

**SOUND TRANSIT  
STAFF REPORT**

**MOTION NO. M2002-46**

**Community Development Fund Agreement Executed by Sound Transit and the City of Seattle to Establish, Oversee, and Fund the City of Seattle's Portion of the Transit Oriented Community Development Fund and to Provide Funding Support for Certain Aspects of the Central Link Light-Rail Project**

<b>Meeting:</b>	<b>Date:</b>	<b>Type of Action:</b>	<b>Staff Contact:</b>	<b>Phone:</b>
Finance Committee	3/21/02	Information Briefing, Introduced and referred to Board	Ahmad Fazel, Link Director <b>Ron Lewis, Link Deputy Director</b>	(206)398-5389 (206) 689-4905
Board	3/28/02	Information Briefing	Hugh Simpson, Finance Director	(206) 398-5082
Board	4/25/02	Information Briefing		
Finance Committee	5/2/02	Discussion/Possible Action to Recommend Board Approval		
Board	5/9/02	Action		

<b>Contract/Agreement Type:</b>	<b>3</b>	<b>Requested Action:</b>	<b>3</b>
Competitive Procurement		Execute New Contract/Agreement	4
Sole Source		Amend Existing Contract/Agreement	
Memorandum of Agreement	4	Contingency Funds Required	
Purchase/Sale Agreement		Budget Amendment Required	

4 Applicable to proposed transaction.

**OBJECTIVE OF ACTION**

- To execute an agreement with the City of Seattle to establish, oversee and fund Seattle's portion of the Transit-Oriented Community Development Fund for Southeast Seattle (CDF).

**ACTION**

- Authorize the Executive Director to execute an Agreement with the City of Seattle to establish, oversee and fund the City of Seattle's portion of the Transit-Oriented Community Development Fund for Southeast Seattle, and to provide funding support for certain aspects of the Central Link Light Rail project.

**KEY FEATURES**

- Authorizes the Executive Director to execute an agreement with the City of Seattle for establishment, funding and oversight of the CDF.

**Establishment of Fund:**

- Establishes two accounts:
  - Supplemental Mitigation Account - to be funded and overseen by Sound Transit for the purpose of providing supplemental mitigation of the impacts of Link Light Rail construction and operation within the geographic boundaries of the Fund (in addition to

mitigation Sound Transit provides to impacted businesses and individuals as part of its agency mitigation program).

- Community Development Account – to be funded and overseen by the City of Seattle for the purpose of funding real-estate development and community improvement projects that benefit the residents, businesses, and institutions of Southeast Seattle and increase transit ridership within the geographic boundaries of the Fund.

#### **Funding and Payment Schedule:**

- Provides for \$42.8 million in funding support from City of Seattle in two forms: supporting contributions to Link Light Rail, and direct contributions to the Community Development Account:
  - Seattle shall provide Sound Transit with utility support totaling \$21.5 million, to be used by Sound Transit for expenses directly related to utility-related elements of Link Light Rail. These utility-related elements may include design, procurement, utility construction and utility relocations related to utilities owned by Seattle. All or part of this amount shall be offset by the value of any such utility work done by Seattle under this Agreement and according to the Utility Plan. Sound Transit shall pay a total of \$21.5 million into the Supplemental Mitigation Account.
  - The City shall pay a total of \$21.3 million directly to the Fund for the Community Development Account.
- Establishes conditions precedent to capitalizing the Fund (see below)

#### **Conditions Precedent to Funding Obligations:**

- Conditions in the MOA state that Sound Transit does not need to make its initial payment of up to \$3 million into the Fund until the following condition precedent is met:
  - Establishment of an Entity to Administer the Fund - The entity designated to administer the Fund has been established and staffed pursuant to the Operating Plan such that it has the capacity to accept funds and administer them. Further, both Seattle and Sound Transit have entered into a contract or contracts with such entity to provide for administration of the Fund and oversight of the Accounts. These conditions precedent are for the benefit of both Seattle and Sound Transit.
- Neither party is obliged to make any further payment (or supporting contribution to Link Light Rail) to the Fund until the following additional condition precedent has been satisfied or waived:
  - Sound Transit Entry Into Full Funding Grant Agreement - Sound Transit has executed a Full Funding Grant Agreement with the FTA (“FFGA”) in the amount of \$500 million or in an amount that Sound Transit finds sufficient to implement Link Light Rail on substantially the same schedule and scope as is reflected in Resolution 2001-16, approved by the Sound Transit Board on November 29, 2001. In the event the FFGA is for an amount less than \$500 million, Sound Transit shall present Seattle with a revised financial plan for implementation of Link Light Rail. This condition precedent shall be deemed satisfied unless within sixty (60) days after the presentation of Sound Transit’s financial plan, Seattle declines, by way of a City Council Resolution with the Mayor concurring, or by a resolution adopted by a two-thirds vote of the City Council, to accept Sound Transit’s revised financial plan. This condition precedent is for the benefit of both Seattle and Sound Transit.

#### **Operating Plan, Implementation and Oversight:**

- Steering Committee and community have proposed three essential attributes for the Fund; that it is community controlled, it will be a long-lived asset for the community, and that it has the ability to lend funds. The Steering Committee established through its deliberative

process that the amount of funds necessary for Supplemental Mitigation was \$21.5 million and that it desired the additional \$21.3 million to be available for broader community development purposes.

- Provides for shared oversight, administration and performance evaluation of the Fund between the City of Seattle, Sound Transit and the entity administering the Fund.
- Provides for CDF Steering Committee development of a draft CDF Operating Plan to be evaluated and implemented upon approval by both the Sound Transit Board and City Council in spring 2002. The Operating Plan will include the following Fund elements: customer and financial product descriptions; structure, governance and management of the Fund; operations and risk mitigation, capitalization and financial forecast and an implementation plan.

### **Timeline for implementation**

- Approval of this agreement is an important part of the total implementation of the Fund. However, the following additional activities must take place in order for the Fund to be successfully implemented:
  - Sound Transit Board/Seattle City Council approve execution of Agreement (spring 2002)
  - Operating Plan is adopted by ST Board and City Council (spring 2002)
  - Entity to administer the Fund is established (spring/summer 2002)
  - Sound Transit enters into a contract with the entity to administer the Fund (spring/summer 2002)
  - Sound Transit initial capitalization of Fund.
  - FFGA is executed

### **BUDGET**

The proposed action is consistent with the current board adopted budget. Within the total adopted budget for the Initial Segment of \$2.07 billion, the \$21.5 million is identified within specific line items in the construction phase.

### **FINANCIAL IMPACTS**

The proposed action is affordable within the agency's current long-term financial plan and sub-area financial capacity. Sound Transit's funding for the Mitigation Account is offset by utility support contributions from the City of Seattle. In recognition of the City's near-term financial situation, the City Council approved shifting a portion of payments from the City Light contributions originally scheduled for 2003 and 2004 to 2006. The impacts of these shifts within the utility funding schedule will have an approximate \$650,000 impact to Sound Transit's financial plan. Specifically, the North King County Subarea will need to absorb this impact within the additional financial capacity (possible program adjustments) of \$264 million included in the 2002 Financial Plan.

### **HISTORY OF PROJECT**

On November 18, 1999, the Sound Transit Board established the \$50 million Transit-Oriented Community Development Fund (CDF) for southeast Seattle to increase transit ridership on Central Link Light Rail and to address the impacts of Link Light Rail construction and operation (Resolution No. R99-34). The resolution stated that the cost of the Fund should be offset, to the extent possible, by contributions from the City of Seattle and King County to the Central Link Light Rail project. The FTA included the establishment of the CDF as a mitigation condition of the FTA's Record of Decision on Central Link's Environmental Impact Statement. In addition,

on November 15, 1999, the Seattle City Council adopted Resolution 30073, which committed to making a financial contribution to the CDF.

On August 10, 2000, by Motion No. M2000-72, the Sound Transit Board adopted a motion establishing a community-based steering committee, made up of ten community members and five Seattle, Sound Transit and King County representatives, which would develop a proposal for how the fund would operate. The steering committee has made significant progress working with Sound Transit, City of Seattle and King County staff, consultants, the public and the C-Link Task Force in developing its operating plan proposal for the CDF. The Steering Committee plans to bring the CDF operating plan to the Sound Transit Board for consideration and approval in spring 2002.

Simultaneously, Sound Transit and the City of Seattle have been working together to develop a Memorandum of Agreement for consideration and approval by the Sound Transit Board and Seattle City Council. The agreement with the City of Seattle allows for establishment of the CDF, sets up oversight and establishes funding of Seattle's portion of the Transit-Oriented Community Development Fund for Southeast Seattle.

**Prior Board or Committee Actions  
and Relevant Board Policies**

<b>Motion or Resolution Number</b>	<b>Summary of Action</b>	<b>Date of Action</b>
Reso No. R2001-16	Selected the initial segment of the Central Link Light Rail Project to be constructed and operated by 2009.	11/29/01
Motion No. M2000-72	Related to establishment of a steering committee for the \$50 million Transit Oriented Community Development fund for Southeast Seattle, providing for associated tasks and procedures, and directing staff to develop Memoranda of Understanding with the City of Seattle and King County identifying their offsetting contributions to the Link Light Rail program	8/10/00
Reso No. R99-34	<p>Selected the alignment alternatives and profiles, station locations, and vehicle maintenance base site alternative to be built for the Central Link Light Rail line.</p> <p>(R99-34 - Sound Transit shall establish within the North King County sub-area budget a \$50 million (YOES) Transit-Oriented Community development Fund ("The Fund") to be available to mitigate impacts of the construction and operation of light rail in Southeast Seattle. The cost of this fund shall, to the extent possible, be offset by contributions from the City of Seattle and King County to the Central Link Light Rail Project. The Fund shall be available to the community to fund physical and economic improvements to the Southeast Seattle corridor. The Fund shall be to address project impacts. Sound Transit will work with the City of Seattle and the southeast Seattle Community to develop a process to decide how decisions regarding the use of the Fund will be made. A community advisory panel or panels shall be established to set priorities and make recommendations for the use of The Fund. Expenditures from the Fund shall be generally consistent with the timing of construction of the project, the mitigation of impacts of the project, and promotion of increased ridership. The Fund shall pay all necessary and associated</p>	11/18/99

	administrative, legal and staff support costs, including any economic feasibility studies completed to support the implementation of The Fund's programs.)	
--	--	--

**CONSEQUENCES OF DELAY**

- The Rainier Valley community has an expectation that this Fund will be operational and available when project impacts (real estate and construction activities) begin. In order to allow the Rainier Valley community to utilize financial products from CDF concurrent with property acquisition activities this year, the CDF will need to be in place and operational. This agreement will establish the funding and oversight elements necessary to establish and implement the City of Seattle's portion of the CDF. Delaying execution of the agreement may mean that community members wishing to utilize CDF funds during the early phases of the project may be unable to do so.
- The CDF Steering Committee is developing a draft operating plan necessary for the implementation of the CDF, to be presented to the Board and City Council for consideration and approval in spring 2002.

**REGIONAL PARTNERSHIP AND COOPERATION**

The City of Seattle has worked diligently with Sound Transit for over a year to develop the elements and foundation of the CDF. ST, City of Seattle and King County staff also participate in the CDF Steering Committee, which is now reaching completion of a draft operating plan for the CDF.

**PUBLIC INVOLVEMENT**

- Sound Transit and the City of Seattle have briefed the C-Link Task Force and CDF Steering Committee regularly on the progress and development of the MOA. In addition, staffs from both agencies are active members of the CDF Steering Committee activities. The work of the Steering Committee in developing a draft operating plan for the CDF has been closely tied to the development of the MOA, as adoption of both items by the ST Board and City Council are required to implement the CDF.
- The CDF Steering Committee, composed of 10 elected community members, and staff from Sound Transit, City of Seattle and King County has worked extensively with the Rainier Valley community to develop an operating plan for the CDF and gain feedback from the community on its ongoing work. The Steering Committee holds regular meetings open to the public and other public forums to share progress and receive input. The Committee has facilitated several focus groups and individual meetings with business and property owners and tenants to review and get feedback on its developing financial products and the community's CDF needs.

**DESCRIPTION OF POLICY**

Execution of the MOA enables the CDF to be partially funded and implemented as directed by Motion No. M99-34 and City Council Resolution 30073, in which Sound Transit and the City of Seattle gave direction to create, fund and implement a \$50 million Transit-Oriented Community Development Fund for Southeast Seattle. Execution of this Agreement is also a step toward

demonstrating the agency's compliance with a mitigation measure contained in the FTA's Record of Decision.

## **FACTORS TO CONSIDER**

Sound Transit is initiating discussions with King County to define the terms for King County's funding commitments for the remainder of the CDF (\$7.2 million).

## **RECOMMENDATION(S)**

Staff recommends that the Sound Transit Board approve the MOA for establishment, partial funding and oversight of the CDF with the City of Seattle.

## **LEGAL REVIEW**

JLB 4/7/02

## SOUND TRANSIT

### MOTION NO. M2002-46

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the Executive Director to execute an agreement with the City of Seattle to establish, oversee and fund the City of Seattle's portion of the Transit-Oriented Community Development Fund for Southeast Seattle, and to provide funding support for certain aspects of the Central Link Light Rail project.

#### Background:

On November 18, 1999, the Sound Transit Board established the \$50 million Transit-Oriented Community Development Fund (CDF) for southeast Seattle to increase transit ridership on Central Link Light Rail and to address the impacts of Link Light Rail construction and operation (Resolution No. 99-34). The resolution stated that the cost of the Fund should be offset, to the extent possible, by contributions from the City of Seattle and King County to the Central Link Light Rail project. The FTA included the establishment of the CDF as a mitigation condition of the FTA's Record of Decision on Central Link's Environmental Impact Statement. In addition, on November 15, 1999, the Seattle City Council adopted Resolution 30073, which committed to making a financial contribution to the CDF.

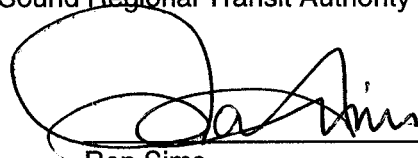
On August 10, 2000, by Motion No. M2000-72, the Sound Transit Board adopted a motion establishing a community-based steering committee, made up of ten community members and five Seattle, Sound Transit and King County representatives, which would develop a proposal for how the fund would operate. The steering committee has made significant progress working with Sound Transit, City of Seattle and King County staff, consultants, the public and the C-Link Task Force in developing its operating plan proposal for the CDF. The Steering Committee plans to bring the CDF operating plan to the Sound Transit Board for consideration and approval in spring 2002.

Simultaneously, Sound Transit and the City of Seattle have been working together to develop a Memorandum of Agreement for consideration and approval by the Sound Transit Board and Seattle City Council. The agreement with the City of Seattle allows for establishment of the CDF, sets up oversight and establishes funding of Seattle's portion of the Transit-Oriented Community Development Fund for Southeast Seattle.

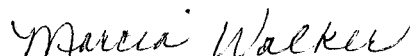
#### Motion:

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the Executive Director is authorized to execute an agreement with the City of Seattle to establish, oversee and fund the City of Seattle's portion of the Transit-Oriented Community Development Fund for Southeast Seattle, and to provide funding support for certain aspects of the Central Link Light Rail project.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on May 9, 2002.

  
\_\_\_\_\_  
Ron Sims  
Board Chair

ATTEST:

  
\_\_\_\_\_  
Marcia Walker

Marcia Walker  
Board Administrator

Motion No. M2002-46



EXHIBIT A TO ORDINANCE

**COMMUNITY DEVELOPMENT FUND AGREEMENT  
EXECUTED BY  
CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY  
AND  
THE CITY OF SEATTLE**

**TO ESTABLISH,  
OVERSEE, AND FUND THE CITY OF SEATTLE'S PORTION OF THE TRANSIT-  
ORIENTED COMMUNITY DEVELOPMENT FUND  
AND TO PROVIDE FUNDING SUPPORT FOR CERTAIN ASPECTS  
OF THE CENTRAL LINK LIGHT-RAIL PROJECT**

This Agreement is between the Central Puget Sound Regional Transit Authority ("Sound Transit") and City of Seattle ("Seattle"). Sound Transit and Seattle agree to establish, oversee, and fund Seattle's portion of the Transit-Oriented Community Development Fund for Southeast Seattle (the "Fund"), according to the terms set forth herein.

**RECITALS**

WHEREAS, Sound Transit's Board of Directors established the Transit-Oriented Community Development Fund (the "Fund") to increase transit ridership on Central Link light rail ("Link light rail") and to address the impacts of Link light rail construction and operation when it adopted Resolution 99-34 on November 18, 1999; and

WHEREAS, Sound Transit Resolution 99-34, adopted November 18, 1999, stated "The cost of [the Fund] shall, to the extent possible, be offset by contributions from Seattle and King County to the Central Link light rail project"; and

WHEREAS, Seattle and King County led efforts to gain Sound Transit approval of a \$50 million Transit-Oriented Community Development Fund and Seattle and King County will finance the Fund's expenditures to a large extent through this Agreement, and through a separate agreement between Sound Transit and King County for the County's contribution of \$7.2 million to the Fund; and

WHEREAS, the Federal Transit Administration ("FTA") required that Sound Transit establish the Transit-Oriented Community Development Fund as a mitigation condition of the FTA's January 2000 Record of Decision on the Central Link light rail Environmental Impact Statement (the "ROD"); and

WHEREAS, entry into this Agreement is intended to satisfy the ROD mitigation condition and the cooperation between the parties herein will ensure that the Fund is more flexible than it otherwise would be if funded and administered solely by one of the parties; and

WHEREAS, the Southeast Seattle community has expressed a desire for significant financial contribution and involvement by Seattle in part because such involvement enhances the flexibility of the Fund and may allow the Fund to become a “revolving fund”; and

WHEREAS, by adoption of Motion 2000-72 on August 10, 2000, Sound Transit’s Board of Directors established a steering committee made up of ten (10) volunteer community members and five (5) Seattle, Sound Transit, and King County representatives (the “Steering Committee”) to propose a detailed operating plan for the Fund; and

WHEREAS, the Steering Committee has held numerous public meetings to develop a proposed operating plan for the Fund, including an assessment that the funding levels for each of the accounts described in this Agreement are the appropriate funding levels for the identified needs, and is on schedule to complete it by April 2002 for consideration by the Sound Transit Board and the Seattle City Council; and

WHEREAS, by adoption of Resolution 2001-16 on November 29, 2001, Sound Transit’s Board of Directors adopted an initial segment that includes construction of light rail in Southeast Seattle; and

WHEREAS, Sound Transit’s Board of Directors directed in Resolution 99-34 that Fund expenditures shall be generally consistent with the timing of construction of Link light rail in Southeast Seattle, the mitigation of impacts of the project, and promotion of increased ridership. Sound Transit expects to begin its property acquisition process in 2002, with the initial impacts to be mitigated occurring soon thereafter in Southeast Seattle; and

WHEREAS, Seattle considers the Central Link light rail project a critical element of the regional transportation system, and as such, recognizes the importance of multi-jurisdictional funding support for Link light rail; and

WHEREAS, Seattle, in Resolution 30073, adopted on November 15, 1999 stated that it is willing to contribute assistance and revenues for the construction of Link light rail; and

WHEREAS, in July, 2000, the parties executed the Agreement Between the City of Seattle and Sound Transit for Grant of Non-Exclusive Use of a Light Rail Transit Way as Related to the Central Link Light Rail Transit Project (the “Non-Exclusive Transit Way Agreement”) authorized by Ordinance 119975 setting forth terms and conditions for Sound Transit’s use of Seattle right-of-way and payment of utility relocation costs incurred as a result of Link light rail construction and implementation; and

WHEREAS, in the Non-Exclusive Transit-Way Agreement authorized by Seattle City Ordinance 119975, Seattle recognized that the Central Link light rail transit system is a public transportation improvement, that it will benefit the citizens of Seattle, and that it is consistent with and promotes the policies in Seattle’s Comprehensive Plan, and in Ordinance 119975 Seattle authorized the construction of the Central Link light rail transit system; and

WHEREAS, Section 15.32.120 of the Seattle Municipal Code provides that Seattle Transportation may direct utility facilities to relocate, at the owner's expense, any underground, surface or overhead facilities which interfere with construction undertaken for a street or transportation purpose authorized by Seattle; and

WHEREAS, Seattle desires to waive a portion of Sound Transit's obligation under Section 3.5 of the Non-Exclusive Transit Way Agreement authorized by Ordinance 119975, which requires Sound Transit to pay for any relocation or protection of City-owned utilities that the City determines is necessary due to construction or operation of the light rail transit system; and

WHEREAS, in the exercise of its right to regulate the use of the public right-of-way, and pursuant to Section 15.32.120 of the Seattle Municipal Code, Seattle finds it appropriate that Seattle and/or Seattle's utilities perform certain infrastructure alterations and relocations to accommodate the Central Link light rail development; and

WHEREAS, Sound Transit, in consideration for Seattle's waiver of a portion of Sound Transit's obligation under Section 3.5 of the Non-Exclusive Transit Way Agreement authorized by Ordinance 119975, desires to provide the maximum amount of \$21.5 million in contributions to the Supplemental Mitigation Account of the Fund as provided in this Agreement; and

WHEREAS, the Fund will be established to preserve and strengthen cultural and economic diversity, long-term livability, and economic opportunity for Southeast Seattle residents, businesses, and institutions and will help mitigate the substantial impacts of constructing Link light rail in Southeast Seattle.

NOW THEREFORE, Seattle and Sound Transit hereby enter into this Agreement to establish, oversee and fund Seattle's portion of the Transit-Oriented Community Development Fund for Southeast Seattle.

## AGREEMENT

**1. Recitals.** The recitals set forth above are incorporated in this Agreement.

**2. Establishment of Fund.** The parties agree to establish, oversee, and fund Seattle's portion of the Transit-Oriented Community Development Fund as set forth in this Agreement. The purposes of the Fund shall be to increase transit ridership within the geographic boundaries of the Fund and to address the impacts of Link light rail construction and operation. The Fund shall be comprised of the two separate accounts (the "Accounts") described below, and shall be administered as provided in this Agreement.

**2.1 Supplemental Mitigation Account.** Sound Transit shall fund and oversee the "Supplemental Mitigation Account" for the purpose of providing mitigation of the impacts of Link light rail construction and operation within the geographic boundaries of the Fund. This mitigation is in addition to mitigation Sound Transit provides to impacted businesses and individuals as part of its agency mitigation program. The funding level established for the

Supplemental Mitigation Account is based on the Steering Committee's assessment of the community's supplemental needs for mitigation of project impacts.

**2.2 Community Development Account.** Seattle shall fund and oversee the "Community Development Account," for the purpose of funding real-estate development and community improvement projects that benefit the residents, businesses, and institutions of Southeast Seattle and increase transit ridership within the geographic boundaries of the Fund.

**3. Operating Plan.** The Steering Committee is expected to present its proposed operating plan for administration of the Fund to the Sound Transit Board and Seattle City Council for consideration by April 2002. By Motion 2000-72, Sound Transit's Board directed the Steering Committee to include in its proposed operating plan the following elements:

"Staffing needs, financial plan, analysis of the market and needs for Fund services, products and services to be delivered by the Fund, policies and procedures, priorities and guidelines for expending funds, the geographic boundaries of the Fund, a timeline including milestones and public meetings to ensure accountability, a form of governance which is consistent with the Sound Transit Board's fiduciary responsibility while also preserving a community-based governing body's authority to make independent decisions about specific uses of the funds."

**3.1 Adoption of the Operating Plan.** Sound Transit's Board and the Seattle City Council shall receive and evaluate the Steering Committee's proposed operating plan. The operating plan shall become effective upon adoption, by the Sound Transit Board and the Seattle City Council, of an identical (to each other) final operating plan (the "Operating Plan") that incorporates, at a minimum, the elements listed above and also specifically provides for the following:

**3.1.1 Establishment.** A process by which the entity designated to administer the Fund will be established and/or staffed in a timely manner so as to achieve its intended purposes, including mitigation of project impacts.

**3.1.2 Governance.** A Fund administrator that has a governance structure sufficient to ensure that decisions regarding the Fund and its expenditures are made openly and are based upon objective written criteria and in a way that avoids conflict of interest or the appearance of such conflict; and that funds are distributed for lawful purposes and in a lawful manner consistent with this Agreement.

**3.2 Approval Date.** The date upon which the latter of the Seattle City Council or the Sound Transit Board adopts the Operating Plan shall be deemed the "approval" date of the Operating Plan.

**3.3 Additional Commitments.** Following adoption of the Operating Plan and establishment of an entity to administer the Fund, Seattle shall cooperate with Sound Transit's efforts, if any, to seek assurances from the FTA that Sound Transit's performance under this

Agreement satisfies the Record of Decision condition as it relates to the Community Development Account of the Fund.

**4. Funding.** Following approval of the Operating Plan the parties shall fund the Fund as set forth in this Section 4.

**4.1 Conditions Precedent to Funding Obligations.** Except as provided in Section 4.3.1, neither party shall be obliged to make an initial payment to the Fund (nor, in Seattle's case, make a supporting contribution to Link light rail) until the conditions precedent expressed below to be for that party's benefit have been satisfied or waived in that party's sole discretion. For Seattle, any waiver must be by way of a City Council resolution with the Mayor concurring, or by a resolution adopted by a two-thirds vote of the City Council. This Agreement shall terminate upon written notice by one party to the other that the notifying party has reasonably determined that a condition precedent for that party's benefit is impossible to achieve, despite that party's reasonable efforts to promote its achievement, and further, the notifying party does not consent to waive such condition precedent.

**4.1.1 Sound Transit Entry Into Full Funding Grant Agreement.** Sound Transit has executed a Full Funding Grant Agreement with the FTA ("FFGA") in the amount of \$500 million or in an amount that Sound Transit finds sufficient to implement Link light rail on substantially the same schedule and scope as is reflected in Resolution 2001-16, approved by the Sound Transit Board on November 29, 2001. In the event the FFGA is for an amount less than \$500 million, Sound Transit shall present Seattle with a revised financial plan for implementation of Link light rail. This condition precedent shall be deemed satisfied unless within sixty (60) days after the presentation of Sound Transit's financial plan, Seattle declines, by way of a City Council Resolution with the Mayor concurring, or by a resolution adopted by a two-thirds vote of the City Council, to accept Sound Transit's revised financial plan. This condition precedent is for the benefit of both Seattle and Sound Transit.

**4.1.2 Establishment of an Entity to Administer the Fund.** The entity designated to administer the Fund has been established and staffed pursuant to the Operating Plan such that it has the capacity to accept funds and administer them. Further, both Seattle and Sound Transit have entered into a contract or contracts with such entity to provide for administration of the Fund and oversight of the Accounts. These conditions precedent are for the benefit of both Seattle and Sound Transit.

**4.2 Seattle Funding.** Seattle shall provide funding support in the amount of \$42.8 million subject to lesser payments under Section 4.2.2.3. This funding support shall be in two forms: (1) supporting contributions to Link light rail, and (2) direct contributions to the Community Development Account. The amounts and conditions of this funding support are set forth below.

**4.2.1 Supporting Contributions to Link Light Rail.** Seattle shall provide Sound Transit with utility support totaling \$21.5 million, to be used by Sound Transit for expenses directly related to utility-related elements of Link light rail (excluding betterments as detailed in the Utility Plan pursuant to Section 6). These utility-related elements may include

the design, procurement, utility construction and utility relocations related to utilities owned by Seattle and required for construction of the light rail transportation project. All or part of this amount shall be offset by the value of any such utility work done by Seattle under this Agreement and according to the Utility Plan. The payments and offsets shall be made as follows:

**4.2.1.1 Sound Transit-Performed Work.** Sound Transit and/or its contractors shall perform utility-related work that would otherwise be the obligation of and/or for the benefit of Seattle Public Utilities and Seattle City Light under this Section 4.2.1 and the Utility Plan, and Seattle shall reimburse Sound Transit for such work performed on or after January 1, 2001, until Sound Transit has received a total of \$21.5 million in payments and offsets. Seattle shall begin making quarterly payments for such utility-related work on July 1, 2003, or 60 days after receipt of Sound Transit's invoice, whichever is later. The first quarterly payment shall be in an amount equal to the value of all Sound Transit-performed work completed and documented in Sound Transit's invoice described in Section 4.2.1.6, subject to the maximum annual contributions shown in Section 4.2.1.4.

**4.2.1.2 City-Performed Work.** In the exercise of its authority as the owner of the right-of-way and under Seattle Municipal Code Section 15.12.130, Seattle may cause Seattle Public Utilities and Seattle City Light to perform utility work under this Section 4.2.1 on or after January 1, 2001, and the value of any such utility work done by Seattle shall offset the amount of payments due from Seattle to Sound Transit under this Section 4.2.1, subject to the maximum annual contributions shown in Section 4.2.1.4. Any such utility work performed by Seattle during calendar year 2001 that is eligible to offset the total amount due will be described in the Utility Plan. Any such utility work performed by Seattle beginning January 1, 2002 will be described in quarterly reports beginning in calendar year 2002 that will detail the value of utility work (including standard Seattle Public Utilities and Seattle City Light overhead charges). Seattle and Sound Transit will agree on a template for the quarterly reports as part of the final Utility Plan pursuant to Section 6. Seattle shall continue to submit quarterly reports until Sound Transit has received a total of \$21.5 million in payments and offsets.

**4.2.1.3 Non-Exclusive Transit Way Agreement.** Seattle is obligated to reimburse Sound Transit for the costs of utility work under this Agreement, and to perform some of the utility work under this Agreement at Seattle's expense, notwithstanding Subsection 3.5 of the Non-Exclusive Transit Way Agreement, unless prevented from doing so by an uncontrollable event as set forth in Section 11. However, Sound Transit remains obligated under Subsection 3.5 of the Non-Exclusive Transit Way Agreement for all costs related to utilities owned by Seattle not specifically exempted by this Agreement.

**4.2.1.4 Contribution Schedule.** The total amount of money to be paid by Seattle to Sound Transit, plus the total value of all utility work performed by the City that is eligible to offset the total amount due under this Section 4.2.1, shall not exceed \$21.5 million. The table below shows the maximum payments/value per year for Seattle City Light and Seattle Public Utilities.

## UTILITY CONTRIBUTIONS

Year	Seattle City Light	Seattle Public Utilities	Total
2003	\$3,000,000	\$1,000,000	\$4,000,000
2004	\$2,500,000	\$1,000,000	\$3,500,000
2005	\$4,600,000	\$1,000,000	\$5,600,000
2006	\$7,400,000	\$1,000,000	\$8,400,000
<b>Total</b>	<b>\$17,500,000</b>	<b>\$4,000,000</b>	<b>\$21,500,000</b>

**4.2.1.5 Sound Transit’s Construction Schedule.** The amounts shown in each year of the utility contribution table in Section 4.2.1.4 are subject to extension due to delays in Sound Transit’s construction schedule. These adjustments will not impact the total contribution of \$21.5 million to be paid by Seattle for utility work. Any acceleration to Sound Transit’s construction schedule, however, will not result in an acceleration of Seattle’s payment for utility work beyond the utility contributions schedule in Section 4.2.1.4 unless agreed to by Seattle through revisions to the Utility Plan.

**4.2.1.6 Invoice and Payments.** All Seattle payments to Sound Transit under this Section 4.2.1 shall be made within 60 days after Seattle receives Sound Transit’s quarterly report and invoice. Seattle and Sound Transit will agree on a template for the quarterly reports as part of the final Utility Plan pursuant to Section 6. In order to qualify for reimbursement by Seattle for work completed in accordance with Section 4.2.1 of this Agreement, Sound Transit must provide documentation of the contractor’s costs in an agreed upon template that: (1) states that Sound Transit has reviewed and approved the work; (2) verifies the work is eligible for reimbursement by Seattle; and (3) includes actual costs and backup information as determined by standard reimbursement policies of Seattle.

**4.2.1.7 Seattle’s Waiver of Sound Transit’s Obligation.** Seattle hereby waives and releases Sound Transit from its obligations under Section 3.5 of the “Non-Exclusive Transit Way Agreement” authorized by Ordinance 119975 to the extent of \$21.5 million.

**4.2.2 City Payments to the Community Development Account.** In addition to the supporting contributions described in the preceding Section 4.2.1, the City shall pay a total of \$21.3 million directly to the Fund for the Community Development Account subject to lesser payments under Section 4.2.2.3. The City shall make every effort to fulfill at least part of its payment obligations under this Section 4.2.2 in the form of Community Development Block Grant or other sources of federal funds. A failure to obtain such federal funding shall, however, not relieve Seattle of its obligations under this Section 4.2.2. The City shall deposit its payments to the Fund as provided in the Operating Plan and shall make the payments under the terms and conditions set forth in this Section 4.2.2.

**4.2.2.1 Payment Schedule A.** Not later than sixty (60) days after the approval of the Operating Plan or achievement or waiver of the conditions precedent designated for Seattle’s benefit under Section 4.1, whichever is later, Seattle shall make an initial \$2 million payment to the Community Development Account, provided that the initial payment

shall not be made before January 1, 2003. In subsequent years, Seattle shall make annual payments, in the same month as the initial payment, in addition to the initial payment, according to the following schedule, and subject to possible revisions pursuant to Section 4.2.2.2:

<b>Year</b>	<b>City Payment</b>
Year 1	Initial \$2,000,000 payment
Year 2	\$2,000,000
Year 3	\$2,000,000
Year 4	\$2,000,000
Year 5	\$2,000,000
Year 6	\$2,000,000
Year 7	\$1,500,000
<b>Total</b>	<b>\$13,500,000</b>

**4.2.2.2 Revisions to Payment Schedule A.** The schedule specified in Section 4.2.2.1 for payments after the initial payment is subject to the following fiscal emergency provision. For purposes of this Agreement, a “fiscal emergency” shall arise when total City General Fund revenue for a year is reasonably projected in the adopted budget to be less than the revenue projected, at the time of adoption of the budget for that next year, to be received in the previous year (the year during which the budget for the next year is adopted). In the event of a fiscal emergency, the payment amount in Section 4.2.2.1 for that next year can be reduced by up to the percentage decline in expected General Fund revenue or by five percent (5%), whichever is less. The reduced payment amount shall be made up and paid in the following year, provided that the percentage growth in total City General Fund revenue reasonably projected to be received in that following year over the revenue projected to be received in the preceding year, is at least as high as the ratio of (a) the reduced payment amount to be made up and paid in that following year, to (b) the payment amount listed in Section 4.2.2.1 for that following year. If needed to comply with this section, a payment shall be made in Year 8, to bring the total paid under Section 4.2.2.1 to \$13.5 million.

**4.2.2.3 Payment Schedule B.** Seattle shall make payments to the Community Development Account in a total amount of up to \$7.8 million in addition to the payments described in Section 4.2.2.1. The following table shows the estimated schedule for these payments, and is based on the estimated annual retail sales and use tax revenue that Seattle will receive due to taxable sales in Seattle for Link light rail construction. This estimated schedule for payments is based on the attached Sound Transit construction schedule (Attachment A).



<b>Year</b>	<b>Estimated City Payment</b>
2002	\$100,000
2003	\$800,000
2004	\$700,000
2005	\$1,000,000
2006	\$2,300,000
2007	\$1,600,000
2008	\$1,300,000
<b>Total Estimated City Payments</b>	<b>\$7,800,000</b>

**4.2.2.4 Revisions to Payment Schedule B.** The estimated annual amounts shown in the table in Section 4.2.2.3 are subject to change due to revisions to Sound Transit's construction schedule. Not later than January 31 of each year, Sound Transit will submit to Seattle an updated schedule showing anticipated construction for Central Link light rail by calendar year for the remainder of the project and completed construction for the previous year. The amount that Seattle shall pay in the then-current year shall equal the estimated retail sales and use tax revenue that Seattle will receive in that year due to taxable sales in Seattle for Central Link light rail, plus or minus any adjustment to reconcile the revised estimate of the previous year's sales tax revenue compared to the original estimate of the previous year's payments. Seattle shall be responsible for calculating any adjustments. Notwithstanding any adjustments to the estimated schedule for payments shown in the table in Section 4.2.2.3, the total amount that Seattle shall pay under Section 4.2.2.3 shall be the total amount of sales and use tax revenue that Seattle receives due to taxable sales in Seattle for Central Link light rail, estimated when the project has been completed, up to a maximum of \$7.8 million.

**4.2.2.5 Payment Cap.** Notwithstanding any other term of this Agreement, the total amount to be paid by Seattle to the Community Development Account shall not exceed \$21.3 million.

**4.3 Sound Transit Payments to the Supplemental Mitigation Account**  
Sound Transit shall pay a total of \$21.5 million into the Supplemental Mitigation Account as described in the Operating Plan.

**4.3.1 Initial Payments.** Notwithstanding the conditions precedent set forth in Section 4.1, Sound Transit shall make initial payments up to \$3,000,000 into the Supplemental Mitigation Account (the "Initial Payments"). Such Initial Payments shall be made on a monthly basis in amounts necessary to pay for the administrative and operating expenses and eligible supplemental mitigation expenses of the Fund as projected in advance by the Fund administrator. The first Initial Payment shall be made within sixty days after both (a) the approval of the Operating Plan and (b) the achievement or waiver by Sound Transit of the condition precedent under Section 4.1.2 (regarding establishment/staffing of an entity to administer the Fund and entry into a contract with that entity). Sixty (60) days after the date on which the conditions precedent set forth in Section 4.1 have been satisfied or waived by Sound Transit, Sound Transit shall pay into the Supplemental Mitigation Account \$3,000,000 less the total of all Initial Payments made to date.

**4.3.2 Subsequent Annual Payments.** One year after Sound Transit makes the first Initial Payment, or sixty (60) days after the date on which the conditions precedent set forth in Section 4.1 have been satisfied or waived by the parties, whichever is later, Sound Transit shall make a payment of \$7,000,000 to the Supplemental Mitigation Account (the “Year 2 Payment”). Each annual payment thereafter shall be made in the same month as the Year 2 Payment was made and shall be made according to the schedule set forth below unless modified as described in Section 4.3.3.

<b>Year</b>	<b>Sound Transit Payments</b>
Year 1	Initial payments: \$3,000,000
Year 2	\$7,000,000
Year 3	\$2,500,000
Year 4	\$2,500,000
Year 5	\$6,500,000
<b>Total</b>	<b>\$21,500,000</b>

**4.3.3 Payment Schedule Acceleration.** No later than 270 days after Sound Transit makes the Year 2 Payment, and on an annual basis thereafter, Sound Transit shall consult with the administrator of the Fund to determine whether the payment schedule for Years 3 through 5 should be accelerated to achieve the purposes of the Supplemental Mitigation Account. If the Fund administrator and Sound Transit agree to an accelerated payment schedule, any additional cost to Sound Transit associated with the accelerated payment schedule shall be deducted from the total payments Sound Transit is obligated to make under this Agreement. Such deductions shall reflect the differences between Sound Transit’s actual payments and the schedule of payments under Section 4.3.2 as well as appropriate discounting to reflect accelerated payments by Sound Transit under this Section 4.3.3. Under an accelerated payment schedule, Sound Transit would be obligated to make payments with a future value no greater than the future value of the original payment schedule as delineated in this Section 4.3 using the borrowing rate included in the Sound Transit 25-year financial plan in effect on the date of any adjustment (the current financial plan includes a rate of 5.85% annually). The process for accelerating the payment schedule, including the method for determining additional costs to Sound Transit, if any, shall be set forth in the contract between Sound Transit and the entity administering the Fund.

**4.4 Use of Excess; Repaid Funds.** In the event a portion of the payments made to the Supplemental Mitigation Account remain after the purposes of the Operating Plan for such Account have been met, or in the event a portion of the funds distributed from the Account as “advances” has been repaid, the funds shall remain in the Fund and be used within its geographic boundaries. The funds shall be used to promote transit ridership in a manner developed in consultation with the community and Seattle, including but not limited to, transit oriented development. In the alternative, the Sound Transit Board may propose additional purposes for such funds. Such additional purposes shall be developed in consultation with the community located within the geographic boundaries of the Fund and with Seattle, and shall be implemented only upon amendment of the Operating Plan in the same manner as the initial Operating Plan was adopted (by Sound Transit Board and Seattle City Council actions).

**4.5 Ongoing Conditions to Funding.** Notwithstanding anything in this Agreement to the contrary, the parties shall have the right to discontinue making further payments required to be made under this Agreement into the Fund and to the Link light rail project under the circumstances described below. Neither party shall exercise this right without first consulting with the other through the dispute resolution process outlined in Section 8 below and attempting to reach satisfactory resolution through that process.

**4.5.1 Cessation of Seattle Payments.** The parties acknowledge that each has a role in the implementation of Link light rail within Seattle, and agree to exercise best efforts to facilitate the timely implementation of the project. Notwithstanding such best efforts, and taking into consideration all relevant circumstances, if Sound Transit does not diligently construct Link light rail, as approved by the Sound Transit Board in Resolution 2001-16 on November 29, 2001, in a timely and fiscally responsible manner, Seattle may cease further payments. Seattle may exercise this right only through a resolution adopted by the City Council, with the Mayor concurring, or by a resolution adopted by a two-thirds vote of the City Council.

**4.5.2 Reciprocal Rights.** If a party fails for any reason (including, but not limited to, insolvency, injunction, failure of a condition precedent, or exercise of a right or remedy under this Agreement, including the exercise of the right to cease payment under Section 4.5.1 or as a result of an uncontrollable event described in Section 11) to make the payments and contributions under this Agreement, then in addition to its legal remedies, the other party may cease further payments.

**5. Oversight of the Fund.** The parties shall share oversight responsibilities for the Fund. Seattle shall oversee the Community Development Account, its administration and expenditures, and Sound Transit shall oversee the Supplemental Mitigation Account, its administration and expenditures.

**5.1 Oversight Objectives and Requirements.** The parties shall oversee the Fund such that the objectives set forth in this Section 5.1 are achieved and may enter into such contracts or agreements with one another and with third parties as may be necessary to do so.

**5.1.1 Administration and Recordkeeping.** The Fund shall be administered in a professional manner by qualified personnel, consistent with this Agreement and with the Operating Plan. The administrator(s) of the Fund shall maintain records that are adequate to fully document Fund finances, including all funds received, income, investments, and expenditures, and the reasons for all expenditures. Records shall be maintained in a manner and duration necessary to satisfy both parties' record retention needs.

**5.1.2 Reports and Audits.** The administrator(s) of the Fund shall provide regular reports to both Seattle and Sound Transit as to Fund finances, including all income, investments and expenditures and the reasons for all expenditures. Each party shall conduct appropriate regular audits of the account it oversees, shall take immediate steps to investigate irregularities, and shall take appropriate and prompt steps to address improper or

unlawful conduct. Each party shall notify the other in writing of such investigations and corrective measures taken.

**5.2 Performance Evaluation.** The parties (through Sound Transit's Light Rail Director, Seattle's Director of Economic Development, and the Executive Director of the entity administering the Fund) shall consult at least quarterly to evaluate the performance of the entity administering the Fund and to discuss any oversight issues that have arisen in the past year. Either party may request such additional consultations regarding performance as the party deems necessary to ensure adequate administration of the Fund.

**6. Utility Plan.** Sound Transit and Seattle shall jointly develop a written Utility Plan that will establish a schedule of utility projects eligible for payment or offset under Section 4.2.1 of this Agreement. This plan shall include a listing of the utility work that counts towards Seattle's \$21.5 million contribution under Section 4.2.1.

**6.1 Schedule.** A draft Utility Plan shall be developed not later than three (3) months after approval of this Agreement based on the best information available and a final Utility Plan shall be completed not later than six (6) months after approval of this Agreement, with annual or more frequent updates as needed. Notwithstanding any revisions over time to the cost of individual utility projects, Seattle's contributions under Section 4.2.1 shall not exceed \$21.5 million in payments and offsets. The Utility Plan shall include an estimate of the dollar value of each project for purposes of payment by or offset to Seattle under Section 4.2.1 of this Agreement. It is understood that this dollar value will likely change based on the actual costs of each project. The parties, however, will make a good faith effort to provide as accurate an estimate as possible in the Utility Plan. Estimates will be updated when applicable contractor bids are opened and contracts are awarded.

**6.2 Utility Work.** Seattle and Sound Transit will perform utility work consistent with the Utility Plan, making practical adjustments to the work performed in response to actual field and construction conditions, and scheduling circumstances. The Utility Plan shall be supplemented with specific scope and project information for each specific project to be undertaken.

**6.3 Utility Plan Recordkeeping.** Each party shall maintain records that are adequate to document all utility costs and expenditures for purposes of reimbursement or offset under Section 4.2.1 of this Agreement.

**6.3.1 Duration.** Each party shall maintain records that are adequate to document all utility costs and expenditures under this Agreement and to document compliance with the terms of this Agreement. These records shall be maintained for a minimum of ten (10) years after all funds have been paid or offset under this Agreement and for any additional period of time during which the party in possession of the records has notice that there is an audit or dispute to which the records may be relevant. Each party shall have the right to inspect, audit and copy the records of the other party required to be maintained under this Agreement, or any part of them, with seven (7) day advance notice after having made reasonable arrangements with the other party to do so.

**6.3.2 Records of Payment and Offset.** Sound Transit shall maintain complete records of money received under this Agreement and of all offsets credited to Seattle for utility work performed by Seattle under this Agreement. Sound Transit also shall in writing promptly acknowledge its receipt of payments, and offsets credited to Seattle.

**6.3.3 Prompt Offset for City Utility Expenditures; Record of Offsets.** Within sixty (60) days after it has received Seattle's quarterly report of utility work done by Seattle under Section 4.2.1 of this Agreement, Sound Transit shall credit Seattle for the undisputed dollar value of the work as reported by Seattle; this credit shall be used to offset and reduce the total amount to be paid by Seattle for utility costs under Section 4.2.1 of this Agreement. Sound Transit shall report each such offset to Seattle within thirty (30) days after it has been credited, and shall maintain complete records of all offsets. The parties shall address disputed values through the process described in Section 8 below.

**6.3.4 Annual Accounting Review.** In the fourth quarter of each year, Sound Transit, Seattle Public Utilities, and Seattle City Light will reconcile offsets and payments.

**6.3.5 Audits.** Each party reserves the right to conduct audits of the other party's records required to be maintained under this Agreement and which relate to matters arising under this Agreement, or to retain an independent Certified Public Accountant to conduct such audits.

**7. Default and Remedies.** If either party defaults on its obligations under this Agreement, the other party shall have all remedies available at law or equity, in addition to those remedies specifically allowed by this Agreement.

**8. Dispute Resolution.** The parties are committed to resolving disputes cooperatively and expeditiously. The parties will use the processes set forth below to resolve disputes. The Designated Representatives of the parties identified below shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement.

**8.1 Designated Representatives.** Sound Transit's Designated Representative shall be the Director of Link Light Rail. Seattle's Designated Representative shall be the Director of Economic Development or in the case of a dispute regarding Seattle's utilities, either the Superintendent of Seattle City Light or the Director of Seattle Public Utilities as is appropriate. Each party may change its Designated Representative through written notice to the other.

**8.2 Notification and Consultation.** Each Designated Representative will notify the other in writing of any problem or dispute that needs to be resolved. The Designated Representatives shall consult within three (3) business days of receiving the written notice to attempt to resolve the issue or dispute.

**8.3 Negotiation.** In the event the Designated Representatives cannot resolve a dispute, the Sound Transit Executive Director and Seattle's Deputy Mayor shall consult within seven (7) business days after the Designated Representatives notify them in writing and shall engage in good faith negotiations to resolve the dispute.

**8.4 Exercise of Remedies.** Neither Sound Transit nor Seattle shall have the right to exercise remedies set forth in this Agreement or to seek relief under this Agreement in court until each of the foregoing procedural steps has been taken.

## **9. Indemnification**

**9.1 Negligence.** Each party agrees to hold harmless and defend the other from all claims and liability to the extent of the indemnifying party's negligent acts, errors, or omissions, or those of its agents, subcontractors, or employees, in performing obligations under this Agreement. It is expressly agreed that each party's obligations under this Section 9.1 shall be effective only to the extent of its own negligence and this paragraph shall not be construed to require one party to defend, indemnify, or hold harmless the other party from any claims, damages, or losses to the extent caused by the other party's negligence.

**9.2 Breach of Contract.** Each party agrees to hold harmless and defend the other from all claims, losses or liability to the extent such claims, losses, or liability arise from a breach of this Agreement by that party.

**9.3 Limitation.** The obligation of the indemnifying party shall be contingent upon (1) receipt of prior written notice of any matter for which indemnification is sought; (2) the opportunity to defend or settle any matter for which indemnification is sought; and (3) the cooperation of the indemnified party in such defense or settlement.

**10. Compliance with Laws; Enforceability.** Each party shall perform its obligations under this Agreement in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, and regulations. Each party acknowledges that its commitments hereunder are enforceable.

**11. Uncontrollable Events.** Each party is not responsible for performance where an event beyond its control prevents performance of this Agreement. Such events include: riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics, landslides, volcanic eruptions, earthquakes, lightning, floods, explosions, fires, condemnation, judicial injunctions or restraining orders, and federal and state laws and orders.

**12. Contractual Relationship; No Agency Relationship; No Third-Party Rights.** By entering into this Agreement, neither party shall become or be construed to be acting as an agent, employee or legal representative of the other for any purpose whatsoever. Neither party is granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the other party or to bind the other party in any manner or thing whatsoever. Each party agrees that its relationship with the other is the same as with any other entity and this Agreement is not intended to imply or suggest that any official can,

by oral or written agreement, change or modify the terms and conditions of any Seattle ordinance or Sound Transit motion or resolution. Nothing in this Agreement shall be construed to create any right in or duties to any third party, nor any liability to or standard of care with reference to any third party. This Agreement shall not confer any right, or remedy upon any person other than the parties to this Agreement.

### **13. Miscellaneous**

**13.1 Governing Law; Venue.** This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Washington. Venue of any action hereunder shall be in King County, Washington.

**13.2 Captions.** The paragraph captions used in this Agreement are for convenience only and do not control or affect the meaning or construction of any provisions of this Agreement.

**13.3 Modification Must Be in Writing.** The terms of this Agreement shall not be amended except by an instrument in writing approved by Seattle by ordinance and by the Sound Transit Board and signed by the parties.

**13.4 Notification; Contact Persons.** Any notification, documentation or demand under this Agreement shall be in writing and shall be effective when hand-delivered during normal business hours or two (2) business days after it has been mailed, postage prepaid, to the person below at the address set forth below for such party or such other address provided by that party:

**For Seattle:**

Jennifer Hayes  
Senior Community Development Specialist  
Office of Economic Development  
Key Tower Building  
700 Fifth Avenue, Suite 1730  
(206) 233-7827

**For Sound Transit:**

Ahmad Fazel  
Sound Transit  
401 South Jackson Street  
Seattle, WA 98104-2826  
(206) 398-5000

**13.5 Computation of Time.** In computing any period of time for any notification mailed under this Agreement, such period shall commence at 12:01 a.m. after the date of mailing.

**13.6 No Waiver.** A party's acceptance of any work performed by the other, its contractors, or agents under this Agreement shall not be construed to operate as a waiver of rights under this Agreement or of any cause of action arising out of the performance of this Agreement. Failure of either party to insist upon strict performance, however, or any other waiver of any of the terms, conditions, or obligations of this Agreement, shall not be deemed a waiver of any other term, condition, covenant, or obligation contained herein. No delay or failure to exercise any right, power or remedy accruing to one party on any breach or default by the other shall impair any such right, power, or remedy, nor be construed as a waiver of any such breach or default.

\_\_\_\_\_  
Central Puget Sound Regional Transit Authority

By: Joni Earl, Executive Director

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

Authorized by Motion:

Approved as to Form:

\_\_\_\_\_  
Sound Transit Legal Counsel

\_\_\_\_\_  
The City of Seattle

By: Gregory J. Nickels, Mayor

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

Authorized by Ordinance: \_\_\_\_\_



..	Activity Description	Early Start	Early Finish	Year											
				2002	2003	2004	2005	2006	2007	2008	2009				
<b>Central Link - Initial Segment</b>															
<b>500 Downtown Seattle Transit Tunnel</b>															
	Civil 500 Final Design (Remainder)	09/04/01A	11/27/02												
	Civil 500 Review/Update Final Design	10/02/06*	12/29/06												
	Civil 500 Construction	07/03/07	01/05/09												
<b>600 Demolition/Abatement/Clean-up for O&amp;M</b>															
	Contract 600 Right of Way	04/11/01A	12/31/02												
	Contract 600 Final Design	06/20/01A	01/18/02A												
	Demolition/Abatement/Clean-up Work Phase 1	05/10/02	11/04/02												
	Demolition/Abatement/Clean-up Work Phase 2	05/10/02	12/31/02												
	Demolition/Abatement/Clean-up Work Phase 3	01/02/03	02/27/03												
<b>700 S. Royal Brougham to Airport Way S.</b>															
	Civil 700 ROW Procurement, RB to Airport Way S.	06/07/00A	04/30/02												
	Civil 700 Construction	11/11/02	04/29/05												
<b>710 Beacon Hill Tunnel</b>															
	Civil & Architectural 710 Final Design	11/12/01A	02/28/03												
	Civil 710 ROW Surface Procurement, Beacon Hill	03/14/02*	05/19/03												
	Civil 710 ROW Subsurface Easements, Beacon Hill	05/03/02	05/30/04												
	Civil 710 Construction	08/27/03	01/20/07												
<b>720 Beacon Hill East Portal to Walden</b>															
	Civil & Architectural 720 Final Design	02/04/02*	02/14/03												
	Civil 720 ROW Procurement, Beacon Hill to Walden	05/18/03	10/25/04												
	Civil 720 Construction	04/20/05	10/06/06												
<b>730 Walden to Holly</b>															
	Architectural 730 Final Design	01/02/02A	02/07/03												
	Civil 730 ROW Procurement, Walden to Holly	03/01/02	02/27/04												
	Civil 730 Construction	04/12/04	07/26/07												
<b>740 Holly to Norfolk</b>															
	Architectural 740 Final Design	01/02/02A	01/08/03												
	Civil 740 ROW Procurement, Morgan to Norfolk	03/01/02	11/27/03												
	Civil 740 Construction	01/14/04	03/02/07												
<b>750 Norfolk to 126th (755 Design)</b>															
	Preliminary Engineering for 755(750)- Civil	10/01/01A	03/01/02												
	Civil & Architectural 755(750) Final Design	04/12/02	08/25/03												
	Civil 750 ROW Procurement, Norfolk to 126th	10/23/02	08/10/04												
	Civil 750 Construction	10/16/04	07/08/07												
<b>760 126th to 154th (755 Design)</b>															
	Preliminary Engineering for 755(760)- Architect	11/10/01A	03/01/02												
	Civil & Architectural 755(760) Final Design	04/12/02	08/25/03												
	Civil 760 ROW Procurement, 126th to 154th	10/23/02	08/15/04												
	Civil 760 Construction	12/18/04	05/04/08												
<b>O &amp; M Facility (810)</b>															
	Design O & M Facility	07/13/00A	06/03/02												
	810 ROW Procurement, Maintenance Base	01/02/02A	06/02/02												
	Civil 810 O&M Facility Construction	03/04/03	06/23/05												
Start Date	09/01/97	M202	Attachment A Sound Transit LINK LIGHT RAIL Central Link - Initial Segment by Contract	Sheet 1 of 1									The bars above represent the durations for each activity.		
© Primavera Systems, Inc.															