

CR# 75349 DATE 10/9/19 LOC E19-449
DESIGN AND CONSTRUCTION AGREEMENT
TRANSIT ACCESS IMPROVEMENTS AT 130TH STATION

THIS DESIGN AND CONSTRUCTION AGREEMENT (the "**Agreement**") dated for reference purposes as of October 17, 2019 (the "**Effective Date**") is made by and between the **CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY**, a Washington regional transit authority ("**Sound Transit**") and the **CITY OF BELLEVUE**, a Washington municipal corporation ("**Bellevue**") with reference to the following facts. Sound Transit and Bellevue are hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. Bellevue and Sound Transit entered into an "Amended and Restated Umbrella Memorandum of Understanding for Intergovernmental Cooperation between the City of Bellevue and the Central Puget Sound Regional Transit Authority for the East Link Project" on May 6, 2015 (the "**MOU**"), which contemplated an agreement for Sound Transit to transfer the property adjacent to the 130th Station (the "**Property**") to Bellevue, so that Bellevue, at its sole cost and expense, would develop and construct certain transit access improvements ("**TAIs**") specifically described in the Conveyance Agreement. The TAIs may be part of a larger transit oriented development project to be developed by Bellevue (the "**TOD Project**") collectively referred to herein as "**Joint Project**"; and

B. The Parties entered into a Conveyance Agreement for Property at 130th Station dated October 17, 2019, (the "**Conveyance Agreement**") for the conveyance of the Property to Bellevue to construct the TAIs as set forth in the MOU; and

C. The Conveyance Agreement contemplates a separate agreement to establish the terms and conditions applicable to Bellevue's procurement, design and construction of the TAIs; and

D. The Parties agree to work cooperatively on the design and construction of the TAIs and TOD Project to maximize their respective TOD objectives for the Property while delivering the TAIs on schedule.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **RECITALS; PURPOSE.** Each recital set forth above is true and correct and incorporated into this Agreement as though fully set forth herein. The purpose of this Agreement is to set forth the terms and conditions applicable to Bellevue's procurement, design and construction of the TAIs and TOD Project on the Property following the Development Plan Election as set forth in the Conveyance Agreement. The term "TAIs" used herein includes

permanent TAIs and/or Interim TAIs (the requirements for which are set forth on Exhibit A to the Conveyance Agreement) as applicable, unless otherwise noted.

2. REQUEST FOR PROPOSALS/INFORMATION.

2.1 Draft Request for Proposals/Information. As set forth in the MOU and Conveyance Agreement, the Parties share a common interest in maximizing transit oriented development on the Property while delivering the TAIs on or before June 1, 2023 (the “**In-Service Date**”). Following execution of the Conveyance Agreement, Bellevue shall promptly initiate a competitive process to request expressions of interest and/or proposals for development of the Joint Project on the Property. Sound Transit shall have a representative on the committee developing such expressions of interest and/or proposals.

2.2 Joint Project Scope and Evaluation. Bellevue shall develop the scope and evaluation criteria for the Joint Project consistent with the Resolution No. R2018-10 – Adopting an Equitable Transit Oriented Development Policy attached hereto as Exhibit A1 and the BelRed TOD Planning Principles as reviewed and edited by Council January 25, 2016 attached hereto as Exhibit A2 (collectively, the “**TOD Objectives**”) and all of the applicable requirements for the TAIs described in the Conveyance Agreement and this Agreement (“**TAI Requirements**”) and shall provide a copy to Sound Transit for its review and approval. Within fifteen (15) business days following its receipt of the scope and evaluation criteria, Sound Transit shall provide Bellevue with its approval, conditioning or disapproval of the scope and evaluation criteria for the Joint Project. Sound Transit’s approval shall not be arbitrarily withheld, conditioned or delayed, taking into account compliance with the TAI Requirements, and applicable federal, state and local laws. In the event of Sound Transit’s conditioning or disapproval of the scope and evaluation criteria for the Joint Project, the Parties shall work cooperatively and expeditiously to reach a resolution. In the event the Parties cannot reach consensus on the scope or evaluation process for the Joint Project, the Parties shall utilize the dispute resolution process set forth in Article 8 of this Agreement the (“**Dispute Resolution Process**”). If Sound Transit fails to respond within such fifteen (15) Business Days, such submitted scope and evaluation criteria shall be deemed approved.

2.3 Review of Joint Project Proposals. Sound Transit will participate in development of the request for expressions of interest and/or proposals for the Joint Project, and will have a voting member participate in evaluating the responses received for consistency with the TAI Requirements; provided, however, the type of uses, mix of housing affordability, and density of development on the Property shall be determined in the sole discretion of Bellevue. Sound Transit may also have technical consultants review the responses received and provide comments to all persons entitled to vote on approval of the same.

2.4 Third Party Agreements. As contemplated in the Conveyance Agreement, Bellevue shall be entitled to enter into a separate agreement with a third party for design and construction of the TAIs on the Property (“**Third Party Agreement**”), provided, however that Bellevue shall provide Sound Transit the opportunity to review and approve any terms of the Third Party Agreement to the extent such terms materially affect the design, construction or operation of the TAIs prior to its execution. The Third Party Agreement must be consistent with all of the terms of the Conveyance Agreement. The Third Party Agreement shall not relieve

Bellevue of its obligations under the Conveyance Agreement. Except as otherwise set forth in Section 15 of the Conveyance Agreement, Bellevue's rights and obligations under the Conveyance Agreement are not assignable, and any attempt by Bellevue to assign or in any manner transfer its interest in, or obligations under, the Conveyance Agreement, shall be automatically void and Bellevue shall remain fully responsible and liable to Sound Transit for the fulfillment of all of Bellevue's obligations under the Conveyance Agreement.

3. CONTRACTING.

3.1 Procurement Process. In the event Bellevue does not enter into the Third Party Agreement, and instead elects to contract directly for design and construction of the TAIs, Bellevue shall have the right to select professionals as necessary or desirable for the design, permitting, development and construction of the TAIs who meet the following minimum guidelines. Bellevue shall cause design and other consulting and construction services to be performed by qualified Washington state licensed architects, engineers, contractors and other professionals ("**Design Consultants and Construction Contractors**") engaged by Bellevue who meet minimum qualifications mutually agreed upon by the Parties. Bellevue shall select the Design Consultants and Construction Contractors through a competitive procurement process.

3.1.1 Bellevue shall develop the scope and evaluation criteria for the Design Consultants and Construction Contractors and shall provide a copy to Sound Transit for its review. Within fifteen (15) business days following its receipt of said criteria, Sound Transit shall provide Bellevue with its approval or disapproval of the scope and evaluation criteria. In the event of such disapproval, the Parties shall work cooperatively and expeditiously to reach a resolution. In the event the Parties cannot reach consensus on the scope or evaluation criteria, the Parties shall utilize the Dispute Resolution Process. If Sound Transit fails to respond within such fifteen (15) Business Days, such submitted scope and evaluation criteria shall be deemed approved.

3.1.2 Review of Proposals. Sound Transit will participate in selecting the Design Consultants and Construction Contractors, and will have a voting member participate in evaluating the candidates.

3.2 Insurance and Liability. Bellevue shall require any contractors or subcontractors for the TAI Elements to maintain insurance as required by Bellevue in its standard contracts, and to name Sound Transit as an additional insured on their required insurance. Bellevue shall also either require any professional services consultants, subconsultants, contractors or subcontractors working on the TAI Elements to carry appropriate levels of Professional Liability insurance coverage during the course of design, engineering, and construction or Bellevue may itself acquire such insurance or self-insure the work. In addition, Bellevue shall require its contractors and subcontractors to indemnify, defend and hold harmless Sound Transit on the same terms and conditions that are required by Bellevue.

3.3 FTA Design and Construction Provisions. Sound Transit has advised Bellevue that it has secured grant funding, including Federal Transit Administration ("FTA") funding which Sound Transit used to purchase the 130th Parcels initially. Bellevue acknowledges receipt of FTA rules, regulations and requirements applicable to the design, development and

construction of the TAIs and, as applicable, the TOD Project, a copy of which is attached hereto as **Exhibit B** and by this reference incorporated herein (the "**FTA Requirements**"). Sound Transit has obligated itself to the FTA Requirements and Bellevue and its contractors shall ensure that all of the FTA Requirements are met to the extent that they are applicable to the TAIs. Bellevue agrees that its and its contractors shall design, develop and construct the TAIs, and as applicable, the TOD Project in accordance with the FTA Requirements and all Requirements of Law. The Parties will work cooperatively to determine which federal clauses and requirements are applicable to which contracts before Bellevue initiates its procurement process for each contract. Questions from the designer or contractors regarding the interpretation or requirements of the FTA Requirements will be directed to Bellevue who will then coordinate with Sound Transit as soon as practicable for resolution.

4. DESIGN OF THE TAIS.

4.1 Design Criteria. Bellevue shall be responsible to Sound Transit for the design of the TAIs, and TOD Project to the extent the TOD Project affects the availability and functionality of the TAIs if the TOD Project is pursued, (the TAIs and TOD Project to the extent the TOD Project affects the availability and functionality of the TAIs if the TOD Project is pursued are collectively referred to herein as "**TAI Elements**") including preparation of copies of design and construction plans and specifications for the Development Plan Option elected including without limitation design plans, engineering studies, construction plans, pre-construction surveys and an estimated construction schedule ("**Design Plans & Specifications**" or "**P&S**"). Bellevue shall ensure that the TAI Elements are designed in accordance with (i) the TAI Requirements set forth as Exhibit A to the Conveyance Agreement, and (ii) all applicable federal, state and local laws.

4.2 Sound Transit Review. Sound Transit shall review, comment, and collaborate in reaching concurrence and resolution of comments for advancing the final design of the TAI Elements. Bellevue shall provide Sound Transit with the P&S (as created or updated) at the 30%, 60% and 100% design levels for Sound Transit's review and approval. Sound Transit's review and approval of P&S shall not be evidence of the adequacy, accuracy or desirability of the same, nor whether the P&S is in conformance with applicable laws, codes and regulations, nor shall it relieve Bellevue from any obligation under the Conveyance Agreement or this Agreement.

4.3 Review Time. Sound Transit shall have fifteen (15) business days to review any P&S submitted by Bellevue and submit comments or approvals, if applicable, to Bellevue regarding the same. If Sound Transit fails to respond within such fifteen (15) business days period, such P&S shall be deemed approved. P&S approvals shall not be arbitrarily withheld, conditioned or delayed, taking into account compliance with TAI Requirements, and applicable federal, state and local laws.

4.4 P&S Review Disputes. If Sound Transit alleges that any P&S do not comply with the requirements set forth in Section 4.1 of this Agreement, or if Bellevue alleges that Sound Transit is arbitrarily withholding P&S approval despite compliance with such requirements, the Parties shall utilize the Dispute Resolution Process.

4.5 P&S Changes. Any material change to the P&S shall be submitted to Sound Transit, clearly indicating the nature and reason for the change, for Sound Transit's review and approval. Sound Transit shall have ten (10) business days to in which to review and approve or make comments and request changes to such proposed changes to the P&S. Bellevue shall make all revisions to the P&S required by Sound Transit within a reasonable amount of time relative to the nature of the change of receipt of Sound Transit's comments. Any subsequent submission requiring Sound Transit's comment or approval or Bellevue's revision shall repeat this process.

5. CONSTRUCTION OF THE TAIS.

5.1 Compliance. Following approval of the final P&S by Sound Transit, Bellevue shall cause the TAI Elements to be constructed in accordance with (i) the P&S that has been 100% approved in advance by Sound Transit ("**Approved P&S**"), (ii) all applicable FTA requirements, criteria, and any grant funding provisions, (iii) all applicable federal, state and local laws, including without limitation public works laws, and (iv) all applicable permits.

5.2 Covenants; Change Orders. Bellevue covenants and agrees that the TAI Elements will be constructed in accordance with the Approved P&S. Bellevue further covenants and agrees that any changes to the Approved P&S that materially affect the appearance, quality or functionality of the TAIs must be submitted to the Sound Transit prior to any such change order being effective. Bellevue shall be required to obtain Sound Transit's approval for any such change order, irrespective of amount; provided, however, that Sound Transit's approval shall not be unreasonably withheld, conditioned or delayed with respect to any change which does not impair compliance with the TAI Requirements and applicable federal, state and local laws.

5.3 Completion. Bellevue agrees that construction of the TAI Elements will proceed expeditiously and continually and that construction of the same will be completed in accordance with the Approved P&S by no later than the In-Service Date.

5.4 Warranty of Completion and Construction. Bellevue agrees that the TAI Elements will be completed in accordance with the Approved P&S free and clear of all liens or encumbrances and within the time set forth herein. Bellevue agrees that the TAI Elements will comply with all applicable building and zoning laws, ordinances, rules, and regulations and that all utility services necessary for the operation of the TAIs shall be provided and shall be adequate for their intended use.

5.5 Bellevue Obligations. Bellevue shall secure, or shall cause the contractor to secure, all permits, environmental reviews, approvals, licenses and inspections necessary for construction of the TAI Elements. Furthermore, Bellevue shall be responsible, or shall cause its contractor to be responsible, as applicable, for compliance with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on construction of the TAI Elements. Bellevue's contract for the construction of the TAI Elements shall include insurance and indemnification as set forth in Section 3.2 of this Agreement, and payment and performance bonds not less than the cost of construction of the TAI Elements. Sound Transit shall be named as an obligee on each payment and performance bond procured in favor of Bellevue for the TAI Elements. Except as set forth herein or in the Conveyance Agreement, the development and

construction of the TAIs, including without limitation any Interim TAIs, shall be at no cost to Sound Transit.

5.6 Sound Transit Obligations. Sound Transit, at its sole cost and expense, shall designate a representative or representatives during construction to assist in responding to requests for information, proposed P&S changes, and other design and construction issues related to the TAI Elements. Bellevue shall invite Sound Transit and its representatives to attend all weekly construction meetings, and Bellevue shall promptly provide copies of all lookahead schedules and other relevant material to Sound Transit and its designated representatives. Sound Transit and/or its representatives shall have access to all TAI related construction work during construction work hours to ensure that the work is being carried out in accordance with the Approved P&S, pursuant to the following procedures: following receipt of the TAI Schedule (defined in Section 7.1 below), Sound Transit will notify Bellevue and Bellevue's Resident Engineer of the on-site TAI related construction work that Sound Transit and/or its representatives will attend. Sound Transit may at any time thereafter modify, including increase, such on-site attendance, and shall provide Bellevue with reasonable notice (under the circumstances) of its modification(s).

5.7 Resident Engineer. Prior to the completion of the Approved P&S and no later than two (2) months prior to Bellevue's anticipated construction start date, Bellevue shall staff or contract with a construction management consultant to secure the services of a full time resident engineer (the "Engineer") to manage the construction contractor who constructs the TAIs. The Engineer or Engineer's designee of similar qualifications shall be available full time when any construction work on the TAIs is occurring and on-site whenever Sound Transit or the Inspector (defined below) is on-site. Sound Transit will coordinate with the Engineer to notify the Engineer when Sound Transit or the Inspector will be on-site. However, access to the site by Sound Transit and the Inspector shall not be conditioned upon the Engineer's availability.

5.8 Start Work. Bellevue shall notify Sound Transit in writing of the anticipated date for the start of construction work of the TAIs and shall invite Sound Transit to all pre-construction conferences. However, notwithstanding the foregoing or anything to the contrary in this Agreement or elsewhere Bellevue shall not commence construction of the TAIs until completion of the Milestone requirements set forth in Subsections 7.1(c)(1)–(4). From and after Bellevue's receipt of title to the Property, nothing herein shall be construed as restricting Bellevue from, engaging in pre-development work on the Property for the TAIs, TOD Project, or Joint Project, or on any properties secured by the Interim TAI Property Right (defined in the Conveyance Agreement) such as soil testing, clearing, grading, equipment storage, utility relocation, and preparing for construction staging. Such work, however, shall not include any construction of permanent structures or buildings, including without limitation foundations, or any other activities which would constitute "commencing construction" of the TAIs or Interim TAIs prior to completion of the Milestone requirements set forth in Subsections 7.1(c)(1)–(4). Bellevue may commence construction of the TOD Project Elements that do not interfere with the TAIs provided the Milestone requirements set forth in Subsections 7.1(c)(1)–(4) are met.

5.9 Access and Staging Coordination. Sound Transit and Bellevue acknowledge that after Sound Transit's conveyance of the Property to Bellevue, Sound Transit may need to utilize portions of the Property immediately adjacent to the 130th Station to support completion

of its Systems Contract, which shall include storage of Conex box, parking for two service vehicles and vehicular and pedestrian access to the 130th Station. Sound Transit acknowledges that Bellevue has plans to construct two roadway projects adjacent to the 130th Station (NE Spring Boulevard Zone 4 and 130th Avenue NE widening) utilizing portions of the Property (collectively, the "**Roadway Projects**"). Sound Transit also acknowledges that Bellevue plans to construct permanent or temporary TAIs on the Property pursuant to this Agreement. Until such time as Bellevue mobilizes on the 130th Parcels for either of the Roadway Projects, or the construction of permanent or temporary TAIs, Sound Transit may utilize the Property for its Systems contract needs, provided Sound Transit shall execute a Right-of-Entry Agreement in the form attached to this Agreement as **Exhibit C ("ROE")**. Pursuant to the ROE, following mobilization for either of the Roadway Projects, or permanent or temporary TAIs ("**Mobilization**"), Sound Transit's contractor shall coordinate with Bellevue's contractor for vehicular and pedestrian access to the 130th Station. Sound Transit acknowledges vehicular access to the 130th Station may be unavailable at times during construction of either of the Roadway Projects or permanent or temporary TAIs. In addition, following Mobilization, Sound Transit's and Bellevue's contractors shall coordinate to locate Sound Transit's Conex box and parking for two Sound Transit service vehicles in close proximity to the 130th Station within adjacent right-of-way or property acceptable to both parties so as not to interfere with construction of either of the Roadway Projects or permanent or temporary TAIs. In addition, Bellevue will include specification language in its contract(s) for the Roadway Projects or temporary or permanent TAIs to require that a Hi Rail Access point to the 130th Station at 130th Avenue NE and NE Spring Blvd or 132nd Avenue NE and NE Spring Blvd be maintained for Sound Transit's Systems Contract.

5.10 Inspections. Sound Transit shall have the right to employ, at its sole cost and expense, the services of an inspector (the "**Inspector**") to act on its behalf during construction of the TAI Elements. The Inspector shall review the Approved P&S and confirm the progress of construction and conformity with the Approved P&S. After complying with the same customary and reasonable access terms and conditions (including any required notice) that the contractor managing construction of the TAIs requires of Bellevue's Engineer, Sound Transit or the Inspector shall at all times when the TAIs are being constructed have the right to enter upon the Property (or other such property where Interim TAIs are being constructed) to inspect construction at their own risk. If such work on the TAI Elements is not in substantial conformity with the Approved P&S, or not performed in a good and workmanlike manner, Sound Transit shall notify the Engineer who will take appropriate action (which may include stopping work among other remedies) to remedy any defective or unauthorized work. Bellevue shall include language in the construction contract documents which allows the Engineer to correct or remedy defects or unauthorized work if the contractor fails to perform any part of the required work. Inspection by Sound Transit of construction of the TAI Elements is for the purpose of protecting the security of Sound Transit, and such inspection is not to be construed as a representation that there will be compliance on the part of any contractors or subcontractors with the P&S, or that construction will be free from faulty material or workmanship.

5.11 Final Inspection and Acceptance. Bellevue shall notify Sound Transit when the TAIs have been completed and are ready for final inspection. Final inspections shall be attended by both Bellevue and Sound Transit. Bellevue shall be responsible for directing any corrective work necessary relating to deficiencies, provided Bellevue shall give such direction in writing

and shall provide a copy to Sound Transit. Once corrective work is complete, Bellevue shall notify Sound Transit and Sound Transit shall have ten (10) business days to give written notice of acceptance or rejection of the applicable work. If Sound Transit does not accept or reject the corrective work within such ten (10) day period, such work shall be deemed accepted by Sound Transit.

5.12 As-Built Plans. A complete set of final as-built plans for the TAIs will be provided to Sound Transit upon completion of the TAIs and acceptance of the same by Sound Transit. At least two copies of the foregoing shall be simultaneously provided to Sound Transit, one on CAD and one in PDF. Notwithstanding anything to the contrary herein or in the Conveyance Agreement, Bellevue shall be solely responsible for all costs and expenses associated with operating or maintaining the TAIs until Sound Transit receives the final as-built plans for the TAIs.

5.13 Warranty. Bellevue shall warrant to Sound Transit the TAIs against defects caused by poor workmanship or defective materials for a period of one year from date of acceptance by Sound Transit. Additionally, at Sound Transit's election upon expiration of the one year warranty period, Bellevue shall assign to Sound Transit any warranties and guarantees associated with the TAIs that Sound Transit owns, operates or maintains, from all contractors, subcontractors and vendors.

5.14 Construction Acceptance Disputes. If Sound Transit alleges that the completed construction does not comply with the requirements of the MOU, Conveyance Agreement, or this Agreement, or if Bellevue alleges that Sound Transit is unreasonably withholding construction approval despite compliance with such requirements the Parties shall utilize the Dispute Resolution Process.

6. SOUND TRANSIT ADDED WORK. Sound Transit may request Bellevue to add additional work within the design and construction of the TAIs. Such requests shall be made in writing and shall describe the additional work required to be accomplished. The Parties shall agree on what additional work will be included, which does not jeopardize grant funding or other obligation requirements including but not limited to delivering the completed TAIs ready for the Permitted Use (defined in the Conveyance Agreement) by the In-Service Date. Upon agreement to the scope of work to be added, Sound Transit shall be solely responsible for all costs due for the requested and agreed to additional work, and shall pay such costs within 45 days of invoice by Bellevue.

7. MILESTONES AND QUARTERLY MEETINGS.

7.1 Milestones. Certain specific events associated with the TAIs (the "Milestones") must be accomplished as set forth in this Article 7 below. The term "TAIs" in this Article 7 shall refer to permanent TAIs on the Property conforming to the requirements set forth in Exhibit A to the Conveyance Agreement unless otherwise noted. Upon request from Bellevue, Sound Transit will provide a concurrence letter upon review and approval at each of the Milestones. This concurrence letter will provide Sound Transit's approval and acknowledgement that the Milestone has been completed.

a. April 30, 2020. On or before April 30, 2020, Bellevue shall communicate with Sound Transit in writing regarding the following:

- (1) Bellevue's Development Plan Election (as defined in the Conveyance Agreement).
- (2) The status of Bellevue's procurement of a third party developer pursuant to the terms of this Agreement, if any such procurement has been made.
- (3) Whether and how Bellevue plans to secure Interim Property Rights (defined in the Conveyance Agreement).

b. November 30, 2020. This Subsection 7.1(b) only applies if Bellevue utilizes Interim TAIs. On or before November 30, 2020, Bellevue shall communicate in writing with Sound Transit regarding the status of securing Interim Property Rights (defined in the Conveyance Agreement).

c. May 31, 2021. On or before May 31, 2021, all Interim TAI Property Rights (defined in the Conveyance Agreement) shall have been secured if Bellevue is developing and constructing Interim TAIs, and all of the following shall have occurred for either the TAIs or the Interim TAIs:

- (1) Bellevue has the Approved P&S for the TAIs or for the Interim TAIs.
- (2) Bellevue has committed in writing to a construction completion schedule that ensures that the TAIs or Interim TAIs are completed and available for the Permitted Use by the In-Service Date or Accelerated In-Service Date if applicable as set forth in the Conveyance Agreement ("TAI Schedule").
- (3) Contracts have been executed with all contractors necessary to complete construction of the TAIs or Interim TAIs as scheduled under the TAI Schedule.
- (4) Bellevue has obtained all necessary permits, certificates, licenses and approvals, consents and environmental reviews, reports and clearances required by any governmental body or agency having jurisdiction over the construction of the TAIs or Interim TAIs to commence construction of the TAIs or Interim TAIs.
- (5) Construction has commenced for the TAIs or Interim TAIs.

d. Accelerated In-Service Date. Should Sound Transit elect an Accelerated In-Service Date pursuant to Section 6.3.2 of the Conveyance Agreement, and Bellevue pursue the Bellevue Constructed Interim TAIs pursuant to Section 6.3.2(a), the deadline for all of the requirements set forth in Subsection 7.1(e) below shall be the Accelerated In-Service Date.

e. June 1, 2023. On or before June 1, 2023, the following shall have occurred: Sound Transit has accepted all TAIs or Interim TAIs in complete and fully functional

condition ready for the Permitted Use, provided that Sound Transit's acceptance shall not be arbitrarily withheld, conditioned or delayed, considering the requirements set forth in the Approved P&S; Bellevue has certified to Sound Transit that the TAIs or Interim TAIs have been completed in accordance with the Conveyance Agreement and this Agreement; and Sound Transit has received fully executed lien releases from all persons or entities working on or supplying materials for the TAIs or Interim TAIs, or the time for filing liens shall have expired with none having been filed and unpaid, or Bellevue shall have provided Sound Transit with an appropriate bond or acceptable affirmative title insurance coverage with respect to potential mechanic's or material supplier's liens. This Subsection 7.1(e) shall not apply if Sound Transit elects to construct the Sound Transit Accelerated Interim TAIs pursuant to Section 6.3.2 of the Conveyance Agreement.

f. June 30, 2024. This Subsection 7.1(f) only applies if Bellevue utilizes Interim TAIs. On or before June 30, 2024, all of the following shall have occurred and Sound Transit has reviewed and approved the same in writing:

Bellevue has obtained the Approved P&S including a written construction completion schedule that ensures all permanent TAI Elements are completed on the Property and available for the Permitted Use by June 1, 2026, or other such date as agreed to in writing by Sound Transit pursuant to the terms of this Agreement and the Conveyance Agreement ("**Permanent TAI Scheduled Completion**").

Provided however, this deadline shall be extended to June 1, 2026, (and the Permanent TAI Scheduled Completion shall be extended to June 1, 2028) if Bellevue is actively pursuing a Third Party Agreement to be executed by June 1, 2026, as contemplated in Section 6.4.1 of the Conveyance Agreement.

g. June 1, 2026. This Subsection 7.1(g) only applies if Bellevue utilizes Interim TAIs. On or before June 1, 2026, the following shall have occurred: (1) all permanent TAI Elements have been completely constructed on the Property in accordance with all the terms of the Conveyance Agreement and this Agreement and have been accepted by Sound Transit as complete and in a fully functional condition ready for the Permitted Use, provided that Sound Transit's acceptance shall not be arbitrarily withheld, conditioned or delayed, considering the requirements set forth in the Approved P&S; (2) Bellevue has certified to Sound Transit that the TAI Elements have been completed in accordance with the Conveyance Agreement and this Agreement; and (3) Sound Transit shall have received fully executed lien releases from all persons or entities working on or supplying materials for the TAI Elements, or the time for filing liens shall have expired with none having been filed and unpaid, or Bellevue shall have provided Sound Transit with an appropriate bond or acceptable affirmative title insurance coverage with respect to potential mechanic's or material supplier's liens. This deadline may be extended by two (2) years pursuant to Section 6.4 of the Conveyance Agreement.

7.2 Quarterly Meetings. From and after April 30, 2020, and until all of the events described in Subsection 7.1(g), above have occurred, regardless of the date of their completion, Sound Transit and Bellevue shall hold quarterly meetings at which Bellevue provides Sound

Transit with updated lookahead schedules and status reports regarding the construction schedule for the TAIs or the Interim TAIs.

8. DISPUTE RESOLUTION.

8.1 Each Party will work collaboratively to resolve disputes arising from activities performed under this Agreement and the Conveyance Agreement. Disagreements will be resolved promptly at the lowest level of hierarchy. All Parties shall follow the Dispute Resolution Process set forth in this Article 8.

8.2 The Designated Representatives of each Party as set forth in this Agreement shall use their best efforts to resolve disputes and issues arising out of or related to the tasks and services covered by this Agreement and the Conveyance Agreement. Each Party's Designated Representatives will jointly cooperate in providing staff, and necessary support to facilitate and resolve the performance of this Agreement and the Conveyance Agreement and resolution of any issues or disputes. Either Party may change its Designated Representatives set forth in this Section 8 by written notice to the other Party of the same.

8.3 Each of the Designated Representatives shall notify the other in writing of any issue or dispute that they believe requires resolution. Upon receipt of written notification, the Designated Representatives, and others as may be required, shall meet within three (3) business days or as otherwise mutually agreed in writing to attempt to resolve the issue, problem or dispute.

8.4 "Designated Representatives" at this initial level will be:

City of Bellevue

Ryan Shelton
Project Manager
450 110th Ave NE
Bellevue, WA 98004
Phone: 425-452-4345
RShelton@bellevuewa.gov

Sound Transit

Chad Frederick
Principal Construction Manager
401 S. Jackson Street
Seattle, WA 98104
206-689-4983
Chad.Frederick@soundtransit.org

Alternate:

Maher Welaye
Engineering Manager
450 110th Ave NE
Bellevue, WA 98004
Phone: 425-452-4879
MWelaye@bellevuewa.gov

Jemae Hoffman
Light Rail Development Manager
401 S. Jackson Street
Seattle, WA 98104
206-903-7328
jemae.hoffman@soundtransit.org

8.5 In the event those persons are unable to resolve the dispute, the issue or dispute shall be elevated to the next higher level in hierarchy, and they shall meet within three business days or as otherwise mutually agreed in writing and engage in good faith negotiations to resolve the issue or dispute.

City of Bellevue

Ron Kessack
Assistant Director
Transportation Department
450 110th Ave NE
Bellevue, WA 98004
Phone: 425-452-4631
RKessack@bellevuewa.gov

Sound Transit

Mike Bell
Executive Proj. Dir. – East Link
401 S. Jackson Street
Seattle, WA 98104
206-398-5150
mike.bell@soundtransit.org

8.6 In the event that those persons are unable to resolve the dispute at the Assistant Director or Director level, the issues shall be elevated to Bellevue City Manager and Sound Transit Executive Director for Design, Engineering and Construction Management, and they shall meet within five (5) business days or as otherwise mutually agreed in writing and engage in good faith negotiations to resolve the issue or dispute.

8.7 The Parties agree that they shall have no right to seek relief in a court of law until and unless each of these procedural steps have been exhausted.

9. CONTACT PERSONS.

Bellevue and Sound Transit have designated formal points of contact and coordination for this project as shown below.

City of Bellevue

Ryan Shelton
Project Manager
450 110th Ave NE
Bellevue, WA 98004
Phone: 425-452-4345
RShelton@bellevuewa.gov

Sound Transit

Chad Frederick
Principal Construction Manager
401 S. Jackson Street
Seattle, WA 98104
206-903-7320
chad.frederick@soundtransit.org

10. DEFAULT. No party shall be in default under this Agreement unless it has failed to perform under this Agreement, or the Conveyance Agreement for a period of ninety (90) calendar days after written notice of default from the other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the 90-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; provided that in no event shall a cure take longer than one-hundred eighty (180) days to complete without mutual written consent. Any dispute regarding the existence of a default or appropriate cure shall be handled through the Dispute Resolution Process. Notwithstanding the foregoing or anything to the contrary in this Agreement or elsewhere: (1) in the event that (a) strict performance of any Milestone events set forth in Subsection 7.1(c) fails to occur by the corresponding date set forth above (“**Milestone Failure**”) or if pursuant to Section 6.4.2(a) of the Conveyance Agreement Sound Transit is entitled to exercise the Additional Sound Transit Remedies set forth in Section 14.4 of the Conveyance Agreement, such situation shall be automatically deemed a non-curable default and Sound Transit may, but is not obligated to, upon 15 days written notice, immediately

thereafter pursue any or all remedies available to it; (2) the making by Bellevue of any general arrangement or assignment for the benefit of creditors shall automatically be deemed a default; (3) Bellevue becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Bellevue, the same is dismissed within 60 days) shall automatically be deemed a default; and (4) the levy by judicial process upon or the appointment of a trustee or receiver to take possession of substantially all of Bellevue's assets located at the Property, or Bellevue's interest in this Agreement, where possession is not restored to Bellevue within 30 days shall automatically be deemed a default. In the event that any provision of this Article 10 is contrary to any applicable law, such provision shall be of no force or effect.

11. REMEDIES; ENFORCEMENT.

11.1 The Parties reserve the right to exercise any and all of the following remedies, separately or in combination, and consistent with the dispute resolution and default Sections of this Agreement, in the event of an uncured default under this Agreement:

- a) Commencing an action at law for monetary damages;
- b) Commencing an action for equitable or other relief;
- c) Seeking specific performance of any provision that reasonably lends itself to such remedy; and
- d) The prevailing party (or substantially prevailing party, as determined by the court, if no one party prevails entirely) shall be entitled to reasonable attorney fees and costs.

11.2 Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

11.3 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.

11.4 Additional Sound Transit Remedies for Milestone Failure. The Parties recognize that the Milestone set forth in Subsection 7.1(c) above and certain events set forth in Section 6.4 of the Conveyance Agreement are critical for timely completion of the TAIs (or Interim TAIs) and that at the time of the Milestone deadline set forth in Subsection 7.1(c) and the deadlines in Section 6.4 of the Conveyance Agreement, little or no time thereafter will be available for Sound Transit to ensure that Bellevue will be able to provide the TAIs (or Interim TAIs) for the Permitted Use within the time period agreed upon by the Parties under the terms of Article 6 of the Conveyance Agreement. Accordingly, in addition to the foregoing remedies, in the event of a Milestone Failure or as provided in Section 6.4.2(a) of the Conveyance Agreement, the Additional Sound Transit Remedies set forth in Section 14.4 of the Conveyance Agreement are available to Sound Transit, and except as prohibited in Section 11.9 of this Agreement, Sound Transit may take any or all of the following action(s) to construct the Parking Lot on the Property in accordance with the permanent TAI requirements set forth in Exhibit A to the Conveyance Agreement:

11.4.1 Remove all persons and property located on the Property, exclude Bellevue and/or third parties from the Property.

11.4.2 Enter and take exclusive possession of the Property.

11.4.3 Store any property belonging to Bellevue or its contractors at the sole cost of and for the account of Bellevue.

11.4.4 Make any demolitions, repairs, alterations or modifications to the Property and to any buildings, structures and improvements thereon necessary to construct the Parking Lot on the Property.

11.4.5 Elect for Bellevue to take any of the actions described in the foregoing Subsections 11.4.1 through 11.4.4 above, and any other actions reasonably necessary for Bellevue to obtain exclusive possession of the Property and deliver such exclusive possession of the Property to Sound Transit with the Property in a condition ready for construction of the Parking Lot thereon. Bellevue shall promptly take all such actions, after receipt of written notice from Sound Transit regarding such election. Such election shall not preclude Sound Transit from pursuing the same actions or any other remedies provided for in this Agreement.

11.4.6 Construct the Parking Lot on the Property.

11.4.7 Use all of the Property, or any part thereof for the construction and operation of the Parking Lot. Upon Sound Transit's request, Bellevue shall grant to Sound Transit all easements or other property rights necessary for the same.

11.4.8 Sound Transit shall make written demand to Bellevue for all costs and expenses reasonably incurred in taking the actions described in this Section 11.4 and Bellevue shall promptly reimburse the same. Sound Transit shall provide reasonable documentation of such costs and expenses along with such demand and Bellevue shall have thirty (30) days to process and pay such demands. Any such demanded amount not timely paid shall accrue interest at shall accrue interest at the lesser of six percent (6%) per annum or the maximum amount permitted under applicable law, from and after the thirty-first day after demand was made.

11.5 Bellevue shall promptly cooperate in all respects in Sound Transit's elected actions. No actions taken by Sound Transit under Section 11.4 shall be construed as an election on Sound Transit's part to terminate this Agreement, unless a written notice of Sound Transit's intention to terminate this Agreement is delivered to Bellevue.

11.6 Nothing contained in Section 11 of this Agreement shall adversely affect Sound Transit's right to indemnification under this Agreement or the Conveyance Agreement.

11.7 Liquidated Damages.

Bellevue recognizes that the TAIs are part of the “critical path” for the 130th Station and East Link Project and ample time exists at the time of this Agreement to timely complete the permanent TAIs on the Property. Accordingly, if after Bellevue has executed either the Third Party Agreement or all necessary contracts with the Design Consultants and Construction Contractors (“**Construction Contracts**”) to complete construction of the TAIs, Bellevue fails to complete: (a) the TAIs or Interim TAIs by the In-Service Date or, if applicable, the Accelerated In-Service Date; or (b) the permanent TAIs on the Property by June 1, 2026 (as may be extended pursuant to Section 6.4 of the Conveyance Agreement) (collectively “**TAI Completion**”), then Sound Transit will be damaged and will be entitled to compensation for those damages, but the damages will be extremely difficult and impractical to ascertain for several reasons, including without limitation the following: (i) the damages Sound Transit will be entitled to in a court of law will be based on the value of obtaining adequate alternative TAI’s which will likely be unavailable, difficult to obtain, or fail to meet the standards for the TAIs set forth in Exhibit A to the Conveyance Agreement; (ii) Sound Transit may suffer lost ridership and/or revenue; (iii) it is difficult or impossible to measure the damages Sound Transit will suffer if Bellevue provides Interim TAIs beyond the time permitted in this Agreement and the Conveyance Agreement, but fails to obtain TAI Completion as it has committed to do under this Agreement and the Conveyance Agreement; and (iv) it is impossible to predict as of the date of this Agreement all of the impacts on the 130th Station, East Link Extension Project, and the greater Sound Transit light rail system, which would result should Bellevue fail to obtain TAI Completion and Bellevue desires to limit the amount of damages that Bellevue might be liable for should Bellevue breach this Agreement or the Conveyance Agreement by failing to obtain TAI Completion.

Accordingly, the City shall include a provision (“**Liquidated Damages Provision**”) in either the Third Party Agreement or Construction Contracts requiring the payment of liquidated damages for each working day beyond: (a) the In-Service Date or, if applicable, the Accelerated In-Service Date, until the TAIs or Interim TAIs are complete; and (b) June 1, 2026 (as may be extended pursuant to Section 6.4 of the Conveyance Agreement) until the permanent TAIs are completed on the Property (“**Liquidated Damages**”). The Liquidated Damages Provision shall be in a form mutually agreed-upon by Sound Transit and Bellevue prior to Bellevue’s execution of the Third Party Agreement or Construction Contracts, and it shall authorize the City to withhold the Liquidated Damages from any money due to the developer or contractor under such agreement, and to the extent there is any deficiency after such withholding, to collect the same from the developer or contractor. The Liquidated Damages shall be in an amount to be determined by the Parties in consultation with each other after consideration of relevant factors including those identified in the preceding paragraph above.

For these reasons, the Parties agree that, if TAI Completion fails to occur, Sound Transit may in its sole discretion elect: (y) as its sole and exclusive remedy for said default or breach, to be entitled to payments on the first of each month following the In-Service date or, if applicable hereunder, Accelerated In-Service Date, in an amount equal to the total daily Liquidated Damages arising during the preceding month collected by Bellevue pursuant to its construction contract or the Third Party Agreement; or (z) to pursue any other available remedies. Should Sound Transit elect the foregoing option (y): Bellevue shall continue to collect such payments

and remit the same to Sound Transit until TAI Completion occurs; and Bellevue shall only be responsible for collecting and remitting payment of collected Liquidated Damages, and shall not be responsible for the payment of Liquidated Damages that cannot be collected from third parties. The foregoing limitation on Sound Transit's remedies shall not apply to any other obligations of Bellevue under this Agreement or the Conveyance Agreement including without limitation Bellevue's obligation to provide Interim TAIs, which shall remain in effect until TAI Completion as set forth in this Agreement and the Conveyance Agreement.

 Initials of Sound Transit  Initials of Bellevue

11.8 If Bellevue at any time shall fail to pay any taxes, assessments, or liens, or fails to make any payment or perform any act required to be made or performed by it by this Agreement, the Conveyance Agreement, or any agreement entered into with third parties that relates to the Property or the Interim TAI Property, Sound Transit, without waiving or releasing Bellevue from any obligation or default under this Agreement, the Conveyance Agreement, or any agreement entered into with third parties that relates to the Property or the Interim TAI Property, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account of and at the expense of Bellevue. All sums so paid by Sound Transit and all costs and expenses so incurred shall accrue interest at the lesser of six percent (6%) per annum for the maximum amount permitted under applicable law, from their due date until paid, said payments and interest to be payable to Sound Transit by Bellevue within thirty (30) days of demand for the same by Sound Transit.

11.9 After construction of the TAIs or Interim TAIs has commenced on the Property pursuant to the Approved P&S, Sound Transit shall not take possession of the Property or exclude Bellevue and/or third parties from the Property without first obtaining Bellevue's written permission or a court order authorizing the same.

12. TERMINATION AND RECORD RETENTION.

12.1 This Agreement shall terminate upon completion of the permanent TAIs on the Property under this Agreement and final acceptance of the same by Sound Transit. Neither Bellevue nor Sound Transit may terminate this Agreement prior to acceptance of the completed TAIs on the Property nor may either Party terminate this Agreement without the concurrence of the other Party. Notice of termination shall be provided ten (10) days in advance and followed by written notification. Termination shall be in writing and signed by both Parties.

12.2 During construction of the TAIs and for a period of not less than six (6) years from the date of final acceptance as provided herein, Bellevue will maintain and make available the records and accounts pertaining to the TAIs, for inspection and audit by Sound Transit, and for the use in the event of litigation, claim or any other purpose.

13. GENERAL PROVISIONS.

13.1 **Notice.** 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.

13.1.1 Unless otherwise provided herein, all notices shall be either: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered electronically to the other Party's Designated Representative as listed in Section 9 of this Agreement.

13.2 Time is of the Essence. Time is hereby expressly declared to be of the essence of this Agreement and of each and every term, covenant, agreement, condition and provision hereof.

13.3 Jurisdiction and Venue. 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.

13.4 No Third-party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto. No other person shall have any right of action based upon any provision of this Agreement.

13.5 No Partnership. 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.

13.6 Amendments. No modification or amendment of this Agreement may be made except by written agreement signed by both Parties.

13.7 Severability. If any one or more of the provisions of this Agreement or the applicability of any such provision shall be held invalid or unenforceable, such provision shall be modified to the extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such provision shall not be affected thereby.

13.8 Entire Agreement. This Agreement as incorporated into, and together with, the Conveyance Agreement constitutes the entire agreement of the Parties with respect to the subject matters of this Agreement.

13.9 Capitalized Terms. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Conveyance Agreement.

13.10 Bellevue's Indemnification. Bellevue shall protect, defend, indemnify and save harmless Sound Transit, its officers, employees and agents from any and all costs, claims, judgments and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of Bellevue, its officers, employees and/or agents, in the performance of this Agreement. Bellevue agrees that its obligations under this subsection extend to any claim, demand and/or cause of action brought by, or on behalf of any of its employees or agents. For

this purpose, Bellevue, by mutual negotiation, hereby waives, with respect to Sound Transit only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event Sound Transit incurs any judgment, award and/or cost arising therefrom including attorney's fees to enforce the provisions of this Article, all such fees, expenses, and costs shall be recoverable from Bellevue. To the extent that Claims covered by the foregoing indemnity are caused by or resulting from the concurrent negligence of (a) Sound Transit, its agents, contractors and permittees, and (b) Bellevue, its agents, contractors and permittees, such indemnification shall apply only to the extent caused by or resulting from the negligence of Bellevue, its agents, contractors and permittees.

13.11 Sound Transit's Indemnification. Sound Transit shall protect, defend, indemnify and save harmless Bellevue, its officers, employees and agents from any and all costs, claims, judgments and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of Sound Transit, its officers, employees and/or agents, in the performance of this Agreement. Sound Transit agrees that its obligations under this subsection extend to any claim, demand and/or cause of action brought by, or on behalf of any of its employees or agents. For this purpose, Sound Transit, by mutual negotiation, hereby waives, with respect to Bellevue only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event Bellevue incurs any judgment, award and/or cost arising therefrom including attorney's fees to enforce the provisions of this Article, all such fees, expenses, and costs shall be recoverable from Sound Transit. To the extent that Claims covered by the foregoing indemnity are caused by or resulting from the concurrent negligence of (a) Bellevue, its agents, contractors and permittees, and (b) Sound Transit, its agents, contractors and permittees, such indemnification shall apply only to the extent caused by or resulting from the negligence of Sound Transit, its agents, contractors and permittees.

13.12 Notice of Claims. Any Party making a claim for indemnification pursuant to Section 13.10 or Section 13.11 (an "**Indemnified Party**") must give the Party from whom indemnification is sought (an "**Indemnifying Party**") written notice of such claim (an "**Indemnification Claim Notice**") promptly after the Indemnified Party receives any written notice of any action, lawsuit, proceeding, investigation or other claim (a "**proceeding**") against or involving the Indemnified Party by a government entity or other third party, or otherwise discovers the liability, obligation or facts giving rise to such claim for indemnification; provided that the failure to notify or delay in notifying an Indemnifying Party will not relieve the Indemnifying Party of its obligations pursuant to Section 13.10 or Section 13.11 above, except to the extent that the Indemnifying Party's ability to defend against such claim is actually prejudiced thereby. Such notice shall contain a description of the claim and the nature and amount of such loss (to the extent that the nature and amount of such loss is known at such time).

13.13 THE PARTIES ACKNOWLEDGE THAT THE INDEMNIFICATIONS IN SECTION 13.10 AND SECTION 13.11 ABOVE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM AND THE SAME INDEMNIFICATION PROVISIONS SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

13.14 Survival of Provisions. Except as otherwise expressly provided herein, the covenants, representations, indemnifications, warranties agreements, terms and provisions contained herein shall survive the completion of the TAs on the Property.

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

CENTRAL PUGET SOUND REGIONAL THE CITY OF BELLEVUE
TRANSIT AUTHORITY
(SOUND TRANSIT)

By: [Signature]
Its: Deputy CEO
Date: 10/17/19

By: Toni Call
~~Brad Miyake, City Manager~~
Toni Call, Director Finance & Asset Management
Date: 10/18/19

Approved as to form:

By: [Signature]
Sound Transit Legal Counsel

Approved as to form:

By: [Signature]
Monica A. Buck, Assistant City Attorney

Exhibit A1
to Design And Construction Agreement
Transit Access Improvements At 130th Station

TOD Objectives

[See Attached]



RESOLUTION NO. R2018-10

Adopting an Equitable Transit Oriented Development Policy

MEETING:	DATE:	TYPE OF ACTION:	STAFF CONTACT:
Executive Committee	04/05/2018	Recommend to Board	Don Billen, Acting Executive Director, PEPD
Board	04/26/2018	Final Action	Brooke Belman, Director, Land Use and Development

PROPOSED ACTION

Adopting an Equitable Transit Oriented Development Policy to reflect ST3 and RCW 81.112.350 direction to implement a regional equitable TOD strategy during planning, design, construction and operation of the high-capacity transit system and supersedes Resolution No. R2012-24.

KEY FEATURES SUMMARY

- Recent state law changes and ST3 system plan approval triggered new requirements for Sound Transit to implement an equitable Transit Oriented Development (TOD) strategy and offered new guidance on how Sound Transit disposes of its surplus properties that are suitable for the development of housing.
- The Sound Transit 3 Regional Transit System Plan stated that the necessary board policy changes to reflect the new requirements and direction must be completed within 18 months of voter approval of the system plan.
- The policy:
 - Provides program direction on a strategy to implement regional equitable TOD throughout transit project delivery and operations.
 - Provides guidance on integrating equitable TOD into project delivery.
 - Is in accordance with regional growth plans, including the Puget Sound Regional Council's Growing Transit Communities strategy, by targeting urban growth at transit centers.
 - Emphasizes partnerships and collaboration with local jurisdictions and regional stakeholders.
 - Commits the agency to equitable engagement processes that complements and informs disposition strategies.

BACKGROUND

TOD is a land development pattern that integrates transit and land use by promoting transit ridership while supporting community land use and development visions. TOD strategies focus urban growth around transit facilities and leverage transit investments to help produce regional and local benefits, such as increases in transit ridership, development of housing options, walkable communities, and improved access to jobs and economic opportunities. Transit oriented development was a programmatic component of the ST3 system plan that complements capital project development and guides the disposition of surplus property.

Sound Transit completed a TOD Program Strategic Plan in 2010, which introduced the policy framework for the TOD work program within the context of Sound Transit's mission to implement regional high-capacity transit. Sound Transit's Board adopted a Transit Oriented Development Policy in December 2012 through Resolution No. R2012-24. The 2012 policy established eight goals for the TOD program and directed the agency to consider TOD outcomes early and throughout project delivery. The 2012 policy also established the concept of "Agency TOD," which is the direct implementation of TOD on agency owned property, and "Community TOD," in which the agency plays a supportive role collaborating with others on transit supportive policy and development one-half mile around a Sound Transit station.

Sound Transit updated its TOD strategic plan in 2014 to reflect the 2012 TOD Policy. The policy and strategic plan have provided the foundation for how the agency approaches integrating transit infrastructure and local and regional land use development.

Regional plans and policies, including those of the Puget Sound Regional Council (PSRC), encourage equitable transit communities. The PSRC's Growing Transit Communities Strategy (GTCS), adopted in 2013 and to which Sound Transit is a signatory, defines "transit community" as the approximately one-half mile area around a high-capacity transit station. Equitable transit communities are further described as:

"...mixed-use, transit-served neighborhoods that provide housing and transportation choices and greater social and economic opportunity for current and future residents. Although generally defined by a half-mile walking distance around high-capacity transit stations, they exist within the context of larger neighborhoods with existing residents and businesses. These communities promote local community and economic development by providing housing types at a range of densities and affordability levels, commercial and retail spaces, community services, and other amenities that are integrated into safe, walkable neighborhoods." (PSRC Growing Transit Communities Strategy)

In 2015, the state legislature amended the agency's enabling legislation, directing the agency to advance equitable TOD goals, setting forth specific financial and procedural requirements, and giving new tools to the agency to advance equitable development through prioritizing affordable housing in surplus property disposition. Those statute changes took effect with the November 2016 voter-approved Sound Transit 3 Regional Transit System Plan.

Consistent with the 2015 amendments to the Sound Transit enabling legislation (RCW 81.112.350), the adopted system plan stated that "Sound Transit will 'implement a regional equitable TOD strategy for diverse, vibrant, mixed-use and mixed-income communities consistent with TOD plans developed with community input by any regional transportation planning organization within the regional transit authority boundaries.'"

Additionally, RCW 81.112.350(b)(i) states that, unless certain exceptions apply, "a minimum of eighty percent of [Sound Transit's] surplus property to be disposed or transferred, including air rights, that is suitable for development as housing, must be offered for either transfer at no cost, sale, or long-term lease first to qualified entities that agree to develop affordable housing on the property, consistent with local land use and zoning laws." The statute defines qualified entities as local governments, housing authorities, and non-profit developers.

The statute requires that if a qualified entity accepts the property through the offer, then at least 80 percent of the housing units constructed would need to be affordable to those earning 80 percent of the area median income for the county in which the property is located.

The Sound Transit 3 Regional Transit System Plan stated that the “necessary board policy changes for implementation [of an equitable TOD strategy] must be completed within 18 months of voter approval of [the ST3] system plan” (Page 10). The system plan was approved by the voters on November 7, 2016, which necessitates the agency to adopt any necessary board policy change by May 8, 2018.

TOD Policy Update

The Equitable TOD Policy is consistent with Board, state and ST3 direction. Sound Transit engaged in a year-long effort to fully understand the new direction for the program focusing on equitable TOD and how the agency can begin to adopt strategies in conjunction with updating the TOD policy.

A Board workshop was held in April 2017 to explore the agency's TOD work program in light of the new state statute and ST3 Plan. Eight guiding principles were identified through the workshop:

1. Ensure Board engagement and direction throughout the process.
2. Emphasize flexibility in TOD policy in order to consider wide variety of factors.
3. Reflect statute's housing priorities but be flexible to take into account local plans and context for each site.
4. Facilitate early and ongoing dialogue with local jurisdictions, stakeholders and partners so that TOD complements planning efforts.
5. Collaborate with industry leaders to consider a variety of tools and programs for implementing equitable TOD.
6. Include all financial factors when considering the value for each site.
7. Ensure delivery of capital program and equitable TOD.
8. Shape each offering based on the assessment and desired outcomes for a project.

Over the course of 2017, Sound Transit advanced several TOD transactions to understand how the program operates under the direction and to apply best practices to the policy update. A draft policy scope and five policy priorities were confirmed by the Sound Transit Board in December 2017. The priorities were informed by the 2017 TOD transactions and Board direction, and include:

- Affordable housing development
- Engagement
- Fiscal responsibility
- Flexibility
- Integrated project delivery

In January 2018, an intra-agency work team began updating the TOD policy to reflect Board, the system expansion plan, and statute direction. This effort also included separating process and procedures from the updated TOD policy, reorganizing the policy content to be clearer on direction and to focus on goals and strategies.

Sound Transit's primary responsibility is to complete and expand the high-capacity transit system and deliver transit service that connects the region's urban centers, which is a key step toward meeting local and regional land use goals. This policy provides direction on the disposition of property that first supports the agency's primary mission, but also considers how and when to price property, including discounting or transferring at no cost, to accomplish affordable housing development. The policy also provides ways to leverage funding sources and strategies to facilitate equitable TOD.

The policy provides a framework for assessing and evaluating equitable TOD outcomes early in system planning and throughout all phases of transit project delivery. The policy acknowledges the importance of working with local jurisdictions on equitable TOD outcomes and how they support the overall vision and comp plans of the local community. The concept of Agency and Community TOD is retained in this policy update. The policy describes how acquisition occurs in a manner that is both consistent with state law and promotes TOD. It directs the agency to explore joint or co-development of transit facilities, such as parking or integrated facilities, where appropriate.

Engagement is critical to the success of equitable TOD and the policy emphasizes inclusive and transparent engagement throughout all phases of TOD project development and delivery. The policy also underscores the importance of creating partnerships with private and public entities to deliver equitable TOD outcomes. And finally, the policy confirms that development on property leased by the agency will occur consistent with agency labor standards for Sound Transit construction projects and applicable law.

The draft Equitable TOD Policy is organized by goals and strategies. The goals and strategies outlined in the policy are executed through integrated project delivery, inclusive and transparent engagement process and specific implementation mechanisms.

The goals identified in the policy include the following:

- Increase the value and effectiveness of transit by increasing transit ridership.
- Support implementation of state, regional and local growth plans, policies and strategies.
- Make equitable TOD an integral component of and supportive of transit project planning and delivery.
- Engage a broad cross-section of the public, reflecting diverse communities.
- Encourage creation of housing options near transit with priority given to affordability.
- Encourage convenient, safe multi-modal access to the transit system, with an emphasis on non-motorized access.

FISCAL INFORMATION

The draft Equitable TOD Policy does not directly impact the financial plan. State law now allows for the agency to consider discounting, including transferring at no cost, surplus property to achieve certain affordable housing outcomes. The policy states that when the Board establishes a discounted price for property disposition in order to accomplish affordable housing, that a financial assessment and gap analysis will be conducted before determining a property discount. The market value, development feasibility and financial plan impacts will be considered.

PUBLIC INVOLVEMENT

Staff have been meeting with local jurisdictions, housing developers and funders, regional stakeholders and others since 2017 to discuss ST3 and the new statute direction and implementation of equitable TOD. In late 2017 a series of workshops were held with advocates and affordable housing stakeholders to specifically discuss policy topics. The draft policy was released to regional stakeholders and jurisdictions ahead of the Board process. Following the distribution of the policy a series of briefings, workshops and meetings were held with stakeholders, jurisdictions and housing developers in order to solicit feedback and input on the policy language.

TIME CONSTRAINTS

The ST3 System Expansion Plan set a timeline whereby the Sound Transit Board of Directors must update its policy to reflect new state law and ST3 plan language within 18 months of voter approval. The last Board meeting before the 18 month deadline is April 26, 2018. Delaying this action causes the voter-approved commitment to not be met.

PRIOR BOARD/COMMITTEE ACTIONS

Resolution No. R2013-30: Adopted the Real Property Excess, Surplus and Disposition Policy

Resolution No. R2012-24: Establishes a policy to guide assessment and facilitation of transit-oriented development (TOD).

Motion No. M2000-90: Established the Transit-Oriented Development Program for 2011.

Motion No. M99-60: Adopted Transit Oriented Development evaluation criteria to be used in the process of identifying and/or evaluating proposed development opportunities around Sound Transit facilities.

Resolution No. R99-35: Adopted the Real Property Disposition Policy, Procedures and Guidelines for the disposition of surplus real property.

Motion No. 98-25: Adopted transit oriented development policies to guide staff work and development on and around Sound Transit station areas, transit centers, and park and ride lots.

Motion No. 45: Set forth principles related to the land use and transit work activities of the RTA and established a mission statement to guide the work program of the Transit Oriented Development (TOD) Task Force.

Motion No. 36: Approved the formation of a Transit-Oriented Development Task Force of the board, identified key questions and issues to be addressed, and established a timeline for completion

ENVIRONMENTAL REVIEW

KH 3/23/2018

LEGAL REVIEW

JV 3/30/2018



RESOLUTION NO. R2018-10
Equitable Transit Oriented Development Policy

A RESOLUTION of the Board of the Central Puget Sound Regional Transit Authority adopting an Equitable Transit Oriented Development Policy and superseding Resolution No. R2012-24.

WHEREAS, the Central Puget Sound Regional Transit Authority, commonly known as Sound Transit, was formed under chapters 81.104 and 81.112 of the Revised Code of Washington (RCW) for the Pierce, King and Snohomish Counties region by action of their respective county councils pursuant to RCW 81.112.030; and

WHEREAS, Sound Transit is authorized to plan, construct and permanently operate a high-capacity system of transportation infrastructure and services to meet regional public transportation needs in the Central Puget Sound region; and

WHEREAS, in general elections held within the Sound Transit district on November 5, 1996, November 4, 2008 and November 8, 2016, voters approved local funding to implement a regional high-capacity transportation system for the Central Puget Sound region; and

WHEREAS, Sound Transit's primary responsibility is to complete, expand and operate the high-capacity transit system to deliver transit service that connects the region's urban centers, which is a key step toward meeting local and regional land use goals; and

WHEREAS, in 2015, the Sound Transit Board established core priorities, including, but not limited to, completing the light rail spine, promoting transit-friendly land use and supporting transit oriented development (TOD), to guide the development and evaluation of the system plan; and

WHEREAS, Sound Transit acquires real property for transit purposes to implement voter-approved system plans; and

WHEREAS, when Sound Transit no longer has a transit use for a property or the property may accommodate additional uses, it may declare property surplus or available for joint development and offer the property in a manner consistent with state and federal laws and regulations; and

WHEREAS, chapters 81.104 and 81.112 RCW inform the basis for Sound Transit's involvement in equitable TOD and guide Sound Transit to work with public and private interests to facilitate equitable TOD; and

WHEREAS, regional plans and policies, including those of the Puget Sound Regional Council (PSRC), encourage equitable transit communities and provide regional guidance on TOD, and Sound Transit is a signatory to PSRC's 2013 Growing Transit Communities Compact; and

WHEREAS, as described in the Growing Transit Communities Compact, new market-rate housing trends and subsidized housing resources are not providing sufficient housing choices in transit communities for households earning under 80 percent of area median income; and

WHEREAS, the Growing Transit Communities Partnership adopted the following vision for "equitable transit communities":

Equitable transit communities are mixed-use, transit-served neighborhoods that provide housing and transportation choices and greater social and economic opportunity for current and future residents. Although generally defined by a half-mile walking distance around high-capacity transit stations, they exist within the context of larger neighborhoods with existing residents and businesses.

These communities promote local community and economic development by providing housing types at a range of densities and affordability levels, commercial and retail spaces, community services, and other amenities integrated into safe, walkable neighborhoods.

Successful equitable transit communities are created through inclusive planning and decision-making processes, resulting in development outcomes that accommodate future residential and employment growth, increase opportunity and mobility for existing communities, and enhance public health for socially and economically diverse populations.

WHEREAS, the combined cost burden of housing plus transportation can be substantially reduced by locating affordable housing opportunities in proximity to transit; and

WHEREAS, many communities that are now or may be served by high-capacity transit are home to low-income and minority households and small locally- and minority-owned businesses that are at a potentially higher risk of displacement due to a range of factors; and

WHEREAS, the Sound Transit Board completed a TOD Strategic Plan in 2010 to introduce a policy framework for the agency's TOD work plan, adopted a TOD Policy in 2012 through Resolution No. R2012-24, and updated the TOD Strategic Plan in 2014 to reflect policy direction; and

WHEREAS, the Board-adopted TOD Policy and TOD Strategic Plan provide the foundation for how the agency approaches integrating transit infrastructure and local and regional land use development; and

WHEREAS, RCW 81.112.350 directs the agency to advance equitable TOD goals, identifies specific financial and procedural requirements, and authorizes the agency to advance equitable development by prioritizing affordable housing in surplus property disposition; and

WHEREAS, the 2016 voter-approved regional transit system plan commits the agency to pursue and implement land disposition and development strategies that reduce the cost of providing affordable housing, increase transit ridership, leverage state, federal and local affordable housing funding, and are consistent with the retention of federal grant funds where appropriate.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Central Puget Sound Regional Transit Authority that Resolution No. R2012-24 is hereby superseded with an Equitable Transit Oriented Development Policy, which is hereby adopted as follows:

1.0 Scope

- 1.1** The 2016 voter-approved regional transit system plan established TOD as a programmatic component of implementing the agency's mission to plan, build and operate regional mass transit. The system plan directs the agency to implement a regional equitable TOD strategy for diverse, vibrant, mixed-use and mixed-income communities adjacent to Sound Transit stations. This policy responds to that direction by planning for equitable TOD throughout project delivery, emphasizing partnerships and collaboration, and committing the agency to inclusive and transparent engagement throughout every phase of project delivery.
- 1.2** Sound Transit recognizes that equitable transit communities promote local community and economic development by providing housing types at a range of densities and affordability levels, commercial and retail spaces that support job creation, community services, and other amenities that are integrated into safe, walkable neighborhoods. Successful equitable transit communities are created through inclusive planning and decision-making processes, resulting in development outcomes that accommodate future residential and employment growth, increase opportunity and mobility for existing communities, and enhance public health for socially and economically diverse populations. Sound Transit recognizes its role in advancing equitable TOD, which focuses growth around transit facilities and leverages transit investments to produce regional and local benefits such as increased ridership, housing and employment options, and walkable, livable communities. The agency is committed to TOD that is equitable by ensuring that:
 - 1.2.1** The processes to plan, develop and implement TOD are inclusive and reflective of the local community, with the goal of a shared station area vision between the agency, community and local jurisdiction.
 - 1.2.2** TOD outcomes benefit and support existing low-income communities and residents of color.
 - 1.2.3** Station areas include housing options for families of many sizes and various income levels, provide social and economic opportunity for current and future residents, and increase access to regional employment, health and educational centers.

2.0 Policy

- 2.1 Goals.** Sound Transit establishes the following goals for implementing TOD:
 - 2.1.1** Increase the value and effectiveness of transit by increasing transit ridership.
 - 2.1.2** Support implementation of state, regional and local growth plans, policies and strategies.
 - 2.1.3** Make equitable TOD an integral component of and supportive of transit project planning and delivery.
 - 2.1.4** Engage a broad cross-section of the public, reflecting diverse communities.
 - 2.1.5** Encourage the creation of diverse housing options near transit with priority to affordability.
 - 2.1.6** Encourage convenient, safe multi-modal access to the transit system, with an emphasis on non-motorized access.

2.2 Strategies

- 2.2.1 **Integrated project delivery.** Sound Transit facilitates TOD through all phases of its transit projects including early system planning, design, construction, and transit system operations. The agency documents evaluations and decisions to ensure continuity throughout project delivery. Sound Transit utilizes TOD, urban design best practices and engagement with local communities to plan and design station areas that integrate with the surrounding community and promote agency and community TOD opportunities.
- 2.2.2 **Engagement.** Sound Transit fosters relationships with local and regional stakeholders, including, but not limited to, jurisdictions, community organizations, property owners, partners and the public, to implement TOD. The agency works closely with local communities and jurisdictions to develop a vision for station areas and goals for equitable development.
- 2.2.3 **Fiscal responsibility.** Sound Transit makes decisions about TOD delivery in the context of project delivery, consistent with Sound Transit's primary responsibility to build and operate the regional high-capacity transit system. Revenue from property disposition supports the delivery of system expansion projects and programs and transit operations.
- 2.2.4 **Types of TOD.** Sound Transit implements equitable TOD on its excess or surplus property and promotes equitable TOD on non-owned property around its transit facilities. Recognizing that TOD may, and often does, involve a combination of actions by Sound Transit, local and regional stakeholders, and private and public development, the following terms clarify Sound Transit's role:
 - 2.2.4.a **Agency TOD:** Facilitate or create TOD on Sound Transit property that is no longer needed for a transit purpose or has additional capacity that could be utilized for TOD. Agency TOD may include joint development and other partnerships. Sound Transit takes the lead role in identifying and implementing agency TOD strategies.
 - 2.2.4.b **Community TOD:** Support and promote TOD within the area around a Sound Transit facility (generally ½ mile, or a 10-15 minute walk, and along corridors that provide key connections to the regional transit system). Strategies that support community TOD may be identified and facilitated by Sound Transit or by others and may include partnerships.
- 2.2.5 **Partnerships.** Sound Transit seeks partnerships with local and regional stakeholders, as allowed by law, for property acquisition and disposition activities to better deliver transit project elements and TOD. Sound Transit generally defines a TOD partner as a public or private entity that adequately shares in risks and benefits and commits time and resources to achieving TOD goals near Sound Transit projects.
- 2.2.6 **Housing options.** Sound Transit seeks proposals from developers that align with local goals and deliver a variety of housing options within its TOD projects to support various income levels and family sizes. Sound Transit explores home ownership models, disposition strategies that allow for mixed-income development, and community/mission ownership opportunities.

- 2.2.7 **Property acquisition.** Sound Transit acquires property for transit purposes. During acquisition of land sufficient to construct and operate the transit facility, Sound Transit considers how potential excess or surplus property after construction may be used for TOD, including such factors as size, configuration and relationship to a future transit facility. This consideration allows the agency to make intentional decisions about property acquisitions and how the final footprint of the agency's constructed facility may allow future excess Sound Transit property or adjacent property to be effectively developed into agency or community TOD.
- 2.2.8 **Property disposition.** Sound Transit disposes of property, in a manner consistent with federal requirements and state law prioritizing affordable housing, to support agency projects, plans and goals including the implementation of a regional equitable TOD strategy.
- 2.2.9 **TOD completion.** Sound Transit strives for the completion of agency TOD at the time the transit project opens or service begins, while considering the agency's property needs for construction and operations of the transit system.
- 2.3 **External Engagement Approach.** Sound Transit commits to inclusive and transparent engagement, starting early in transit project development and throughout project delivery. Sound Transit:
 - 2.3.1 Collaborates with local and regional stakeholders to articulate a development vision and goals for station areas when planning and developing transit projects.
 - 2.3.2 Resources engagement efforts to be equal in opportunity, accessibility and inclusive of existing low-income and minority populations, with particular emphasis on underrepresented communities.
 - 2.3.3 Engages jurisdictions having local land use authority early in project planning to leverage Sound Transit investments to implement agency and community TOD, consistent with local plans.
 - 2.3.4 Works with local and regional stakeholders to shape local plans that support Sound Transit's investments, encourage TOD-supportive public policy and promote TOD best practices.
 - 2.3.5 Seeks input through public engagement that informs, involves, and empowers people and communities. Engagement strives to include low-income communities, communities of color, immigrants, refugees, and other underrepresented and vulnerable populations.
 - 2.3.6 Uses a variety of innovative methods and technology to reach and engage stakeholders, including outreach and communication methods relevant to specific low-income, minority or immigrant populations reliant on interpretation or translation services.
- 2.4 **Integrated Project Delivery Approach**
 - 2.4.1 **Sound Transit commits to TOD analysis and measures early in system planning and throughout transit project delivery.** Sound Transit:
 - 2.4.1.a Incorporates TOD criteria as a decision-making factor during alternatives development, alternatives selection, design and transit project delivery activities. Sound Transit reports through project development on how project decisions affect and support TOD. For example, criteria could

include consideration of land use and local comprehensive plans, as well as feasibility of redevelopment.

- 2.4.1.b Considers how the siting, configuration, design and use of a transit facility connects to adjacent land uses and results in high-quality public spaces and a sense of place.
- 2.4.1.c Identifies and pursues strategies that minimize displacement of existing businesses and individuals from properties impacted by Sound Transit.
- 2.4.1.d Incorporates sustainability measures in TOD, including, but not limited to, green building standards for development, shared utilities or other site-specific measures that support feasible sustainable development practices.
- 2.4.2 **Sound Transit acquires property in a manner that considers TOD in selecting among otherwise reasonable and legally permissible alternatives for the acquisition, use and disposition of land.** Sound Transit considers how the siting, configuration or design of a transit facility may affect or facilitate:
 - 2.4.2.a Availability of air rights for TOD.
 - 2.4.2.b Availability of excess or surplus for TOD.
 - 2.4.2.c Opportunities for community TOD.
 - 2.4.2.d Access and connections between a transit facility and community TOD.
 - 2.4.2.e Configuration of developable remaining parcels, while avoiding the creation of unbuildable, residual parcels whenever possible.
- 2.4.3 **Sound Transit pursues joint or co-development of transit facilities, where such opportunities exist.** Sound Transit:
 - 2.4.3.a Considers alternative methods to deliver transit project elements and TOD.
 - 2.4.3.b Evaluates options to co-locate transit facilities and TOD, including mixed- and shared-use parking.

2.5 Equitable TOD Implementation Approach

- 2.5.1 **Sound Transit generates revenue through property disposition to support the delivery of the agency's voter-approved plans.** Sound Transit:
 - 2.5.1.a Develops and implements an approach for its surplus property and joint development portfolio to satisfy the revenue projections identified within Sound Transit's financial plan.
 - 2.5.1.b Implements property discounts, including no cost transfers where appropriate, to achieve affordable housing development, consistent with state law. All property discounts, if offered, for affordable housing development will be determined by the Board and informed by a financial assessment that includes relevant project, corridor and overall system expansion delivery analysis, as well as a gap analysis demonstrating the necessity of the property discount for the project to succeed. A property discount must be commensurate with the affordable housing outcomes achieved.

- 2.5.1.c Evaluates opportunities to capture property value to support affordable housing development, including, but not limited to, allowing cross-subsidy across a master development site or through transfer of development rights to a market-rate site generating revenue to support affordable housing development.
- 2.5.1.d Recovers infrastructure costs that support TOD, including joint development.
- 2.5.1.e Sells property as-is except under extenuating circumstances. When Sound Transit is leasing its property for long-term development, the agency may remediate environmental conditions.
- 2.5.1.f Disposes of property in manners consistent with requirements governing the funding used for the property's initial purchase, i.e. recoups any and all federal dollars used to purchase the property, unless otherwise permitted by the Federal Transit Administration.
- 2.5.2 **Sound Transit leverages available funding sources and strategies to facilitate equitable TOD.** Sound Transit:
 - 2.5.2.a Seeks, as appropriate, direct or alternate funding sources to support joint or co-development of property by others.
 - 2.5.2.b Explores local, state and federal funding opportunities that allow for TOD and provide for local flexibility in joint development or property disposition.
 - 2.5.2.c Coordinates with local jurisdictions, housing authorities and other funders on available funding resources for affordable housing projects.
 - 2.5.2.d Builds relationships with affordable housing funders and seeks opportunities to jointly offer properties to qualified entities with committed funding.
 - 2.5.2.e Develops and implements guidelines for investment in a revolving loan fund that considers multiple strategies to promote the development of affordable housing near transit stations or on Sound Transit properties.
- 2.5.3 **Sound Transit maintains a flexible approach to optimize equitable TOD outcomes on its excess or surplus property, including opportunities for affordable housing development.** Sound Transit:
 - 2.5.3.a Develops and implements approaches to determining the suitability of surplus property for housing development to support equitable TOD. These approaches consider individual property characteristics, input from qualified entities and the vision of local municipalities.
 - 2.5.3.b Explores community and mission-based development opportunities that minimize displacement risk for low-income communities and communities of color by utilizing creative development delivery strategies, including community ownership models to build local wealth and support existing populations.
 - 2.5.3.c Develops and implements a TOD portfolio-wide approach, consistent with statutory requirements for affordable housing, prioritizing development near transit stations.

- 2.5.3.d Evaluates qualifications regarding experience, ability to perform, responsiveness to the local community and project financing plans for developers or partners of joint development, disposition or leasing of property before finalizing applicable agreements.
- 2.5.3.e Evaluates projects against TOD criteria, as appropriate, when considering proposals for developing agency TOD opportunities, including, but not limited to, inclusion of space for small businesses, child/health care services and cultural/community institutions.
- 2.5.4 **Development of property leased by the agency will occur consistent with agency labor standards for Sound Transit construction projects.** When Sound Transit leases property around stations for TOD, it will, consistent with law, include in its evaluation criteria whether a proposer demonstrates:
 - 2.5.4.a Inclusion of all members of the workforce, including underrepresented groups, and workforce utilization goals.
 - 2.5.4.b Apprenticeship and work-training opportunities.
 - 2.5.4.c Plans to keep workers safe at job sites.
 - 2.5.4.d Area standards for wages and benefits.
 - 2.5.4.e Equivalent pay for equivalent work for all workers.
- 2.6 **Reporting and Accountability Approach.** Sound Transit develops necessary plans, procedures and/or guidelines to implement this policy. Sound Transit staff report at least annually to the Board to inform the Board on TOD progress.
 - 2.6.1 Sound Transit staff will develop equitable TOD guidelines and/or procedures with direction from Board and input from diverse stakeholders and partners. Equitable TOD guidelines and/or procedures will address, but not be limited to, the following:
 - 2.6.1.a Station area planning and evaluation of joint development opportunities.
 - 2.6.1.b Disposition methods the agency will use for TOD.
 - 2.6.1.c Engagement strategy for planning and implementing TOD.
 - 2.6.2 A regional equitable TOD plan will strategically capture the agency's excess and surplus property inventory in time increments with annual offer and disposition targets identified, tracked and reported to the Board. The agency's excess and surplus property inventory is fluid, and this approach allows the agency to work strategically with local jurisdictions, regional stakeholders, qualified entities and housing funders on portfolio collaboration and coordination. The plan will:
 - 2.6.2.a Identify properties suitable for development as housing that are anticipated to be offered to qualified entities, as defined in statute, and those that will be offered more broadly.
 - 2.6.2.b Capture financial plan assumptions and report the status of recouping the agency's financial plan assumptions for property disposition revenue.
 - 2.6.2.c Align with regional planning efforts.
 - 2.6.3 The Board will receive an annual report on the TOD program status and performance in meeting statutory requirements and other targets identified in the TOD plan. The report will also describe development and implementation of equitable TOD guidelines and/or procedures.

3.0 References

- 3.1 Resolution No. R2016-16 Sound Transit 3 Regional Transit System Plan
- 3.2 Resolution No. R2013-30 Real Property Excess, Surplus and Disposition Policy
- 3.3 Resolution No. R2009-24 Scope Control Policy
- 3.4 Resolution No. 98-20-1 Real Property Acquisition and Relocation Policies, Procedures and Guidelines
- 3.5 Resolution No. 78-2 Delegation of Authority Policy for Procurement, Agreements and Real Property
- 3.6 Resolution No. R2011-15 Inclusive Public Participation and Community Outreach (Title VI) Policy
- 3.7 Resolution No. R2013-03 Parking and System Access Policy
- 3.8 Resolution No. R2007-12 Sustainability Initiative

ADOPTED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on April 26, 2018.



John Marchione
Board Vice Chair

ATTEST:



Kathryn Flores
Board Administrator

**Exhibit A2
to Design And Construction Agreement
Transit Access Improvements At 130th Station**

TOD Objectives

[See Attached]

BelRed TOD Planning Principles

As reviewed and edited by Council January 25, 2016

BelRed TOD Planning Principles

1. Aggressively pursue the objectives of both parties is to establish higher density, mixed use, and walkable station area TOD, concurrent with the start of East Link service.
2. Activate station areas with development that is compact, mixed use and walkable. Higher densities within BelRed station nodes are essential to the BelRed vision, transit ridership, and Bellevue's land use and economic development strategy.
3. Include a mix of housing affordability in TOD to meet adopted BelRed policy targets for affordable housing and the goals of the Growing Transit Communities partnership.
4. Ensure that TOD design fully realizes the BelRed vision, with development oriented to streets and public areas, with innovative green building technologies, and with amenities including parks, open spaces, trail system, and stream restoration.
5. Provide bike and pedestrian connections from station areas, including connections to existing and planned regional trail systems. Connections need to occur early in redevelopment.
6. Include City of Bellevue as lead or co-lead for any technical studies or agreements that involve TOD on Sound Transit surplus parcels at the OMSF or 130th Station.
7. Within the BelRed Vision, provide flexibility to pursue special opportunities, such as the Global Innovation Exchange.
8. Provide for early integration of TOD with other program elements so that TOD can be completed with the start of light rail service.

120th Station Area/OMSF Draft TOD Planning Principles

1. TOD development should be located in closest proximity to future Spring District/120th Station (southern portion of available OMSF acquired parcels).
2. TOD on all Phase 1 OMSF parcels should achieve "critical mass" urban densities that contribute to a vibrant neighborhood center.
3. OMSF TOD parcels (Phase 1 and 2) should provide bicycle and pedestrian connections to the future Eastside Rail Corridor trail system. These connections should be made as early as practicably possible.
4. Phase 1 OMSF TOD parcels should be marketed with the goal of TOD developed on all 3 parcels with the start of East Link service.
5. The City, with Sound Transit and KC Metro shall continue to explore different mechanisms, consistent with the 3-party agreement for the future development of Phase 2 (parcels 4 and 5) of TOD, including the potential future realignment of 120th Ave NE.
6. TOD at the OMSF will forward the BelRed vision for a compact, mixed use and walkable center focused on office with retail, education and housing, including affordable housing.
7. Consider stakeholder input prior to agreements between the City and Sound Transit and other work leading up to the selection of the TOD developer. City of Bellevue will consider community input including "key elements" identified by the Stakeholder group.
8. Encourage innovation in building structures (LEED, Green, living walls, etc.)

130th Station Area TOD Planning Principles

- 1. Integrate the full 300 stall park and ride into a larger TOD facility that advances the BelRed vision and activates the station area.**
- 2. Transfer the 130th parcels to the City at the earliest opportunity in order to best accomplish the partners' goals as stated in the updated MOU. The City will be responsible for ensuring that staging needs are met and park and ride stalls are available at beginning of light rail service; while also advancing development of TOD to serve as a catalyst for other station area development.**
- 3. Include a mix of market and affordable housing in TOD at 130th, utilizing public and private resources.**
- 4. Provide Goff Creek restoration and alignment consistent with BelRed vision; options are shown in the 130th Station Area Plan report.**
- 5. Advance the 130th/BelRed Station Area planning vision for a vibrant, diverse and walkable neighborhood focused on housing that includes affordable housing, retail, and plazas.**
- 6. Explore opportunities for public uses including publicly owned facilities within 130th TOD.**

Exhibit B
to Design And Construction Agreement
Transit Access Improvements At The 130th Station

FTA Requirements

[See Attached]



EXHIBIT B
TO DESIGN AND CONSTRUCTION AGREEMENT
TRANSIT ACCESS IMPROVEMENTS AT 130TH STATION

SECTION 00 73 73 – FEDERAL PROVISIONS

INCORPORATION OF FTA PROVISIONS

1.01 APPLICABILITY OF FEDERAL GRANT CONTRACT

- A. This procurement may be subject to one or more financial assistance contracts between Sound Transit and the U.S. Department of Transportation (DOT), which incorporate the current FTA Master Agreement and Circular 4220.1 as amended.
- B. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1, as amended, and the Master Grant Agreement, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Sound Transit request that would cause Sound Transit to be in violation of the FTA terms and conditions.
- C. The FTA Master Agreement obligates Sound Transit to incorporate certain provisions into this Contract and any lower tier subcontracts at any level and to take appropriate measures to ensure that Contractor and its lower tier Subcontractors at any level comply with certain applicable requirements set forth in the Master Agreement. The following provisions of the FTA Master Agreement are hereby incorporated by reference into this Contract, and the Contractor shall comply with all such requirements.
- D. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Sound Transit and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.
- E. Copies of the FTA Circular 4220.1, as amended, and the Master Grant Agreement are available from Sound Transit.

1.02 FEDERAL FUNDING LIMITATION

The Contractor understands that a portion of the funds to pay for the Contractor's performance under this Contract are anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All such funds must be approved and administered by FTA. Sound Transit's obligation hereunder is, in part, payable from funds that are appropriated and allocated by FTA for the performance of this Contract. If such funds are not allocated, or ultimately are disapproved by FTA, Sound Transit may be required to terminate or suspend the Contractor's services. In such event, the Contract may at Sound Transit's option be terminated for convenience in accordance with these General Conditions.

1.03 NO OBLIGATION BY THE FEDERAL GOVERNMENT

- A. Notwithstanding that the Federal Government may have concurred in or approved the solicitation for this Contract, the Federal Government is not a party to this Contract and has no obligations or



liabilities to any entity other than Sound Transit, including the Contractor and its Subcontractors and Suppliers at any tier.

- B. The Contractor agrees to include the above clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provision.

1.04 CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

- A. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.
- B. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. C. By signing and submitting its Bid, the Bidder certifies as follows:

The certification in this clause is a material representation of fact relied upon by Sound Transit. If it is later determined that the Bidder knowingly rendered an erroneous certification, in addition to remedies available to Sound Transit, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

1.05 FEDERAL LOBBYING RESTRICTIONS

- A. This Contract is subject to Section 319, Public Law 101-121 (31 U.S.C. §1352) and U.S. DOT regulations "New Restrictions on Lobbying," 49 CFR Part 20, which prohibits Federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an office or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federally funded contract, the making of any Federal grant or loan, or entering into any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. Contractors and Subcontractors at any time who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.



- C. The Contractor shall submit the "Certification Regarding Lobbying," included in the Bid documents. The Contractor's signature on this certification shall certify that: a) it has not engaged in the prohibited activity and b) the language of the certification shall be included in all lower tier subcontracts, which exceed \$100,000, and that all such Subcontractors shall certify and disclose accordingly. Sound Transit is responsible for keeping the certification form of the Contractor, who is in turn responsible for keeping the certification forms of Subcontractors. Further, by executing the Contract, the Contractor agrees to comply with these laws and regulations.
- D. If the Contractor has engaged in any lobbying activities to influence or attempt to influence the awarding of this Contract, the Contractor must disclose these activities. In such a case, the Contractor shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities." Sound Transit must also receive all disclosure forms.
- E. The Contractor and any Subcontractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:
 - 1. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Contract; or
 - 2. A change in the person(s) influencing or attempting to influence this federally funded Contract; or
 - 3. A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Contract.

1.06 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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Federal Provisions

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- C. The Contractor agrees to include the above two clauses in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

1.07 ANTI-KICKBACK

- A. Sound Transit and contractors are required to comply with the Copeland "Anti-Kickback" Act, 18 USC § 874 and 40 USC § 276(c), as supplemented in U.S. Department of Labor regulations, 29 CFR Part 3. Under state and federal law, it is a violation for Sound Transit employees, proposers, bidders, contractors or subcontractors to accept or offer any money or benefit as a reward for favorable treatment in connection with the award of a contract or the purchase of goods or services.
- B. "Kick-Back" as defined by Federal Acquisition Regulations (FAR), means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to any prime contractor, prime contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contractor in connection with a subcontract relating to a prime contract.

1.08 CIVIL RIGHTS

In addition to the provisions in Section 00 73 39 00, Diversity Program Provisions, the following requirements pertaining to nondiscrimination and civil rights apply to the underlying contract:

A. Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, Executive Order 11246 as amended, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, gender identity, status as a parent, marital status, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity

The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulation, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive

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orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

As required by 41 CFR 60-1.4, during the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, gender identity, status as a parent, marital status, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, marital status or national origin.
- c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Executive Order 11246, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his or her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246, as amended, and such other sanctions may



be imposed and remedies invoked as provided in Executive Order 11246, amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor will include the portion of the sentence immediately preceding paragraph 1.a and the provisions of paragraphs 1.a through 1.f in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- h. The Contractor and its Subcontractors shall include the equal employment opportunity clause set forth in paragraph 1.a above in each of their non-exempt Subcontracts.

2. Age

In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the "Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. Federal Equal Employment Opportunity Requirements

As required by 41 CFR 60-4.2, the Contractor shall take into account the following provisions in performing the Work:

- a. The Contractor shall comply with the Federal Equal Employment Opportunity (EEO) Requirements.
- b. The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows (unless modified by the federal government):



- Minority participation in each trade (King County) – 7.2%
- Minority participation in each trade (Snohomish County) – 7.2%
- Minority participation in each trade (Pierce County) – 6.2%
- Female participation in each trade (Nationwide) – 6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- c. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) Business Days of award of any construction Subcontract in excess of \$10,000 at any tier for construction work under this Contract. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number of the Subcontractor; estimated dollar amount of the Subcontract; estimated starting and completion dates of the Subcontract; and the geographical area in which the Subcontract is to be performed.
- d. As used in this Notice, and in this Contract, the "covered area" is Snohomish, King and Pierce Counties of the State of Washington.

5. EEO Construction Contract Specifications

As required by 41 CFR 60-4.3, the Contractor shall comply with the following:

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

- a. As used in these specifications:



- (1) "Covered area" is Snohomish, King and Pierce Counties of the State of Washington.
 - (2) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - (3) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - (4) "Minorities" includes:
 - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (c) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.
- b. Whenever the Contractor, or any Subcontractor at any tier subcontracts a portion of the Work involving any construction trade, it shall physically include in each Subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which are set forth in this Contract.
- c. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.



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- d. The Contractor shall implement the specific affirmative action standards provided in paragraphs g(1) through g(16) below. The goals set forth in this Contract are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
 - e. Neither the provisions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
 - f. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
 - g. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
 - (1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - (2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its

unions have employment opportunities available, and maintain a record of the organizations' responses.

- (3) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- (4) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor minority persons or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- (5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under g(2) above.
- (6) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- (7) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.



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- (8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the new media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipate doing business.
 - (9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 - (10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - (11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - (13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - (14) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - (15) Document and maintain a record of all solicitations of offers for subcontract from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

- h. The Contractor is encouraged to participate in voluntary associations which assist in fulfilling one or more of its affirmative action obligations (paragraphs g(1) through g(16) above). The efforts of a contractor association, joint contractorunion, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under g(1) through g(16) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- i. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- j. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.
- k. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- l. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- m. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph g of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the



implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

- n. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- o. Nothing herein provided shall be construed as limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

6. The Contractor also agrees to include these requirements in each Subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

C. Flow Down

The Civil Rights requirements flow down to the Contractor and its subcontractors at every tier.

1.09 BUY AMERICA REQUIREMENTS

- A. The Contractor agrees to comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations in 49 CFR Part 661, which provide that federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General Waivers are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out in section 165(b)(3), of the Surface Transportation Assistance Act of 1982 and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.
- B. A bidder or offeror must submit to Sound Transit the appropriate Buy America certification, attached herein, with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors
- C. Whether or not a Bidder certifies that it will comply with the applicable requirement, Bidder will be bound by its original certification and is not permitted to change its certification after the time that the Bid is submitted, except for clerical error. A Bidder that certifies that it will comply with

00 73 73



the applicable Buy America requirements may not change its certification at any point, and is not eligible for waiver of those requirements. (Buy America Regulations, 49 CFR Part 661.13(c))

- D. If the Bidder is unable to certify compliance, but believes that it may qualify for an exception to the requirement consistent with section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, Sound Transit, on behalf of the Bidder, will tender the request for exception(s) to FTA for review and approval. Sound Transit does not warrant that any such request will be acted upon in accordance with the Bidder's time frame. Failure to achieve an exception will not relieve the Bidder of its responsibilities under this Section.

1.10 CARGO PREFERENCE

Pursuant to 46 CFR Part 381, the Contractor agrees:

- A. To utilize privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.
- B. To furnish within twenty (20) Days following the date of loading for shipments originating within the United States, or within thirty (30) Business Days following the date of loading for shipment originating outside the United States, a legible copy of a rated, commercial ocean bill of lading in English for each shipment of cargo described in paragraph A above to Sound Transit (through the prime Contractor in the case of Subcontractor bills of lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, SW, Washington, D.C., 20590, marked with appropriate identification of the Project.
- C. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Contract.
- D. The Contractor must properly execute and submit with its Bid the "Cargo Preference Certificate" which is included in the Contract Documents, if applicable.

1.11 FLY AMERICA REQUIREMENTS

The Contractor agrees to comply with 49 U.S.C. § 40018 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.



1.12 RECOVERED MATERIALS

- A. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of 40 CFR Part 247.
- B. These requirements flow down to all Contractor and Subcontractor tiers.

1.13 ENERGY CONSERVATION

- A. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- B. These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

1.14 CLEAN WATER

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to Sound Transit and understands and agrees that Sound Transit will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include these requirements in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

1.15 CLEAN AIR

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Contractor agrees to report each violation to Sound Transit and understands and agrees that Sound Transit will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include these requirements in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

1.16 MIGRATORY BIRD TREATY ACT

The Contractor shall comply with the Migratory Bird Treaty Act (MBTA), 16 U.S.C. Sections 703-712, 50 C.F.R. Section 10.13 and all amendments, which makes it illegal for anyone to take, possess, import, export, transport, sell, or offer for sale, purchase, or barter, any migratory bird, or other parts, nests, or eggs of such a bird except unless and except as permitted by regulations or under the terms of a valid permit issued by the Secretary of the Interior.

1.17 SEISMIC SAFETY

The Contractor agrees that any new building or addition to an existing building will be constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety 00 73 73



Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a Subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

1.18 ELECTRONIC AND INFORMATION TECHNOLOGY

When providing reports or other information to Sound Transit, or to the Federal Transit Administration (FTA), among others, on behalf of Sound Transit, the Contractor agrees to prepare such reports or information using electronic or information technology capable of assuring that the reports or information delivered will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

1.19 DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

In addition to the Disadvantaged Business Enterprise Program provisions set forth in Section 00 733 39, the Contractor shall comply with the following requirements:

- A. As a recipient of financial assistance from the federal Department of Transportation (DOT), through the Federal Transit Administration (FTA), Sound Transit developed and administers a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 Code of Federal Regulations (CFR) Part 26. The Contractor shall review and comply with applicable provisions in 49 CFR Part 26 and Section 00 73 39 of this Contract.
- B. The Contractor shall comply with the following assurance:

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Sound Transit deems appropriate.
- C. The Contractor shall include in each Subcontract it awards pursuant to this Contract the following assurance:

"The subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this subcontract. The subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the subcontractor to carry out these requirements is a material breach of this subcontract, which may result in the termination of this subcontract or such other remedy as the Contractor or Sound Transit deems appropriate."

1.20 NO TEXTING WHILE DRIVING

- A. Contractor shall comply with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While December 30, 2009. Contractor shall:



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1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving;
 2. Contractor-owned or Contractor-rented vehicles or Government-owned, leased or rented vehicles;
 3. Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or
 4. Any vehicle, on or off duty, and using an employer supplied electronic device.
 5. Conduct workplace safety initiatives in a manner commensurate with the Contractor's size, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- B. "Driving" is defined as operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.
- C. "Text Messaging" is defined as reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.
- D. Contractor shall include this provision in all subcontracts at all tiers.

Exhibit C
to Design And Construction Agreement
Transit Access Improvements At The 130th Station

Right of Entry Agreement

RIGHT-OF-ENTRY AGREEMENT

Project: 130th Station Conveyance Agreement

Grantor: CITY OF BELLEVUE, a Washington City, a regional

Grantee: CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority of the State of Washington

Abbreviated Legal Description: Portion of the SE 1/4 of the 130th Parcel, B, City of Bellevue Short Plat No. 7612230730

Portion of Lot 130th Station, under Recording

Exhibit only
No need to sign.

Assessor's Property Tax Parcel Number(s): 2825059159, 2825059040, & 2825059191

RECITALS

A. The undersigned, CITY OF BELLEVUE ("City" or "Grantor") and CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, ("Sound Transit" or "Grantee") have entered into that certain Conveyance Agreement for Property At 130th Station (the "Conveyance Agreement"), concerning certain real property described in the Conveyance Agreement. Pursuant to the Conveyance Agreement, Grantee shall construct an at-grade light rail station with platforms located between 130th Avenue NE and 132nd Avenue NE in Bellevue (the "130th Station") to be located immediately adjacent to the future extension of NE Spring Boulevard; and

B. Under the Conveyance Agreement, Grantor has the right to acquire the property described in the attached Exhibit "A" ("130th Parcels") from Grantee upon the satisfaction of certain conditions set forth in the Conveyance Agreement, and the closing under the Conveyance Agreement is expected to occur on or before November 30, 2020; and

C. Grantor and Grantee acknowledge that after Grantee's conveyance of the Property to Grantor, Grantee may need to utilize portions of the 130th Parcels immediately adjacent to the 130th Station to support completion of Grantee's Systems contract, which shall include storage of a Conex box parking for two service vehicles and vehicular and pedestrian access to the 130th Station; and

D. Grantee acknowledges that Grantor has plans to construct two roadway projects adjacent to the 130th Station, commonly known as "NE Spring Boulevard Zone 4" and "130th Avenue NE" (the "Roadway Projects"), utilizing portions of the 130th Parcels.

E. Sound Transit also acknowledges that Bellevue plans to construct permanent or temporary transit access improvements ("TAIs") on the 130th Parcels according to the terms of the Conveyance Agreement.

F. Per that certain Transit Way Agreement separately entered into by Grantor and Grantee, Grantor has already issued Grantee a Right of Way Use permit for use of the right of way for construction of the 130th Station and East Link project.

G. Grantor desires to grant to Grantee a right of entry to the 130th Parcels in accordance with the terms and conditions of this Right of Entry Agreement.

NOW, THEREFORE, in consideration of the terms, covenants and conditions set forth in this Right of Entry Agreement, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **License.**

Grantor hereby grants to Grantee, its successor and/or assigns, a non-exclusive revocable license to access and use the 130th Parcels, subject to the terms and conditions in this Right of Entry Agreement ("**License**").

2. **Pre-Mobilization Use.**

Until such time as Grantor mobilizes on the 130th Parcels for construction of either of the Roadway Projects or permanent or temporary TAIs ("**Mobilization**"), Grantee may access and utilize the 130th Parcels for its Systems contract needs.

3. **Post-Mobilization Use.**

Following Mobilization, Grantee's contractor and Grantor's contractor shall coordinate to: (a) locate one Conex box and park two service vehicles in close proximity to the 130th Station either within right-of-way adjacent to the 130th Parcels or other property acceptable to both Grantor and Grantee so as to reasonably minimize interference with construction of either of the Roadway Projects or permanent or temporary TAIs; and (b) provide Grantee vehicular and pedestrian access to and from said Conex box and parking and the 130th Station. Grantor shall provide Grantee written notice at least two (2) weeks' prior to requiring any relocation of Grantee's Conex box. When providing such notice Grantor shall designate a new location for the Conex box that is reasonably acceptable to Grantee. In addition, Grantor will include specification language in its contract(s) for the Roadway Projects or temporary or permanent TAIs to require that a Hi Rail Access point to the 130th Station be maintained at 130th Avenue NE and NE Spring Blvd or 132nd Avenue NE and NE Spring Blvd for Grantee's use for its Systems contract.

4. **Periods of Unavailability for Vehicular Access.**

Grantee acknowledges that vehicular access to the 130th Station across the 130th Parcels may be unavailable from time to time during construction of either of the Roadway Projects or permanent or temporary TAIs. Grantor's contractor shall notify Grantee's contractor in writing (for which notice email is acceptable) at least: five (5) days prior to vehicular access being unavailable to Grantee.

5. **Notice.**

Due to the need for coordination with Grantor's ongoing construction-related activities taking place on the 130th Parcels, Grantee must notify Grantor prior to any entry onto the 130th Parcels by Grantee and/or Grantee's employees, consultants, agents, contractors, subcontractors and/or permittees. Grantee shall notify Grantor at least forty-eight (48) hours in advance of any desired entry onto the 130th Parcels. Grantee and Grantor shall direct all notification and coordination required under Sections 2, 3, 4 and 5 of this Agreement via electronic mail to the following individuals:

Grantor's representative:

City of Bellevue
Attn: Ryan Shelton
Transportation Engineer
450 110th Avenue NE
Bellevue, WA 98004
425-452-4345
rshelton@bellevuewa.gov

Grantee's representative:

Christopher Cook
Construction Manager – Systems, Design Engineering and Construction Management
Christopher.Cook@soundtransit.org
W 206-903-7234
M 404-747-5704

6. **No Construction or Liens.**

Grantee shall not (i) cause any improvements to be constructed within the 130th Parcels; (ii) conduct any construction activities upon the 130th Parcels; or (iii) cause any liens or encumbrances to attach to the 130th Parcels.

7. **Restoration.**

Prior to expiration of the term of this License, or earlier at the request of Grantor, Grantee shall, at no expense to Grantor, promptly restore the 130th Parcels as near as possible to its condition prior to Grantee's entry thereon, or to such other condition as the parties agree in writing.

8. **Term.**

The term of this License shall commence upon Grantor's execution and Grantee's acceptance below and expire on December 31, 2021.

9. Insurance.

Grantee has provided Grantor with evidence that Grantee is self-insured. Grantee shall require any if its contractors, consultants, subcontractors, agents and permittees entering the 130th Parcels to maintain insurance as required by Grantee in its standard contracts, and to name Grantor as an additional insured on such insurance.

10. Representations and Indemnifications.

Grantee will exercise its rights under this License in accordance with the requirements of all applicable laws, statutes, orders, rules and regulations of any public authority having jurisdiction. Grantee expressly acknowledges that Grantor makes no guarantees, warranties or representations as to the safety or suitability of the Property for the uses authorized under this License. Grantee acknowledges that Grantee is accessing the Property in an "as-is" and "where-is" condition, with all faults and defects, latent and otherwise, and shall assume the risks that adverse physical conditions may not have been revealed by its investigation.

11. Indemnification.

Grantee shall protect, defend, indemnify, and hold harmless Grantor, its officers, employees and agents from and against any and all suits, claims, strict liabilities, costs, liabilities and/or damages, including, without limitation, reasonable attorneys' fees and expenses, (collectively, "Claims") that arise from or relate to the activities of Grantee and/or its officers, employees, consultants, agents, contractors, subcontractors and/or permittees on, about, or with respect to the 130th Parcels. To the extent permitted by RCW 4.24.115 Grantee's obligations under this indemnity shall not apply to the extent that any such claims, costs, liabilities and/or damages arise from the sole negligence of Grantor, or Grantor's agents or employees. Grantee's obligations under this indemnity includes Claims caused by or resulting from the concurrent negligence of (i) Grantor or its agents and employees, and (ii) Grantee or its agents and employees, is valid and enforceable only to the extent of negligence by Grantee or its agents and employees. Grantee waives any immunity that would otherwise be available under the industrial insurance provisions of Title 51 RCW against the Claims to which this immunity extends.

12. Environmental Indemnification.

In addition to all other indemnities provided in this License, Grantee agrees to protect, defend, and indemnify and hold Grantor harmless for any Claims and Costs associated with the presence, removal or remediation of any Hazardous Substance (including petroleum and gasoline products) that are released onto or from the 130th Parcels, or otherwise come to be located on the 130th Parcels as a result of Grantee's use of the 130th Parcels. "Hazardous Substances" for purposes of this section include, but are not limited to, those substances included within the definition of "hazardous substances," "extremely hazardous substances," "hazardous materials," "hazardous chemicals," "toxic substances," "air pollutants," "hazardous wastes" or "solid wastes" in any federal, state or local law, statute, ordinance, regulation, order, or rule pertaining to health, industrial hygiene, environmental conditions, or hazardous substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials

Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.; the Clean Air Act, 42 U.S.C. Section 7401, et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001, et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; or the Occupational Safety and Health Standards, 25 C.F.R. 1910-1000 et seq.; the Model Toxics Control Act, RCW chapter 70.105D, and regulations promulgated thereunder, all as amended to date and as amended hereafter. "Costs" shall include, but not be limited to, all response or remediation costs, disposal fees, investigation costs, monitoring costs, civil or criminal penalties, attorneys' fees, and other litigation costs incurred in connection with such response or remediation.

13. Notice of Claims.

Consistent with Grantee's indemnification obligations herein, Grantor shall give Grantee prompt notice of any Claims directly affecting Grantee about which Grantor has received formal notification. Grantee shall promptly assume responsibility for the Claim or undertake the defense of any litigation on behalf of Grantor. Grantor shall cooperate fully with Grantee in the defense of any Claim associated with this License. Grantee shall not settle any Claim associated with this License directly affecting Grantor without the prior written consent of Grantor, which consent shall not be unreasonably withheld.

14. Non-Waiver of Breach.

A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this License shall not impair the right of the Party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either Party to insist upon strict performance of any agreement, covenant or condition of this License, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

15. Construction.

The Section headings throughout this License are for convenience and reference only and the words contained in them shall not be held to expand, modify, amplify or aid in the interpretation, construction or meaning of this License. In the event of any ambiguity or inconsistency between the terms of this License and any other agreement entered into by Grantor and Grantee including the Conveyance Agreement for Property at 130th Station, and the Design and Construction Agreement Transit Access Improvements at 130th Station, the terms of the other agreements shall control over the terms of this License. Any reference herein to "including" means "including but not limited to."

16. Governing Law and Venue.

This License shall be governed by and construed in accordance with the laws of the State of Washington. The venue for any action to enforce or interpret this License shall lie in the Superior Court of Washington for King County, Washington.

17. **Authority to Bind Parties and Enter Into License.**

The undersigned represent that they have full authority to enter into this License and to bind the parties for and on behalf of the legal entities set forth below.

Dated: _____

GRANTOR: CITY OF BELLEVUE

Toni Call, Finance Director

Approved as _____

By: _____
Monica

Accepted as _____

GRANTEE: ~~Central Puget Sound~~ Regional Transit Authority

Approved as to form:

By: _____

Its: _____

By: _____
Sound Transit Legal Counsel

Exhibit "A"
130th Parcels

Portion of R/W Nos. EL-296, 297 & 299
PIN 2825059159, 2825059040 & 2825059191

PROPERTY AREA:

LOT B, CITY OF BELLEVUE SHORT PLAT NUMBER 75-18 (REVISED), RECORDED UNDER
RECORDING NUMBER 7612230730, IN KING COUNTY, WASHINGTON; AND

THE SOUTH 205 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE
NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 25 NORTH, RANGE 5 EAST, WILLAMETTE
MERIDIAN, IN KING COUNTY, WASHINGTON;

EXCEPT THE EAST 30 FEET THEREOF, AS CONVEYED TO THE CITY OF BELLEVUE FOR ROAD (132ND
AVENUE NORTHEAST) BY DEED RECORDED UNDER RECORDING NUMBER 7109100202;

AND EXCEPT THE WEST 30 FEET THEREOF, AS CONVEYED TO THE CITY OF BELLEVUE FOR ROAD
(130TH AVENUE NORTHEAST) BY DEED RECORDED UNDER RECORDING NUMBER 5341397;

AND EXCEPT THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SUBDIVISION;

THENCE N88°21'09"W ALONG THE SOUTH LINE OF SAID SUBDIVISION A DISTANCE OF 30 FEET
TO THE WEST LINE OF THE EAST 30 FEET OF SAID SUBDIVISION, BEING THE WEST MARGIN OF
132ND AVENUE NORTHEAST, AND THE POINT OF BEGINNING;

THENCE CONTINUING N88°21'09"W ALONG SAID SOUTH LINE A DISTANCE OF 595.70 FEET TO
THE EAST LINE OF THE WEST 30 FEET OF SAID SUBDIVISION, BEING THE EAST MARGIN OF
130TH AVENUE NORTHEAST;

THENCE N00°57'18"E ALONG SAID MARGIN A DISTANCE OF 29.60 FEET;

THENCE S88°11'38"E A DISTANCE OF 565.92 FEET;

THENCE S01°48'22"W A DISTANCE OF 14.60 FEET;

THENCE S88°11'38"E A DISTANCE OF 30.05 FEET TO THE WEST MARGIN OF 132ND AVENUE
NORTHEAST;

THENCE S01°02'19"W A DISTANCE OF 13.35 FEET TO THE POINT OF BEGINNING.

CONTAINING 159,269 SQUARE FEET, MORE OR LESS.

Earl J. Bone 2/8/19

130th STATION Legal.doc

Earl J. Bone P.L.S.

2/7/2019

