevard to the Tukwila International Boulevard Station is neither required nor necessary. However, Sound Transit agrees that it shall not preclude construction of a pedestrian bridge to the Tukwila International Boulevard Station in the future, provided that any parking stalls that are displaced by a pedestrian bridge shall be replaced at no cost to Sound Transit, and further provides that Sound Transit shall be fully reimbursed for any other costs it may incur in accommodating such a pedestrian bridge.
4.4 The City has determined that the Project is well designed and that pursuant to SMC 15.36.020(C), strict interpretation of certain High Capacity Transit Standards and other Zoning Code regulations would be contrary to the overall purpose of the Comprehensive Plan. Therefore, the following standards are not applicable to the Project:

(a) Track Design, 15.36.210.A: At-grade HCT track within or immediately adjacent to a public street right-of-way shall be embedded in a nonasphalt, ornamental paving material.

(b) Track Design, 15.36.210.B: Any structural supports for the HCT overhead catenary system within or immediately adjacent to a public street right-of-way shall be low profile.

(c) Landscaping, 15.36.220: At-grade HCT track corridors shall be screened from adjacent streets and/or nearby development with minimum five (5) foot wide landscape strip(s).

(d) Landscaping of Surface Parking Areas, 15.14.090.B: At least one (1) interior landscape island for every seven (7) parking stalls shall be provided to be reasonably distributed throughout the parking lot.

(e) Surface Parking Lot Landscaping and Treatment of Perimeter, 15.36.320.B: Surface parking shall be visually screened from public and/or private streets by means of building placement and/or landscaping. The perimeter of a parking lot shall be planted with a minimum of five (5) feet in width of Type III landscaping. Any abutting landscaped areas can be credited toward meeting this standard.

4.5 Pursuant to SMC 16A.07.030, the City has determined that the Project is generally consistent with the Comprehensive Plan and development regulations. So long as the Project is developed consistent with appropriate City permit approvals and this Agreement, the public health, interest, and welfare are adequately protected within the bounds of the law.

4.6 In addition to this Agreement, additional permits and approvals will be required by the City, including but not limited to: a land use approval pursuant to the CUP-EPF, right-of-way, drainage, sign, demolition, fire alarm, sprinkler, plumbing, and electrical permits. Subsequent to execution of this Agreement, the City agrees that it shall issue permits and approvals necessary to complete the Project consistent with this Agreement and any other applicable laws and regulations within the City's jurisdiction. The City shall exercise due diligence to review and issue decisions on subsequent permits and approvals efficiently and in an expedited manner.
5.0 ESSENTIAL PUBLIC FACILITY REQUIREMENTS

5.1 The Project is a critical component of the Central Link Light Rail regional transportation system and is an Essential Public Facility ("EPF") as provided by law. Because cities are not regional decision-making bodies under the Growth Management Act, they may not make decisions regarding system location of regional EPFs. A city’s role is limited to attempting to influence such decisions by providing information to the regional body, commenting on the alternatives under consideration, or expressing local preferences in its comprehensive plan. However, after the regional decision is made, the city then has a duty to accommodate the EPF, and in the exercise of its land use powers may impose reasonable permit and mitigation conditions.

5.2 The Project is an EPF that is subject to the requirements of RCW 36.70A.200. Sound Transit, as the regional transit authority sponsoring the Project, has the primary authority to make siting and location decisions for the Project. Under RCW 36.70A, the City may not utilize development regulations to preclude Sound Transit’s decisions on siting and location of the Project; however, the City may impose reasonable permit and mitigation conditions on the Project.

5.3 The Parties agree that the requirements of RCW 36.70A.200 regarding the siting of essential public facilities are applicable to the Project.

6.0 PROJECT CONDITIONS AND MITIGATION MEASURES

6.1 As part of the construction of the Initial Segment, Sound Transit shall construct capital improvements in the vicinity of the Tukwila International Boulevard Station area as generally described in the roadway modifications shown on sheets 25 through 28 and related improvements defined in the 60 percent design submittal for the Central Link Light Rail Southcenter Boulevard Improvements Contract Drawings, Contract No. C759, dated June 2005.

6.2 Prior to December 31, 2006, Sound Transit shall pay the City a total lump sum in the amount of One Million Six Hundred Eighty One Thousand Two Hundred Dollars ($1,681,200) to provide funding assistance for the City to construct capital improvements in the vicinity of the Tukwila International Boulevard Station area as generally described on Exhibit "C". The City may, at its sole discretion, modify, delete, or add scope to these improvements.

6.3 Sound Transit shall construct the following SeaTac/Airport Station area improvements:

(a) pedestrian bridge at the SeaTac/Airport Station, including vertical circulation elements on the east side of International Boulevard. The
configuration of the elevator and stairway on the east end of the pedestrian bridge shall generally conform to the plans as shown in Exhibit “D”, attached and incorporated herein; and

(b) the kiss-and-ride facility described on Exhibit “D”; unless the City provides notice to Sound Transit of its intent to exercise one of the options described in Section 6.4.

6.4 In the event that the City determines that it is in the best interest of the City to construct the Project’s kiss-and-ride facility in conjunction with other development and consistent with the City’s ongoing station area planning effort, the City may construct the kiss-and-ride facility described on Exhibit “D”, or an alternative design as mutually approved by the Parties, provided as follows:

(a) the City provides written notification to Sound Transit of its intent to construct the kiss-and-ride facility on Sound Transit’s behalf, or a mutually approved alternative facility, prior to September 1, 2006, together with a construction schedule that demonstrates to Sound Transit’s satisfaction that the City (i) will complete construction of the essential kiss-and-ride facility programmatic elements prior to December 31, 2010 and (ii) provide for adequate temporary, convenient, and safe passenger drop-off and paratransit opportunities near the station plaza until the kiss-and-ride facility is operational. As used in this Section, the term “essential kiss-and-ride programmatic elements” shall include eight (8) street level parking stalls; adequate turning areas; pedestrian and vehicular access from South 176th Street, including any associated traffic flow improvements on South 176th Street; direct pedestrian access between kiss-and-ride parking stalls and the pedestrian bridge to the SeaTac/Airport Station; paratransit and ADA dropoff; and, pedestrian and vehicular lighting and signage;

(b) in the event that the City decides to construct the kiss and ride facility as provided in Section 6.4(a) above, within 120 days of the written notification provided therein, Sound Transit shall pay the City a total amount of Six Hundred Ninety One Thousand Two Hundred Twenty Dollars ($691,220) as its total financial contribution toward the City’s construction of the kiss-and-ride facility;

(c) the City provides written notification to Sound Transit of its intent to construct the kiss-and-ride facility on Sound Transit’s behalf, or a mutually approved alternative facility, prior to March 31, 2008, together with a construction schedule that demonstrates to Sound Transit’s satisfaction that the City (i) will complete construction of the essential kiss-and-ride facility programmatic elements as defined in Section 6.4 (a) prior to December 31, 2010 and (ii) provide for adequate temporary, convenient,
and safe passenger drop-off and paratransit opportunities near the station plaza until the kiss-and-ride facility is operational. If the City decides to construct the kiss and ride facility as provided in this subsection, the financial contribution contemplated under Section 6.4(b) shall not apply.

(d) within 90 days of the notification provided above in Sections 6.4(a) or (c), Sound Transit shall convey whatever property interest or rights it has acquired in the subject property for the purpose of constructing the kiss-and-ride facility, subject to temporary and permanent easements, as mutually agreed to over, across, or through the subject property as necessary for the Project and including maximization of construction staging opportunities, together with all design plans, engineering reports, environmental and geotechnical reports, and appraisals and the City shall pay to Sound Transit the full value of the subject property based on Sound Transit’s actual costs incurred in acquiring the subject property, including but not limited to appraisal fees, reports, and attorney fees;

(e) in the event the City decides to construct the Project’s kiss-and-ride as described herein, the Parties shall enter into subsequent agreements whereby (a) the City agrees to indemnify, defend, and hold Sound Transit harmless from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses (including, without limitation, reasonable attorneys’ fees) paid by Sound Transit arising from or growing out of or in connection with or resulting from, either directly or indirectly, the construction, maintenance, operation, repair, removal, occupancy, and use of the kiss-and-ride facility, unless such claims arise from the sole or partial negligence, actions or inaction of Sound Transit; and (b) the Parties agree upon their respective rights and responsibilities for the operation, maintenance and use of the kiss-and-ride facility.

6.5 Prior to December 31, 2006, Sound Transit shall pay the City a total lump sum in the amount of Two Million Four Hundred Eighty Six Thousand Three Hundred Eighty Eight Dollars ($2,486,388) to provide funding assistance for the City to construct capital improvements in the vicinity of the SeaTac/Airport Station at South 176th as generally described on Exhibit “E” attached and incorporated herein. The City may, at its sole discretion, modify, delete, or add scope to these improvements.

6.6 Sound Transit shall provide art enhancements within the Project that seek to maximize the overall visibility of art installations consistent with Sound Transit Art Program (STArt). Sound Transit shall allocate a total amount of One Hundred Fifty Thousand Dollars ($150,000) of the total Project STArt budget to the kiss-and-ride and/or the Light Rail Transit Facility that crosses over International Boulevard in the vicinity of South 154th Street. The final decision regarding allocation of these funds shall be made by the City, in coordination with Sound
The parties acknowledge that any art enhancements to Light Rail Transit Facilities (a) shall not involve modifications to structural elements; and (b) if located within or above WSDOT rights-of-ways are subject to WSDOT approvals. In the event that the City seeks to broaden the extent of the art enhancements, Sound Transit shall incorporate such changes provided that they: (a) meet Sound Transit’s criteria for art installations; (b) gain applicable and necessary approvals from WSDOT and the Port of Seattle; (c) are adequately developed no later than March 31, 2006 for any elements necessary for incorporation into Project construction documents; and (d) do not increase Sound Transit’s adopted total STArt budget for the Project.

6.7 Storm water drainage from the Project shall be addressed as provided in the Storm Water Drainage Concurrence letter executed between the City and Sound Transit dated November 21, 2005, Exhibit “F”, attached and incorporated herein. However, in the event that prior to March 1, 2006, the City decides that some or all of the Project storm water detention requirements may be addressed through a financial contribution to regional storm drainage basin improvements in lieu of construction of a detention facility within the Project, the City shall provide written notification of this decision as provided in this Agreement and affirm that the City deems the capacity of its existing storm water conveyance systems to be adequate to accommodate any storm water generated by the Project. Within 90 days of such notification, Sound Transit shall pay the City an amount equal to the construction cost of the storm water facilities necessary to serve the Project, as mutually determined by the parties based on cost estimates, in an amount not to exceed Two Million Three Hundred Fifty Thousand Dollars ($2,350,000). Sound Transit’s payment to the City under this Section shall fully satisfy storm water detention requirements for the applicable Project facilities.

6.8 Sound Transit shall provide Fire/Life-Safety mitigation as provided in the concurrence letter executed between the City and Sound Transit dated November 21, 2005 Exhibit “G”, attached and incorporated herein.

6.9 Sound Transit shall provide security mitigation as provided in the concurrence letter executed between the City and Sound Transit dated October 28, 2005, Exhibit “H”, attached and incorporated herein.

6.10 Sound Transit shall, at its expense, conduct an on-street parking inventory and utilization study within one half mile of the Airport Station within one year before start and within one year after start of Light Rail Transit System operations based on a mutually agreeable study methodology.

6.11 The Parties agree that the conditions of approval and mitigation measures identified in this Agreement are reasonable as part of the Project approvals and such mitigation shall be incorporated into the Project in full satisfaction of all development standards, except for those standards applicable to the building
permits and other necessary administrative permits, and in full satisfaction of SEPA.

7.0 MINOR REVISIONS TO PROJECT APPROVALS

7.1 The City Manager or his designee are authorized to approve minor revisions to the Project that are necessary and generally consistent with this Agreement. Such minor revisions shall include: (a) any revisions within the scope and intent of the original Project approvals; (b) any revisions within the scope of the Project Environmental Documents; (c) any relocations and adjustments of the Light Rail Transit Facility within the approved right-of-way, and; (d) any relocations and adjustments of the elements and features of the SeaTac/Airport Station.

8.0 FINANCIAL REIMBURSEMENT BY SOUND TRANSIT

8.1 Sound Transit shall reimburse the City for management of and administrative support for the Project, the City’s environmental review costs associated with street improvement projects; and related matters as described in this Agreement, through and until December 31, 2009, up to a total amount not to exceed Two Hundred Eight Thousand Dollars ($208,000).

8.2 The City shall invoice Sound Transit on a quarterly basis based on actual expenditures. Within thirty (30) calendar days after Sound Transit’s receipt of any complete and accurate City invoice, Sound Transit shall remit the reimbursement for the amount of valid expenditures.

8.3 The City is committed to work efficiently and will closely monitor the time required to complete work products consistent with the scope of work for the Project. The City shall prepare and submit detailed monthly progress reports to Sound Transit. These monthly reports shall document tasks completed, changes in the scope of work assumed and upcoming challenges and projections of the next month’s activities. These monthly reports shall be submitted within fourteen (14) calendar days after the end of the month for which progress is being reported. The City and Sound Transit will provide active, ongoing oversight to ensure that Sound Transit funds are expended efficiently, in a manner that adds value to the Project.

8.4 The City’s Designated Representative, or other designated City official, shall coordinate requests for reimbursements by all City departments and offices.

9.0 FINANCIAL REIMBURSEMENT BY THE CITY

9.1 In the event that the City agrees to reimburse Sound Transit for any cost associated with the Project, Sound Transit shall invoice the City one time only based on actual expenditures. Within thirty (30) calendar days after receipt of
the complete and accurate invoice, the City shall remit the reimbursement for the amount of valid expenditures.

9.2 Sound Transit is committed to work efficiently and will closely monitor the time required to complete work products consistent with the scope of work for the Project. Sound Transit shall prepare and submit detailed monthly progress reports to the City. These monthly reports shall document tasks completed, changes in the scope of work assumed and upcoming challenges and projections of the next months’ activities. These monthly reports shall be submitted within fourteen (14) calendar days after the end of the month for which progress is being reported. The City and Sound Transit will provide active, ongoing oversight to ensure that City funds are expended efficiently, in a manner that adds value to the Project. Both parties agree to monitor and reconcile actual versus estimated effort on a quarterly basis.

10.0 LIGHT RAIL TRANSIT WAY

10.1 The City hereby grants to Sound Transit, its successors and assigns, a non-exclusive use of portions of the Public Right-of-Way, the general location of which is described and depicted on Exhibit “I,” attached and incorporated herein, to be known as a Light Rail Transit Way, to 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 and more fully described in the As Built Final Right-of-Way Plans. The City’s Public Works Director and Sound Transit’s Director of Light Rail may, from time to time, jointly revise and modify Exhibit “I” to conform to the record drawings and the Final Right-of-Way Plans as long as the revisions are, in their professional engineering judgment, within the scope and intent of Exhibit “I.” This grant shall take effect upon the filing of approved As Built Final Construction Plans and Final Right-of-Way Plans. Sound Transit expressly agrees that it will operate and maintain the Light Rail Transit System in compliance with this Agreement and all applicable City ordinances and state and federal laws.

10.2 The non-exclusive use of the Light Rail Transit Way is granted solely for the purpose of maintenance, operation, and ownership of the Light Rail Transit System detailed in the Approved Building Permit Plans and included in the other related permits, and this Agreement, and for no other purpose. Sound Transit intends, and shall have the right, to use the Light Rail Transit Way solely for Light Rail Transit System uses. Subsequent to construction of the Light Rail Transit Facilities authorized in accordance with the Approved Building Permit Plans and the Final Right-Of-Way Plans, Sound Transit shall not construct any additions or expansions to the Light Rail Transit System on or
along the Light Rail Transit Way without the City’s written consent. Notwithstanding the foregoing, nothing contained herein shall prevent Sound Transit from replacing Light Rail Transit Facilities or equipment existing after construction after first obtaining any necessary permits or other authorization from the City.

10.3 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 Right-of-Way construction; (4) Public Right-of-Way repair (including resurfacing or widening); (5) change of Public Right-of-Way grade; (6) response to emergencies and natural disasters; and (7) construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, traffic control devices, tracks, communications systems, public works, public facilities or improvements, or any utilities. The City agrees to exercise its best effort to provide written notice to Sound Transit of such activities within the Light Rail Transit Way, to the extent they are permitted or controlled by the City, at least twelve hours prior to commencement of the work, unless an Emergency exists as defined herein. The City shall further exercise its best efforts to ensure that any such activities done by or for the City shall be undertaken in a manner that minimizes, to the extent possible, disruption to operation of the Light Rail Transit System.

10.4 Sound Transit understands that the rights granted herein are non-exclusive. The City 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.

10.5 This Agreement does not authorize the provision of any services by Sound Transit other than 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.

10.6 Unless otherwise provided in this Agreement or in other City project approvals or agreements, Sound Transit shall own all tracks and other Light Rail Transit Facilities on the Light Rail Transit Way. Nothing in this Agreement, however, 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.
10.7 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 business within the City that may be required by the ordinances and laws of the City; or

(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, street cut permits; or

(c) Any permits or agreements for occupying any other property of the City to which access is not specifically granted by this Agreement.

10.8 This Agreement shall not be read to diminish or in any way affect the authority of the City to control and charge for use of storm water utility facilities. In the event that Sound Transit decides to use the City’s storm water utility facilities, Sound Transit must obtain the necessary permits and approvals as required by the City pursuant to SMC 12.10.

10.9 In the event that Sound Transit acquires real property that the Parties agree should be transferred to the City for Public Right-of-Way, such real property shall be transferred to the City pursuant to the procedures provided in SeaTac Municipal Code without further compensation from the City.

11.0 CONSTRUCTION

11.1 Sound Transit shall obtain approval from the City for construction of the Project through submittal of the appropriate applications as described in this Agreement. When approving such applications, the City may impose such reasonable conditions as may be required to implement this Agreement or other Project approvals. Prior to advertisement of the first Project construction contract by Sound Transit, Sound Transit shall submit a Construction Mitigation Plan to the City’s Public Works Director for its review and approval, and such approval shall not be unreasonably withheld.

11.2 Sound Transit, its employees and agents, are authorized to enter upon the Light Rail Transit Way to construct, operate and maintain the Light Rail Transit Facilities, as defined and limited in this Agreement.

11.3 As promptly as possible, but in no event later than three months after the Light Rail Transit System begins operations, Sound Transit shall furnish to the City record drawings of the As Built Final Construction Plans and Final Right-of-
Way Plans. Record Drawings are full size Mylars and associated electronic files prepared in AUTOCAD showing the as-built condition.

11.4 During construction of the Light Rail Transit System, Sound Transit may utilize portions of the public right-of-way for the temporary storage of construction equipment and materials subject to conditions of right-of-way permits issued pursuant to SMC 11.10.

11.5 The City recognizes that the Light Rail Transit System is a public transportation improvement and as such will cooperate with Sound Transit by directing conflicting non-City, private utilities to relocate when necessary at their expense, as provided by law. Sound Transit agrees that it will coordinate with all utilities to minimize utility relocation costs and related construction, and will negotiate with non-City owned utilities on relocation costs and cost allocation. Sound Transit shall fully indemnify the City for any claim and undertake the defense of any litigation directed at the City arising from such relocation to accommodate the construction of the Light Rail Transit System. The City shall cooperate 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 and as required by the SMC.

11.6 Sound Transit, at Sound Transit’s sole cost and expense, shall furnish all materials, parts, components, equipment and structures necessary to construct and operate the Light Rail Transit System, or any part thereof, in accordance with this Agreement. Any and all work 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.

11.7 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.

11.8 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 shall support the tracks and roadbed of the Light Rail Transit System in such a manner as is necessary for the safe operation of the Light Rail Transit System and ordinary use of the Public Right-of-Way.

11.9 If, during construction, the Light Rail Transit System creates, or contributes 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 Sound Transit shall pay for costs incurred by the City. The City shall provide notice of such danger to Sound Transit as soon as possible, given the nature and circumstances of any such danger.

11.10 Sound Transit shall develop and implement a community outreach program that includes a business mitigation plan intended to provide technical business assistance and promotional activities to businesses directly impacted by Project construction. The program will include, but not be limited to, assigned staff to implement the activities of the outreach and business mitigation plan, public meetings, written materials, one-on-one visits, 24/7 construction hotline, and “businesses are open signs”.

11.11 Sound Transit shall promptly repair any and all Public Right-of-Way and public property that is disturbed or damaged during the construction of its Light Rail Transit System to the same condition as existing prior to construction. In the event Sound Transit does not comply with the foregoing requirement, the City may, upon seven calendar days’ advance notice to Sound Transit, take actions to restore the Public Right-of-Way or public property at Sound Transit’s sole cost and expense.

11.12 Sound Transit’s design and construction of the Project is subject to a financial assistance contract between Sound Transit and the Federal Transit Administration (“FTA”). Both parties recognize that the FTA may request a change to this Agreement to comply with its funding requirements. The Parties agree to consider any such request in good faith.

12.0 PERMITS

12.1 Sound Transit, at its sole cost and expense, shall: (i) secure and maintain in effect, all federal, state and local permits and licenses required for the construction, operation and maintenance of the Light Rail Transit System, 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.

12.2 The City shall not hinder Sound Transit’s attempts to secure, obtain, and maintain, at Sound Transit’s sole cost and expense, any permits, licenses or approvals of other governmental agencies or authorities, or of any necessary Third Parties, for the use of any structures or facilities (including streets, roads or utility poles).
13.0 ACCESS; ENTRY NOTICE

13.1 Sound Transit and its employees and agents shall have access to the Public Right-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; provided, however, 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 unreasonably interfere with or disrupt, other than in ways approved in writing in advance by the City, the use of the Light Rail Transit Way by the City or Third Parties in and along the Light Rail Transit Way.

13.2 During construction, Sound Transit shall provide the City at least 48 hours advance written notice as provided in a construction schedule to be reviewed and approved by Sound Transit and the City before initial entry upon any portion of the Public Right-of-Way for construction purposes.

13.3 After the completion of construction of the Project, no further construction, maintenance, or repairs shall be undertaken in the Public Right-of-Way without first obtaining all necessary permits as required by the SMC, except in cases of Emergency. In any such Emergency, Sound Transit shall apply for the necessary permit within 24 hours of actual notice of such Emergency.

13.4 In order to maintain safe and efficient operations of the Light Rail Transit Facilities, in consultation with the City, Sound Transit and the City shall jointly develop standard operating procedures for the City's entry and access to Light Rail Transit Facilities.

14.0 OPERATION, MAINTENANCE, AND REPAIR IN STREETS AND RIGHTS OF WAY

14.1 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 applicable provisions of City Code. 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.

14.2 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.

14.3 Sound Transit shall promptly repair any and all Public Right-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 Right-of-Way must be restored to the same condition as before the disturbance or damage occurred.

14.4 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 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 Sound Transit shall pay to the City the cost of any such action undertaken by the City. The City shall provide notice of such danger as soon as possible thereafter, taking into consideration the nature and complexity of the Emergency or other imminent danger.

15.0 FACILITY LOCATION SIGNS

15.1 Sound Transit, at its sole cost, expense and risk, shall furnish, erect and maintain signs showing the location of all Sound Transit facilities. Signs shall be in conformance with applicable requirements of SMC 15.36.600.

16.0 LIABILITY, INDEMNIFICATION

16.1 Sound Transit hereby agrees to indemnify, defend, and hold the City harmless from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses (including, without limitation, reasonable attorneys’ fees) paid by the City and arising from or growing out of or in connection with or resulting from, either directly or indirectly, the construction, maintenance, operation, repair, removal, occupancy, and use of the Light Rail Transit System in the Light Rail Transit Way by Sound Transit, unless such claims arise from the sole or partial negligence, actions or inaction of the City, its employees, servants, agents, contractors, subcontractors or persons using the Light Rail Transit System with permission of the City.

16.2 The City shall give Sound Transit prompt notice of any claims directly affecting Sound Transit about which it is aware. 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. The City shall not settle any claim directly affecting Sound Transit without the prior written consent of Sound Transit, which consent shall not be unreasonably withheld.
16.3 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.

17.0 INSURANCE

17.1 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; and (v) comprehensive auto liability coverage (including owned, hired, and non-owned vehicles).

17.2 Sound Transit shall carry such insurance with responsible insurers 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 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.

17.3 Sound Transit shall file with the City’s Risk Manager Certificates of Insurance reflecting evidence of the required insurance and naming the City as an additional insured where appropriate. The certificates shall contain a provision that coverage shall not be canceled until at least 30 days’ prior written notice has been given to the City.

17.4 If Sound Transit fails to maintain the required insurance, the City may order Sound Transit to stop operating the Light Rail Transit System in the Light Rail Transit Way until the required insurance is obtained.
18.0 LIENS

18.1 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's 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 (5) 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 that may adversely affect the Light Rail Transit System.

18.2 Nothing herein shall preclude Sound Transit's or the City's ability to contest 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.

18.3 Nothing in this Agreement shall be deemed to give, and the City hereby 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.

19.0 DISPUTE RESOLUTION

19.1 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.

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

19.3 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 process should any such disputes arise:

(a) Level One - Sound Transit’s Project Manager or Resident Engineer or equivalent and the City’s Senior Project Coordinator shall meet to discuss
and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level One, either party may refer the dispute to Level Two.

(b) **Level Two** - Sound Transit’s Director of Link Light Rail and the City’s Assistant City Manager shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) business days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.

(c) **Level Three** - Sound Transit’s Executive Director or Designee and the City Manager or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner.

19.4 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 or arbitration. At all times prior to resolution of the dispute, the Parties shall continue to perform and make any required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

19.5 In the event that the Parties choose to resolve their dispute through binding arbitration, the Parties agree to the following procedure:

(a) Binding arbitration between the Parties pursuant to this Section shall be governed by the rules and procedures set forth in this Section.

(b) If the Parties to the dispute are unable to agree upon a single arbitrator within fourteen (14) calendar days of failure to resolve the dispute at the end of the Level Three process, then a board of three arbitrators shall be appointed by the American Arbitration Association (“AAA”) in compliance with the Rule of Appointment of Neutral Arbitrator. Any arbitrator appointed by AAA under this Subsection shall possess knowledge of the particular matters at issue in the arbitration.

(c) Upon selection of the arbitrator(s), said arbitrator(s) shall determine the question(s) raised within fourteen (14) calendar days, unless a different period of time is otherwise agreed upon by the Parties in writing. Said arbitrator(s) shall then give both parties reasonable notice of the time (which time shall be within thirty (30) calendar days of the Arbitrator(s)’ determination of the questions raised, unless a different period of time is otherwise agreed upon by the Parties), and place of hearing evidence and argument; take such evidence as the arbitrator(s) deems relevant, with witnesses required to be sworn; and hear arguments of counsel or others.
(d) After consideration of all evidence, testimony and arguments, said single arbitrator or said board of arbitrators or a majority thereof shall, within thirty (30) days of completion of the hearing, promptly state such decision or award in writing. Said decision or award shall be final, binding, and conclusive on all parties to the arbitration when delivered to them, except as otherwise provided in this Agreement. Until the arbitrator(s) issue the first decision or award upon any question submitted for the arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

(e) Sound Transit and the City shall share equally the compensation, costs, and expenses of the arbitrators, but each shall be responsible for their own fees and expenses of its own witnesses, exhibits, and counsel. The compensation, costs and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by Sound Transit and the City.

(f) The arbitrator(s) shall have the authority to enter awards of equitable remedies consistent with the obligations of the City and Sound Transit under this Agreement.

(g) The arbitrator(s) shall not have the authority to enter any award, the satisfaction of which by the party to be bound, would be impermissible under any law, regulation, or funding agreement to which the bound party is subject. The determination of any such impermissibility shall be made by a court of competent jurisdiction within the State of Washington and under the laws of the State of Washington. Any such determination shall be appealable.

20.0 DEFAULT

20.1 No 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 any 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 commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure. Any party not in default under this Agreement shall have all rights and remedies provided by law including without limitation damages, specific performance or writs to compel performance or require action consistent with this Agreement. The prevailing party (or the substantially
prevailing party if no one party prevails entirely) shall be entitled to reasonable attorneys' fees and costs.

21.0 REMEDIES; ENFORCEMENT

21.1 The Parties reserve the right to exercise any and all of the following remedies, singly or in combination, in the event the other 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.

21.2 In determining which remedy or remedies for 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 breaching 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.

21.3 Neither party 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 such failure to enforce shall not constitute a waiver of rights or acquiescence in the other party's conduct.

22.0 TERM; TERMINATION

22.1 This Agreement shall be effective as of the date the last party signs. Unless sooner terminated pursuant to the terms hereof, this Agreement shall remain in effect for so long as the Light Rail Transit Way is used for public transportation purposes.

22.2 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.

22.3 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.

22.4 Sound Transit shall file a written removal plan with the City not 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.

23.0 COVENANTS AND WARRANTIES

23.1 By execution of this Agreement, the City warrants:

(a) That the City has the full right and authority to enter into and perform this Agreement and to issue 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 its charter or by-laws, 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 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.

23.2 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 or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement.
24.0 RECORDINGS, TAXES AND OTHER CHARGES

24.1 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).

24.2 The City may 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.

25.0 ASSIGNABILITY; BENEFICIARY

25.1 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 disposition of all or substantially all of the assets of a party, (ii) any governmental entity merger, consolidation, or reorganization, whether voluntary or involuntary, (iii) a sublease or assignment of this Agreement (in whole or in part) to a governmental entity, or (iv) a sale, lease, or other conveyance subject to those requirements set forth in this Agreement; provided, however, that no sublease or assignment under (ii) or (iii) shall be permitted to a governmental entity not operating, constructing or maintaining a Light Rail Transit System on behalf of Sound Transit, and provided further that no
unconsented assignment shall relieve Sound Transit of its obligations and liabilities under this Agreement.

25.2 Either party hereto may assign any monetary receivables due them under this Agreement; provided, however, such assignment shall not relieve the assignor of any of its rights or obligations under this Agreement.

25.3 Sound Transit acknowledges and agrees that the City may designate, in writing, a designee to (i) receive information (including information designated or identified as confidential) and notices under this Agreement, and (ii) provide certain approvals or consents required from the City under this Agreement. In the event of such designation, Sound Transit may rely on approvals or consents by such designee on behalf of the City as fully as if such actions were performed by the designator itself.

25.4 Neither this Agreement nor any term or provision hereof, or any inclusion by reference, shall be construed as being for the benefit of any party not a signatory hereto.

26.0 DESIGNATED REPRESENTATIVES

26.1 Responsibilities. To promote effective intergovernmental cooperation and efficiencies, the Parties each designate a representative ("Designated Representative") who shall be responsible for coordination of communications between the Parties and shall act as the point of contact for each party. The Designated Representatives shall be responsible for the performance of the objectives of this Agreement.

26.2 Coordination. Each Designated Representative is also responsible for coordinating the input and work of its agency, consultants, and staff as it relates to the objectives of this Agreement. The Parties reserve the right to change Designated Representatives, by written notice to the other party during the term of this Agreement. Each party’s Designated Representative is named below with the individual’s contact information.

26.3 Designated Representatives and Contact Information.

Sound Transit

During Construction: Martin Schachenmayr, Project Manager
Sound Transit Link Light Rail
401 South Jackson
Seattle, Washington 98104-2826
206-398-5374
During Operations: Charles Joseph, Operations Division Manager
Sound Transit Link Light Rail
401 South Jackson
Seattle, Washington 98104-2826
206-398-5200

City of SeaTac

During Construction: Dale Schroeder, Public Works Director
4800 S. 188th Street
SeaTac, WA 98188
206-973.4800
or
Tom Gut, City Engineer

During Operations: Tina Rogers, Assistant City Manager
4800 S. 188th Street
SeaTac, WA 98188
206-973.4800

27.0 NOTICE

27.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to the Designated Representative. Any party at any time by written notice to the other party may designate a different address or person to which such notice or communication shall be given.

27.2 Unless otherwise provided herein, notices shall be sent by registered or certified U.S. Mail, or other verifiable physical or electronic transmission, and shall be deemed served or delivered to addressee, or its office, upon the date of actual receipt, return receipt acknowledgment, or, if postal claim notice is given, on the date of its return marked “unclaimed”; provided, however, that upon receipt of a returned notice marked “unclaimed,” the sending party shall make a reasonable effort to contact and notify the other party by telephone.

28.0 GENERAL PROVISIONS

28.1 The Parties shall not unreasonably withhold requests for information, approvals or consents provided for in this Agreement. 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. The City and Sound
Transit agree to work cooperatively with each other to achieve the mutually agreeable goals as set forth in this Agreement.

28.2 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.

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

28.4 A Memorandum of this Agreement shall be recorded against the property legally described in Exhibit “J”

28.5 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.

28.6 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.

28.7 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 including the requirements of RCW 36.70A.200.

28.8 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.

28.9 The Parties shall 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 shall not be revoked or a party penalized for such noncompliance, provided that such party takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, and integrity of both parties’ employees or property, or the health, safety, and integrity of the public, Public Right-of-Way, public property, or private property.
28.10 This Agreement may be amended only by a written instrument executed by each of the Parties hereto. No failure to exercise and no delay in exercising, on the part of any party hereto, any rights, power or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein.

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

28.12 Section headings are intended as information only, and shall not be construed with the substance of the section they caption.

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

28.14 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.

29.0 SEVERABILITY

29.1 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)

By: [Signature]
Joan M. Earl, Chief Executive Officer

Date: 2/16/06

THE CITY OF SEATAC

By: [Signature]
Craig R. Ward, City Manager

Date: 2/9/06

Authorized by Ordinance 06-002

Approved as to form:

By: [Signature]
Stephen G. Sheehy, Legal Counsel

By: [Signature]
Mary Mirante Bartolo, City Attorney
DEVELOPMENT AND TRANSITWAY AGREEMENT EXHIBITS

EXHIBIT “A”  SOUND TRANSIT BOARD RESOLUTION SELECTING THE AIRPORT LINK ALIGNMENT AND STATIONS

EXHIBIT “B”  AIRPORT LINK PROJECT DESCRIPTION

EXHIBIT “C”  TUKWILA INTERNATIONAL BOULEVARD STATION AREA CAPITAL IMPROVEMENTS

EXHIBIT “D”  SOUTH 176TH STREET PLAZA AND KISS-AND-RIDE PLAN

EXHIBIT “E”  SEATAC/AIRPORT STATION AREA CAPITAL IMPROVEMENTS

EXHIBIT “F”  STORMWATER MANAGEMENT CONCURRENCE LETTER

EXHIBIT “G”  FIRE/LIFE-SAFETY CONCURRENCE LETTER

EXHIBIT “H”  SECURITY CONCURRENCE LETTER

EXHIBIT “I”  TRANSITWAY MAP

EXHIBIT “J”  LEGAL DESCRIPTION FOR AIRPORT LINK PROJECT