

**SOUND TRANSIT
STAFF REPORT**

MOTION NO. M2002-66

Agreement with the City of Lakewood for the Lakewood Commuter Rail Station

Meeting:	Date:	Type of Action:	Staff Contact:	Phone:
Board of Directors	5/9/02	Discussion/Possible Action	David P. Beal, Program Manager Kimberlee Brackett, Project Manager	(206) 398-5124 (206) 398-5415

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

✓ Applicable to proposed transaction.

OBJECTIVE OF ACTION

- To authorize the Executive Director to execute the Funding and Cooperative Agreement Between the City of Lakewood and Sound Transit for the Development of a Regional Rail and Bus Station and Community Connector Project. The agreement provides for the transfer of \$1.7 million of local revenue funds to the City to be utilized for the City's CBD Connector Project upon completion of the City's environmental review process and the Federal Transit Administration's review of the Agreement.

ACTION

- Authorize the Executive Director to execute the attached "Funding and Cooperative Agreement Between the City of Lakewood and Sound Transit for the Development of a Regional Rail and Bus Station and Community Connector Budget."

KEY FEATURES

- Authorizes the Executive Director to execute the attached "Funding and Cooperative Agreement Between the City of Lakewood and Sound Transit for the Development of a Regional Rail and Bus Station and Community Connector Budget."
- The agreement provides for the transfer of \$1.7 million of local revenue funds to the City to be utilized for the City's CBD Connector Project upon completion of the City's environmental review process and the Federal Transit Administration's review of the Agreement.
- The City of Lakewood assumes full responsibility for the funding, design, and construction of the CBD Connector Project. Sound Transit assumes full responsibility for the funding, design, and construction of the Lakewood Station Project.
- The Lakewood City Council authorized the execution of this Agreement at its May 6, 2002, Council meeting.

BUDGET IMPACT SUMMARY

Project Description: Lakewood CBD Rail Station Connection
Current Status: Pending Board Approval; completion of City of Lakewood environmental review process; review by FTA
Projected Completion Date: 2nd Quarter 2002

Action Outside of Adopted Budget:	Y/N	Y	Requires Comment
This Line of Business	N		
This Project	N		
This Phase	N		
This Task	N		
Budget amendment required	N		
Key Financial Indicators:	Y/N	Y	Requires Comment
Contingency funds required	N		
Subarea impacts	N		
Funding required from other parties other than what is already assumed in financial plan	N		

N = Action is assumed in current Board-adopted budget. Requires no budget action or adjustment to financial plan

BUDGET DISCUSSION

Budget for this action is included in the construction phase of Lakewood CBD Rail Station Connection (See page 97 of the Adopted 2002 Budget document). The Construction phase of the project budget contains sufficient funds for this effort. The remaining funds in this project have the potential to be transferred to the Lakewood Station project, pending a future board action to the Finance Committee. This future action will require a change to Sound Move.

REVENUE, SUBAREA, AND FINANCIAL PLAN IMPACTS

The proposed action is consistent with the current Board-adopted budget and is affordable within Sound Transit's current long-term financial plan and the subarea financial capacity.

Summary for Board Action (Year of Expenditure \$000)

Budget Summary: This action would authorize xxx for contract for yyy. This amount is within the

Action Item: Funds Transfer to City of Lakewood and Lakewood Station from Lakewood CBD

	Current Board Adopted Budget (A)	Committed To Date (B)	This Action (C)	Total Committed & Action (D)	Uncommitted (Shortfall) (E)
1 Agency Administration	242	20		20	222
2 Pre-Engineering	250	49		49	201
3 Final Design	322	2		2	320
4 Right of Way	200	-		-	200
5 Construction	3,293	-	1,700	1,700	1593
6 Contingency	866	-		-	866
7 Total Current Budget	5,173	71	1,700	1,771	3402

	(A)	(B)	(C)	(D)	(E)
8 Phase I	3,293	-	1,700	1,700	1,593
9 Total Phase	3,293	-	1,700	1,700	1,593

Transfer Detail	Current Approved Transfer Value (F)	Spent to Date (G)	Proposed Action (H)	Proposed Total Transfer Value (I)
10 City of Lakewood	-	-	1,700,000	1,700,000
11 Contingency	-	-		-
12 Total	-	-	1,700,000	1,700,000

Budget Shortfall

Level	\$ (J)	Potential Revenues (K)	Funding Source (L)
NA	-	-	NA

Notes

- 1 Current phase budget for Agency Administration (LOB and Support Dept. staff costs)
- 2 Current phase budget for Preliminary Engineering
- 3 Current phase budget for Final Design
- 4 Current phase budget for all costs associated with right-of-way
- 5 Current phase budget for Construction
- 6 Current phase budget for Contingency
- 7 Total Current lifetime budget
- 8 Staff budget for work function. Not Board Adopted, for planning purposes only
- 9 Total current phase budget
- 10 Base proposed transfer value
- 11 Base proposed contingency value
- 12 Total proposed transfer plus contingency

M/W/DBE – SMALL BUSINESS PARTICIPATION

Not applicable.

HISTORY OF PROJECT

Sound Transit and the City of Lakewood have been negotiating an agreement which would have provided \$5.2 million to the City for its Central Business District (CBD) Connector Project in exchange for \$3.5 million of City grant funds to be used for station construction. The City would net \$1.7 million. The CBD Connector Project, a package of street improvements occurring within the City's right-of-way, is included in Sound Move and has a budget of \$5.2 million in the 2002 Sound Transit Adopted Budget.

Upon receipt of the City's grant documentation, it was determined that the Federal Highways Administration (FHWA) grant funds could not be transferred to Sound Transit. Subsequently, staff has negotiated an agreement, which has the same net monetary effect of providing \$1.7 million to the City of Lakewood and approximately \$3.5 million to the Sound Transit Lakewood Station budget.

On May 6, 2002, the Lakewood City Council approved the approved the "Funding and Cooperative Agreement Between the City of Lakewood and the Central Puget Sound Regional Transit Authority for the Development of a Regional Rail and Bus Station and Community Connector Project." The Agreement proposes the transfer of \$1.7 million of local revenue funds to the City of Lakewood from the \$5.2 million Sounder Central Business District (CBD) Connector Project budget to allow the City of Lakewood to begin design and construction of a portion of the CBD Connector Project during this construction season. The City will combine these funds with its \$3.5 million FHWA grant for a funding total of \$5.2 million. The City has agreed to allow the remaining \$3.5 million (approximate) of the Sounder CBD Connector Project budget to be transferred to the Sound Transit Lakewood Station Project in a future Board action (possibly during the 2003 budget cycle).

There are several key provisions in the agreement that provide Sound Transit and the City of Lakewood with reasonable assurance that the Lakewood Station Project will be constructed in the true spirit of partnership:

- the City represents that it will not interpret its codes to impose unreasonable permitting conditions or mitigation requirements on the Lakewood Station project and agrees to cap permit fees at \$60,000. In addition, the City will not require a pedestrian bridge as a permit condition;
- the City also agrees to provide expedited permit assistance and work cooperatively with Sound Transit to reasonably achieve a maximum of number parking spaces at the station; and
- the City agrees to fund any City Code Based Mitigation or Permitting Conditions put into place subsequent to the date of this agreement and imposed on the Lakewood Station Project by the City's permitting authority.

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

Motion or Resolution Number	Summary of Action	Date of Action
	No prior actions have been taken.	

CONSEQUENCES OF DELAY

A delay in authorizing the execution of this Agreement will prevent the City of Lakewood from proceeding with the design and construction of a portion of the CBD Connector Project during this construction season.

REGIONAL PARTNERSHIP AND COOPERATION

ST staff has worked closely with City of Lakewood personnel to negotiate an agreement mutually acceptable to both parties.

PUBLIC INVOLVEMENT

The Lakewood City Council authorized the execution of this Agreement at its May 6, 2002, Council meeting.

LEGAL REVIEW

JW 5/8/02

SOUND TRANSIT

MOTION NO. M2002-66

A motion of the Board of the Central Puget Sound Regional Transit Authority to authorize the Executive Director to execute the "Funding and Cooperative Agreement Between the City of Lakewood and Sound Transit for the Development of a Regional Rail and Bus Station and Community Connector Budget" which transfers \$1.7 million of local revenue funds to the City to be utilized for the City's CBD Connector Project upon completion of the City's environmental review process and the Federal Transit Administration's review of the Agreement.

Background:

During the past six months, ST and the City of Lakewood have been negotiating an agreement which would have provided \$5.2 million to the City for its Central Business District (CBD) Connector Project in exchange for \$3.5 million of City grant funds to be used for station construction. The City would net \$1.7 million. The CBD Connector Project, a package of street improvements occurring within the City's right-of-way, is included in Sound Move and has a budget of \$5.2 million in the 2002 Sound Transit Adopted Budget.

Upon receipt of the City's grant documentation, it was determined that the Federal Highways Administration (FHWA) grant funds could not be transferred to Sound Transit. Subsequently, staff has negotiated an agreement, which has the same net monetary effect of providing \$1.7 million to the City of Lakewood and approximately \$3.5 million to the Sound Transit Lakewood Station budget.

On May 6, 2002, the Lakewood City Council approved the approved the "Funding and Cooperative Agreement Between the City of Lakewood and the Central Puget Sound Regional Transit Authority for the Development of a Regional Rail and Bus Station and Community Connector Project." The Agreement proposes the transfer of \$1.7 million of local revenue funds to the City of Lakewood from the \$5.2 million Sounder Central Business District (CBD) Connector Project budget to allow the City of Lakewood to begin design and construction of a portion of the CBD Connector Project during this construction season. The City will combine these funds with its \$3.5 million FHWA grant for a funding total of \$5.2 million. The City has agreed to allow the remaining \$3.5 million (approximate) of the Sounder CBD Connector Project budget to be transferred to the ST Lakewood Station Project in a separate action (possibly during the 2003 budget cycle).

Pursuant to the terms of the Agreement, the City of Lakewood assumes full responsibility for the funding, design and construction of the CBD Connector Project. Sound Transit assumes full responsibility for the funding, design and construction of the Lakewood Station Project. There are several key provisions contained therein which also provide Sound Transit and the City of Lakewood with reasonable assurance that the Lakewood Station Project will be constructed in the true spirit of partnership:

- the City represents that it will not interpret its codes to impose unreasonable permitting conditions or mitigation requirements on the Lakewood Station project and agrees to cap

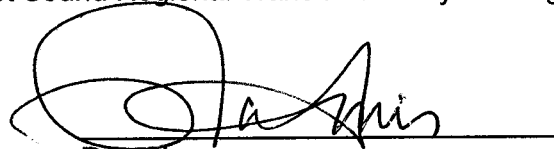
permit fees at \$60,000. In addition, the City will not require a pedestrian bridge as a permit condition;

- the City also agrees to provide expedited permit assistance and work cooperatively with Sound Transit to reasonably achieve a maximum of number parking spaces at the station; and
- the City agrees to fund any City Code Based Mitigation or Permitting Conditions put into place subsequent to the date of this agreement and imposed on the Lakewood Station Project by the City's permitting authority.

Motion:

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority authorizing the Executive Director to execute the "Funding and Cooperative Agreement Between the City of Lakewood and Sound Transit for the Development of a Regional Rail and Bus Station and Community Connector Budget" which transfers \$1.7 million of local revenue funds to the City to be utilized for the City's CBD Connector Project upon completion of the City's environmental review process and the Federal Transit Administration's review of the Agreement.

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
Board Administrator

**FUNDING AND COOPERATIVE AGREEMENT BETWEEN
THE CITY OF LAKEWOOD AND
THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY
FOR THE
DEVELOPMENT OF A REGIONAL RAIL AND BUS STATION
AND COMMUNITY CONNECTOR PROJECT**

This Agreement is between the City of Lakewood, a municipality of the State of Washington (“City”) and the Central Puget Sound Regional Transit Authority, a regional transit authority organized under RCW 81.112 (“Sound Transit”) for the purpose of transferring funds and establishing financial responsibility for the City’s permitting and mitigation requirements imposed on the Lakewood Sounder Commuter Rail Station (“Lakewood Station Project”).

RECITALS

1. WHEREAS Sound Transit is a duly organized regional transit authority existing under Chapters 81.104 and 81.112 RCW and has all powers necessary to implement a high capacity transportation system.
2. WHEREAS, Sound Transit’s voter approved ten year regional transit plan, *Sound Move*, includes commuter rail and a regional express bus/HOV system that will be integrated with local transit systems. *Sound Move* envisions a commuter rail service from Lakewood to Tacoma (Sounder Lakewood-to-Tacoma project) which will include a commuter rail and express bus station in Lakewood (“the Lakewood Station Project”).
3. WHEREAS, the City acknowledges that the Sound Transit funded Lakewood Station Project for the construction of the commuter rail and express bus station in Lakewood is a long anticipated, highly desirable local improvement.
4. WHEREAS the parties acknowledge that the design and construction of the Lakewood Station Project and its amenities must be completed within the Board approved budget for the Project.
5. WHEREAS, Sound Transit currently is completing the Final Environmental Impact Statement (FEIS) for the Sounder Lakewood-to-Tacoma project which will include the Lakewood Station and will evaluate multiple alternatives, environmental impacts, and potential mitigation measures for the Lakewood Station.
6. WHEREAS, the Sound Transit Board will not select the location for the Lakewood Station until the completion of the FEIS, and nothing in this Agreement is intended to prejudge or select the station location.
7. WHEREAS, the Parties desire to provide necessary multi-modal connections between the Lakewood commuter rail station and the central, higher density area of the City of Lakewood. These consist of a series of street improvements generally

referred to as the Central Business District (CBD) connector project ("the CBD Project").

8. WHEREAS, the CBD Project is specifically authorized as a distinct project in *Sound Move* as a component of the Sounder Lakewood to Tacoma project, and Sound Transit desires to provide financial assistance for its completion by the City of Lakewood as provided in this Agreement.
9. WHEREAS, the various Lakewood Station alternatives under evaluation in the FEIS are in close proximity to the CBD project, and the CBD Project will provide benefits regardless of which station location is ultimately selected by the Sound Transit Board.
10. WHEREAS, the CBD Project will facilitate vehicular access to any of the alternative station sites and help minimize station impacts by improving the surrounding street system.
11. WHEREAS, the City is willing to consider the CBD project as constituting full road transportation mitigation in connection with the Lakewood Station Project at any of the alternative locations identified in the FEIS.
12. WHEREAS, after the Lakewood Station Project site is selected, Sound Transit will need to obtain local permits from the City of Lakewood to construct and operate the commuter rail station. Such permits could be subject to certain conditions or mitigation requirements imposed by the City's permitting authority.
13. WHEREAS, as full consideration for the City's commitments under this Agreement the City is willing to accept \$1.7 million of Sound Transit local revenue funds for its immediate use in the CBD Project; and the City has agreed to allow the remaining \$3.5 million budgeted by Sound Transit for the CBD Project to be transferred to the Lakewood Station Project.
14. WHEREAS, the City of Lakewood is willing to undertake the design and construction of the CBD Project using the \$1.7 million in Sound Transit funds and its Federal Highway Administration grant funds .
15. WHEREAS, the City of Lakewood is responsible for its SEPA process for the CBD Project, and Sound Transit relies on the City's SEPA compliance to support its transfer of funds to the CBD Project.
16. WHEREAS, the City of Lakewood will not interpret its codes to impose unreasonable permit conditions or mitigation requirements on the Lakewood Station Project.
17. WHEREAS, to facilitate the Lakewood Station Project, the City is willing to allow certain parking lot design standards to be applied to the Lakewood Station to maximize the number of stalls and agrees to work cooperatively with Sound Transit to identify and adopt these design standards for the Lakewood Station Project.
18. WHEREAS, in recognition of the benefits that the Lakewood Station Project will bring to the City and the surrounding area, the City is willing to expedite its

permitting requirements, set a maximum amount of permitting fees, and work with Sound Transit in the areas further provided in this Agreement.

Now, therefore, in consideration of the mutual covenants of the parties contained herein, the parties agree as follows:

1.0 The Lakewood Projects.

- 1.1. ***The Lakewood Station Project.*** As part of the Sounder-Lakewood to Tacoma Project, Sound Transit proposes to construct a Lakewood Station Project within the City of Lakewood. The Lakewood Station Project shall consist of a commuter rail and express bus station and associated parking facilities. The Lakewood Station Project will be constructed through Sound Transit's own contractors, engineers, consultants, and design professionals using Sound Transit funding. The Lakewood Station Project is described in the FEIS that will be issued by Sound Transit.
- 1.2. ***The CBD Project.*** As part of the Sound-Lakewood to Tacoma Project, the City of Lakewood agrees to design and build the CBD Project to connect the Lakewood Station to the downtown Lakewood area. The CBD Project consists of off-site transportation improvements that will provide transportation benefits regardless of which station site is ultimately selected by the Sound Transit Board. The CBD Project is more clearly outlined in Exhibit A attached to this Agreement and made a part hereof and will be funded as further described in this Agreement.

2.0 Funding for the CBD Project.

- 2.1. ***CBD Funds.*** Upon the execution of this Agreement, Sound Transit shall transfer to the City One Million Seven Hundred Thousand Dollars (\$1,700,000.00) (the "CBD Funds") for the City's design and construction of the CBD Project. Upon its transfer of the CBD Funds, Sound Transit shall have no further financial responsibility for the CBD Project.
- 2.2. ***City's Responsibilities.*** The City agrees to construct the CBD Project through the City's own contractors, engineers, consultants, and design professionals. The City agrees that it will fund the remainder of the CBD project through a federal grant in the amount of \$3.5 million.

3.0 Conditions for Transfer of Funds and Lakewood Project Construction.

- 3.1. ***Sound Transit's Obligations.*** Sound Transit shall manage the design and construction of the Lakewood Station Project using funds under its control. The

final design to be determined, at Sound Transit's sole discretion, shall allow the Lakewood Station Project to be constructed within the maximum amount budgeted for the Project. Sound Transit shall be responsible for those permitting requirements or conditions imposed by the City 's permitting authority under the authority of non-City codes, such as those conditions required by sewer, water or fire codes ("Pass through Conditions"). Mitigation requirements imposed by the Burlington Northern and Santa Fe Railway in connection with any improvements on right of way owned by the Burlington Northern and Santa Fe Railway shall be the responsibility of Sound Transit. .

3.2. **City's Obligations.** As consideration for Sound Transit's transfer of CBD Funds and its construction of the Lakewood Station, the City agrees that it shall perform the following and such other obligations as provided in this Agreement:

- A. The City of Lakewood agrees to fund any City Code Based Mitigation or Permitting Conditions put into place subsequent to this agreement and imposed on the Lakewood Station Project by the City's permitting authority. Such City Code Based Permitting or Mitigation Conditions are those mitigations and/or permitting conditions that are considered integral to the Lakewood Station Project. The City's responsibility shall not include those permitting or mitigation conditions imposed by the City under the authority of City codes in effect on the date of the execution of this Agreement.
- B. If any City Code Based Permitting or Mitigation Conditions are imposed by the City's permitting authority, the City shall give assurance to Sound Transit that it has the ability to undertake or to fund such mitigation and permitting requirements prior to the commencement of Station construction.
- C. The City represents that it will not interpret its codes to impose unreasonable permitting conditions or mitigation requirements on the Lakewood Station Project.

4.0 Project Development.

4.1. **Project Design Team.** The City and Sound Transit may form a Project Development Team comprised of a designated representative from the City and a designated representative from Sound Transit and other members as appropriate. The Project Development Team shall coordinate regularly with the Permitting Coordinator. The Project Development Team may coordinate with representatives the fire, sewer and water districts to ensure that relocations of utility facilities are performed in a timely manner.

4.2. **Contract Administration.** Each party shall be responsible for the execution and administration of any contracts necessary or useful for the planning, design, construction and operation of the Party's respective project. Each Party shall

comply with the requirements of any federal grant funds, all federal, state and local laws, regulations and ordinances applicable to the work and services to be performed on the Party's Project.

5.0 City's Permitting Requirements for the Lakewood Station.

- 5.1 The City shall not impose a pedestrian bridge as a condition of permitting the Lakewood Station Project.
- 5.2 In recognition that the proposed mitigation identified in the FEIS for all alternative commuter station sites in the FEIS constitutes significantly greater mitigation than would be achieved through the imposition of impact fees or concurrency fees, the City represents that it does not intend to adopt or impose any concurrency fees or impact fees on the Lakewood Station Project as a permitting condition. Notwithstanding the foregoing, any impact fees or concurrency fees shall be paid for by the City to the extent the City's permitting agency decides to impose such impact fees or concurrency fees as a condition of construction or occupancy of the Lakewood Station Project.
- 5.3 All permits submitted by Sound Transit for the Lakewood Station Project shall be deemed to have been submitted as of the effective date of this Agreement, and the City codes and regulations in effect as of the effective date of this Agreement shall apply to the permits issued for the Lakewood Station Project.

6.0 Expediting and Coordination of Permit Applications.

- 6.1. ***Permits and Approvals.*** The Parties agree to the following with respect to the City's permitting process:
 - A. The City shall work cooperatively with Sound Transit to identify and adopt design standards, which include landscape and tree provisions, for the platform, parking lots, and bus bay associated with the Lakewood Station to enable Sound Transit to reasonably achieve a maximum number of parking spaces at the Lakewood Station. The City shall provide flexibility from its established codes in the area of parking space dimensions recognizing that Sound Transit's goal is to provide 1,060 parking spaces at the Lakewood Station parking lot. Prior to the submittal of Sound Transit's applications for permits, the Parties shall have agreed upon the applicable platform, parking lot, and bus bay design standards in an attempt to achieve the above goals, and the City shall have completed its process for modification of the City's general design and parking lot standards for the Lakewood Station Project.

- B. The City shall at its expense issue all required environmental documents required for its CBD Project
- C. Sound Transit shall with respect to its Lakewood Station Project issue at its expense its environmental documents, including its FEIS.
- D. Sound Transit shall obtain all permits including those to be issued by the City, licenses, easements, and such other approvals as may be necessary to complete the Lakewood Station Project.
- E. The City's permit fees for the Lakewood Station Project shall not exceed the maximum amount of \$60,000.

6.2. *Permitting Coordinator.*

The City shall assign a staff representative familiar with its land use regulations and permitting process as the "Permitting Coordinator" for the Lakewood Station Project. The Permitting Coordinator shall be authorized to coordinate and expedite all permit applications related to Sound Transit's Lakewood Station Project and act as the primary contact for communications with Sound Transit's representatives regarding its permit applications.

6.3. *Duties of the Permitting Coordinator.*

The Permitting Coordinator for the City shall facilitate the timely processing of permits and construction inspections related to the Lakewood Station. Among other activities, the Permitting Coordinator shall:

- A. Assist Sound Transit's representatives in obtaining necessary information regarding the City's permitting process.
- B. Ensure that Sound Transit's permit applications and design documents are submitted to all proper reviewing departments and personnel within the City.
- C. Obtain all significant permit comments early in the permitting and construction process and in written form, and assist Sound Transit in resolving all permitting issues in a timely manner.
- D. Organize representatives of the various City departments or units providing reviews and approvals to expedite the return of timely and coordinated reviews and comments to Sound Transit representatives.
- E. If necessary attend weekly/monthly status meetings and such other meetings as may be necessary to initiate other coordination as required including informational meetings between Sound Transit and the City.
- F. Identify and coordinate to the extent possible timely review by the fire, water, and sewer districts during the permit review process.
- G. Give timely notice to these utilities of any utility facilities that must be relocated for the Lakewood Station Project.

7.0 Project Construction.

7.1. Commencement of Lakewood Station Project Construction.

The Parties agree that the following shall occur prior to the construction of the Lakewood Station.

- A. The City shall have commenced, if not completed, the design and construction of the CBD Project using the CBD Funds and such other funds as the City has available, including Federal Highway Administration grant funds.
- B. Sound Transit shall have completed its final design for the Lakewood Station Project.
- C. Sound Transit shall have obtained and the City shall have issued all necessary permits and approvals for the construction of the Lakewood Station Project.

8.0 Property Acquisition and Ownership

8.1. ***Property Acquisition.*** Each party shall be responsible at its own expense for the acquisition of any real property necessary for the Party's construction of its project or improvements. Sound Transit may agree to undertake the appraisal of property related to the CBD Project at the request of the City of Lakewood and upon the execution of a written agreement by the City for reimbursement of Sound Transit's expenses.

8.2. ***Ownership of Lakewood Station.*** Upon completion of the Lakewood Station, Sound Transit shall own, operate, and maintain the Lakewood Station. Incidental uses of the Station or the parking facilities owned by Sound Transit shall be upon such terms and conditions as mutually agreed to by the Parties and consistent with Sound Transit's property use policies and procedures.

8.3. ***Ownership of Community Connector Improvements.*** Upon completion of the CBD Project, the City shall own, operate and maintain the improvements, including any landscaped area, sidewalks, and signage installed in the public rights of way , and any traffic signals regulating traffic from the Station.

9.0 Utility Relocation.

The City agrees to exercise its authority under the law and its rights under any applicable franchises, permits, or agreements to order the relocation of same to allow the construction of the Lakewood Station. As may be necessary and at Sound Transit's request, the City shall direct the owners of such utilities to relocate their facilities consistent with the appropriate franchise, and in accordance with the law and any franchise or permits. The City shall use its best efforts and powers to obtain the

necessary utility relocations in a timely manner to avoid any conflicts with Sound Transit construction and additional construction costs to Sound Transit.

10.0 Designated Representatives.

The City’s designated representative shall be:

Public Works Director
City of Lakewood
6000 Main Street, S.W.
Lakewood, WA 98499-5027
Phone: (253) 589-2489

Sound Transit’s designated representative shall be:

Kimberlee Brackett
Sound Transit
401 S. Jackson St.
Seattle, WA 98104-2826
Phone: (206) 398-5415

11.0 Community Relations.

Sound Transit shall, with respect to its construction activities, but not those performed by the City, be responsible for coordinating all necessary community relations activities related to the Project, with the cooperation and participation of the City. These activities may include, but not be limited to, public meetings and hearings on environmental documents, as required, distribution of notices and relevant materials, attendance at and participation in meeting of, existing groups and organizations in the neighborhoods affected by the project and local chambers of commerce, providing ongoing updates of the progress of station design, development and permitting, to existing groups, organizations and community newspapers and other media, and notices regarding project milestones and opportunities for agency and public input as required by this Agreement or by law.

12.0 Hold Harmless.

To the extent permitted by law, each of the Parties to this agreement shall protect, defend, indemnify, and save harmless the other Party, and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgment, damages or liability of any kind including injuries to persons or damages to property, which arise out of, or in any way result from, or are connected to, or are due to any negligent acts or omissions of the indemnifying Party. No Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the Party

seeking indemnification. Where such claims, suits, or actions result from concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the Party's own negligence. Each of the Parties agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. In the event of any claims, demands, actions and lawsuits, the indemnifying Party upon prompt notice from the other Party shall assume all costs of defense thereof, including legal fees incurred by the other parties, and of all resulting judgements that may be obtained against the other Party. In the event that any Party incurs attorney fees, costs or other legal expenses to enforce the provisions of this section, all such fees, costs and expenses shall be recoverable by the prevailing Party.

This indemnification shall survive the termination of this Agreement.

13.0 Records and Audit.

The Parties agree during the progress of the Projects and for a period of not less than three (3) years from the date of final acceptance and completion of the Projects, to keep available records and accounts pertaining the Projects for inspection and audit as required by the parties auditors and federal representatives. Copies of the records shall be furnished to the requesting party upon request and shall be maintained in accordance with work order accounting procedure prescribed by the Division of Municipal Corporations of the Sate Auditor's Office.

14.0 Dispute Resolution.

The Parties will work collaboratively in accordance with the following steps to resolve disagreements arising from activities performed under this Agreement. Disagreements will be resolved promptly and at the lowest level of authority.

The Designated Representatives shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. Each Designated Representative shall notify the other in writing of any problem or dispute the Designated Representative believes needs formal resolution. This written notice shall include: (1) a description of the issue to be resolved; (2) a description of the difference between the parties on the issue; and (3) a summary of steps taken by the designated representatives to resolve the issue.

The Designated Representatives shall meet within three (3) business days of receiving the written notice and attempt to resolve the dispute. In the event the Designated Representatives cannot resolve the dispute (and that dispute is not subject to some other formal appeal process), the Sound Transit Executive Director or his/her designee and the City's Manager or his/her designee shall meet within seven (7) business days of receiving notice from a Designated Representative and engage in good faith negotiations to resolve

the dispute. The Parties agree to exhaust all three steps of the dispute resolution process before seeking redress in a court of law or other tribunal.

15.0 Miscellaneous Provisions.

15.1. **Publicity.** The parties to this Agreement shall not make any formal press releases, news conferences or similar public statements concerning this Agreement without consultation with the other party and coordination with such parties' public relations objectives for this agreement. Notwithstanding the foregoing, without consulting or coordinating with Sound Transit, the other party may issue press releases and make public statements regarding operational information, street or freeway lane closures, detours and other matters typical in the ordinary course of completing the scope of work in this Agreement.

15.2. **Contract Administration.** To fulfill its respective responsibilities under this Agreement, each Party shall be solely responsible for the administration of and the completion and quality of work performed under any contracts executed by the Party. In no event shall any contract executed by a Party be construed as obligating the other party or Parties to this Agreement. All contracts shall comply with all applicable public works and procurement laws and regulations, including, but not limited to, applicable bonding, prevailing wage, nondiscrimination, retainage, insurance, and workers compensation requirements.

15.3. **Compliance with Law.** Each party shall comply, and to the best of its ability shall ensure, that its employees, agents, consultants and representatives comply with all federal, state, and local laws, regulations, and ordinances applicable to the work and services to be performed.

15.4. **Nondiscrimination.** Each Party agrees that it will comply with pertinent statutes, Executive Orders, and such rules as are promulgated thereunder to assure that no person shall, on the grounds of race, creed, color, national origin, sex age, or the presence of any sensory, mental or physical handicap be discriminated against or receive discriminatory treatment by reason of the work performed under this Agreement.

15.5. **Legal Relations.** This Agreement is solely for the benefit of the parties thereto and gives no third party right to any other entity or person. No joint venture is formed as a result of this Agreement. No employees or agents of Sound Transit or any of its contractors, subcontractors, consultants or their employees shall be deemed or represent themselves to be employees of or under

contract to the City. No employees or agents of the City or any of its contractors, subcontractors, consultants or their employees shall be deemed or represent themselves to be employees of or under contract to Sound Transit.

- 15.6. **Waiver of Default.** Waiver of any default shall not be deemed to be a waiver of any subsequent default. Failure of any Party at any time to required full and timely performance of any provisions of this Agreement shall not waive or reduce the Party's right to insist upon complete and timely performance of any other provisions thereunder.
- 15.7. **Assignment.** No Party shall assign any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent by the other party.
- 15.8. **Binding on Successors and Assigns.** All of the terms, provisions and conditions of this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors, permitted assigns and legal representatives.
- 15.9. **Severability.** If any of the terms and conditions of this agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and conditions unaffected thereby shall remain in full force and effect. The parties agree to negotiate in good faith to reform the agreement to replace any invalid or unenforceable term and/or condition with a valid and enforceable term and/or condition that comes as close as possible to the intention of the stricken term and/or condition.
- 15.10. **Jurisdiction and Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The parties agree that the venue for any legal action arising under this Agreement shall be in the Superior Court of King County, Washington.
- 15.11. **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by telegram, rate paid, confirmation requested to the Designated Representatives identified in this Agreement.
- 15.12. **Warranty of Right to Enter into Agreement.** The Parties each warrant that they have the authority to enter into this Agreement and that the persons signing this Agreement have the authority to bind such person's respective entity.

15.13. **Entire Agreement.** This Agreement constitutes the Entire agreement between the parties. There are not terms, obligations, covenants or conditions other than those contained herein. No modifications or amendments of this Agreement shall be valid or effective unless evidence by an agreement writing signed by the authorized representative of each party.

16.0 Effective Date and Duration.

Upon its signing by both Parties this Agreement shall take effect upon the _____ day of _____, 2002, and shall remain in effect for the period of time that is reasonable for each Party to discharge its obligations hereunder.

IN WITNESS WHEREOF, the parties hereby agree to the terms and conditions of this Agreement as of the Sound Transit date written below.

For:

For Sound Transit:

By: _____

By: _____

Title:

Title:

Approved as to Form:

Approved as to Form:

By: _____

By: _____

Sound Transit Legal Counsel