

AGREEMENT BETWEEN
SOUND TRANSIT AND THE CITY OF KIRKLAND
FOR
KIRKLAND TRANSIT CENTER

THIS AGREEMENT ("Agreement") is entered into by and between the Central Puget Sound Regional Transit Authority ("Sound Transit") and the City of Kirkland, a municipal corporation ("City" or "Kirkland") (individually, a "Party" or collectively, the "Parties") to provide for design, construction, operation and maintenance of certain transit-related improvements in the Kirkland area.

WHEREAS, Sound Transit is a duly organized regional transit authority existing under RCW Chapters 81.104 and 81.112 with all powers necessary to implement a high capacity transportation system, including the power to implement agreements necessary for the planning, design, construction, and operation of high capacity transportation system facilities within its boundaries, including commuter rail, light rail and regional express bus services as set forth in *Sound Move*, its voter approved regional transit system plan; and

WHEREAS, the City is a municipal corporation existing under state law with all powers necessary to supply municipal services commonly or conveniently rendered by cities and towns, including a system of streets within its corporation boundaries; and

WHEREAS, one of the *Sound Move* projects includes replacement and enhancement of the existing Kirkland Transit Center located within the City and as shown on the site plan attached and incorporated herein as Exhibit "A", hereafter referred to as the "Project"; and

WHEREAS, the City has completed its review and found that the Project is generally consistent with the City's Comprehensive Plan, development regulations and other adopted policies, and applicable City regulations and approved the Project subject to certain conditions, however, the City's approval does not supersede any outstanding or future permit and/or design review conditions; and

WHEREAS, the City will grant to Sound Transit non-exclusive use of portions of City property, including 3rd Street, adjacent city properties, and portions of Peter Kirk Park, as described in Exhibit "B" in consideration of Sound Transit's development of the Project as provided herein; and

WHEREAS, the City has determined that a pedestrian crossing signal at Park Lane and 3rd Street is not necessary;

NOW, THEREFORE, In consideration of the mutual promises and covenants contained herein, it is agreed that:

1. PURPOSE

1.1 The purpose of this Agreement is to establish the Parties' respective rights, obligations, costs and liabilities with respect to the design, construction, operation, maintenance and funding

of the Project and grant of authorization to Sound Transit for the non-exclusive use of certain City property described in Exhibit "B", attached and incorporated herein, under the terms and conditions set forth herein.

2. COOPERATION AND GOOD FAITH EFFORTS

2.1 The Parties understand and agree that the process and commitments described in this Agreement depend upon timely and open communication and cooperation between the Parties. In this regard, communication of issues, changes, or problems that arise with any aspect of the actions to be taken hereunder should occur as early as possible in the process, and not wait for explicit due dates or deadlines. Each Party agrees to work cooperatively and in good faith toward resolution of any such issues.

2.2 The Parties acknowledge that this Agreement may contemplate the execution and delivery of future documents, instruments and permits, the final form and contents of which are not presently determined. The Parties agree to provide the necessary resources and to work in good faith to develop the final form and contents of such documents, instruments and permits, and to execute and deliver the same promptly.

3. GRANT FOR USE OF CITY PROPERTY

3.1 The City hereby grants to Sound Transit, its successors and assigns, a non-exclusive use of portions of 3rd Street, Central Avenue, and Peter Kirk Park, the general location of which is described and depicted on Exhibit "A," hereafter collectively referred to as "City Property", to construct, operate, maintain, and own the Project in accordance with the terms and conditions of this Agreement. The portions of the Project located in City Property shall be limited to the areas shown in Exhibit "A". The City's Public Works Director and Sound Transit's Director of Capital Projects may, from time to time, jointly revise and modify Exhibit "A" to conform to the record drawings, so as long as the revisions are, in their professional engineering judgment, within the scope and intent of Exhibit "A." Nothing in this Agreement, however, shall be construed as granting to Sound Transit any interest or right in the City right of way, the adjacent Peter Kirk Park, or the improvements on the City's right of way other than the rights expressly provided herein.

3.2 The parties acknowledge that on June 5, 2007, the City Council conferred 3,000 square feet of Peter Kirk Park land adjacent to Third Street for public right-of-way use in order to provide assurance that the width of 3rd Street would accommodate construction of the Project improvements.

4. DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE

4.1 Unless otherwise provided in this Agreement, Sound Transit shall design and construct all facilities associated with the Project and, upon acceptance by the City, the City shall own and maintain certain facilities associated with the Project and identified in this Agreement. Sound Transit expressly agrees that it will design, construct, operate and maintain those portions of the Project for which it is responsible in compliance with this Agreement and all applicable City ordinances and state and federal laws.

4.2 Sound Transit shall retain ownership of the following Project facilities:

- a. Bus shelters and associated benches, waste receptacles, and other associated street furniture
- b. Transit signage, including fixed and variable-message signs

- c. Transit operations painting and thermoplastic markings on roadway
- d. Bicycle storage equipment (hooks, racks, or lockers)
- e. Transit center Equipment Room and electrical equipment
- f. Public art

4.3 Kirkland shall retain ownership of the following Project facilities:

- a. Trellis structure (glass, wood decking, structural and electrical elements)
- b. Restroom trellis
- c. Recycle facilities
- d. In-pavement flashing crosswalk
- e. Median lighting
- f. Pedestrian lighting
- g. Landscaping
- h. Irrigation
- i. Median railing
- j. Traffic signals
- k. Utilities (storm, wastewater, water)
- l. Plaza lighting (not including Trellis)
- i. vehicular operations painting/thermoplastic markings'

4.4 The Parties agree that each shall operate, maintain and repair the Project facilities as provided in the matrix attached and incorporated herein as Exhibit C". Each Party shall operate, maintain, and repair the Project facilities for which each is responsible in compliance with all federal, state, and local laws. In addition, the operation, maintenance, and repair of the Project shall be performed in a manner consistent with industry standards. The Parties shall exercise reasonable care in the performance of all their activities and shall use industry accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

4.5 Sound Transit, at Sound Transit's sole cost and expense, shall furnish all materials, parts, components, equipment and structures necessary to construct and operate the Project, or any part thereof, in accordance with this Agreement. Any and all work by Sound Transit shall be done in a good and workmanlike manner, in conformity with all applicable engineering, safety, and other statutes, laws, ordinances, regulations, rules, codes, orders, or specifications of any public body or authority having jurisdiction.

4.6 Sound Transit, at Sound Transit's sole cost and expense, shall furnish construction inspection for the Project. The Project also includes utility pipeline construction being done on behalf of the King County Department of Natural Resources (KCDNR) and for the City of Kirkland. Sound Transit will provide the City with advanced notice of all modifications to the City's watermain including the need for shutdown, removal, placement, backfill, compaction testing and purity testing.

4.7 Change Orders -- Sound Transit may approve changes in those parts of the construction contract providing for modifications of the watermain and appurtenances, provided that if any change order would change the nature of the modification work or would cause that portion of the contract price attributable to such modification work to increase by more than \$5000 or cumulatively more than two percent (2%) of the original contract amount attributable to the Watermain Modifications then the following procedure will be followed:

Prior to issuing a Change Order to the Contractor, Sound Transit will seek the agreement of the City for any change to the Watermain Modifications.

City Agreement with Change Order. If the City agrees with the change order in its entirety, Sound Transit will issue the change order to the Contractor, and the City shall be liable for the amount of such change order that applies to the City's share of the Watermain Modifications.

City Partial Agreement with Change Order. If the City disputes any portion of the change order, then Sound Transit may issue the change order to the Contractor, and the City will be liable for the amount it does not dispute, with the disputed remainder being reserved for dispute resolution between the City and Sound Transit as provided in Section 20 herein.

City Disagreement with Change Order. If the City disputes the entire change order, then Sound Transit may issue the change order to the Contractor, and the full amount of the disputed change order will be reserved for dispute resolution between the City and Sound Transit as provided in Section 20 herein.

In the event of a claim by the Contractor(s), each party shall be responsible for its proportionate share based on its proportionate responsibility for the claim and each party shall be responsible for its own attorneys' fees and costs. PROVIDED THAT nothing in this Agreement shall be construed to make the City responsible for a Contractor claim, to the extent that it is caused by the actions, inactions or responsibilities of Sound Transit, and/or their agents, employees or consultants. PROVIDED FURTHER THAT nothing in this Agreement shall be construed to make Sound Transit responsible for a Contractor claim, to the extent that it is caused by the actions, inactions or responsibilities of the City and/or its agents, employees or consultants.

4.8 Project Site / Contractor Interaction The City of Kirkland, and its employees, representatives, agents, and inspectors shall not provide any direction directly to the Contractor – all such direction to the Contractor shall be provided solely through Sound Transit or Sound Transit's Resident Engineer.

5. TEMPORARY TRANSIT FACILITY

5.1 The Parties agree that a temporary transit site shall be provided by the City on public right of way and Peter Kirk Park land in order to minimize disruption of transit service or inconvenience transit passengers during construction of the Project. The temporary transit facility shall be designed by Sound Transit and constructed by the City consistent with the approved design. Sound Transit shall reimburse the City for its actual costs associated with construction of the temporary transit facility as provided in Section 7.6.

6. OTHER EXISTING CITY STRUCTURES

6.1 The Parties acknowledge that construction of the Project is likely to impact existing City structures located adjacent to the Project, specifically, but not exclusively, the library parking structure and park restroom facility, and that some portions of these structures may already be damaged and defective through no cause of Sound Transit. Sound Transit shall restore and repair any damage it causes to existing City structures as nearly as possible to the equal value and utility which existed prior to such damage, except, however, to the extent that such repairs are necessary due to damage or defects that existed prior to Project construction.

6.2 Prior to the beginning of construction of the Project, the City shall complete a survey of the existing conditions of the accessible portions of the City structures. As the inaccessible portions of the City structures are exposed or otherwise become accessible through construction operations, the City shall supplement its survey to reflect the existing conditions within 48 hours of discovery of the new information. The City will provide a copy of all existing condition surveys and supplements to Sound Transit within 24 hours of completing documentation.

6.3 Within 24 hours of discovery of any damage to or deterioration of portions of existing City structures during Project construction, the Parties shall notify each other and mutually determine in a timely manner and so as not to delay the Project schedule, what repairs are necessary and the extent to which each Party is responsible. Sound Transit shall design the necessary repairs as mutually determined by the Parties and complete construction of the necessary repairs. The City shall reimburse Sound Transit for its actual cost of designing and repairing existing damage not caused by Sound Transit as provided in Section 6.3. This reimbursement obligation specifically includes any delay, acceleration, inefficiency, or other impact costs to the Contractor that are directly attributable to the repair work of existing damage not caused by Sound Transit. Impacts must be demonstrated by CPM schedule and as further defined in the contract documents.

6.4 Sound Transit shall submit invoices together with supporting documentation, to City for the repairs provided based on actual costs incurred by Sound Transit. Invoices may include any work supported by documentation on the Project through the date of the corresponding milestone. City shall review the invoices and within ten (10) calendar days after receipt of such invoices shall notify Sound Transit, in writing, of the amount approved for payment and the amount (if any) that will be rejected along with the reason for rejected amounts. City shall not withhold payment for those portions of invoices that are not in dispute. For the amount of invoices that are approved, City shall pay Sound Transit within thirty (30) calendar days after approval of each such invoice.

6.5 Sound Transit and/or its successors, assigns, agents and employees shall have the right to access the City structures and lands referenced in this Section as may be necessary to complete any repairs to such City structures and to construct and maintain the project.

7. FUNDING, INVOICE AND PAYMENT PROCEDURES

7.1 Sound Transit shall reimburse the City a total amount not to exceed One Million, Three Hundred Thirty-eight Thousand Three Hundred Four Dollars (\$1,338,304) for the design and construction of the following intersection improvements that are necessary to support the Project:

- a) 108th Avenue NE and NE 68th Street
- b) NE 85th Street/Central Way and 6th Street South
- c) NE 85th Street/Central Way and 3rd Street South
- d) 3rd Street South and Kirkland Way

7.2 The amount set forth above reflects the Parties' best estimates of the amount that may be required to design and construct the intersection improvement described in Section 7.1, and the allocation of these amounts to be paid by Sound Transit to the City. Actual amounts reimbursable under this Agreement shall be based on actual work performed and made pursuant to reimbursement provisions contained herein. In no event shall the City be paid for costs that are not documented pursuant to the requirements of this Agreement.

- 7.3 Reimbursement payments from Sound Transit to the City shall be made as follows:
- a) Upon completion of the final design and with the City Council's authorization to bid, Sound Transit shall pay the City an amount not to exceed One Hundred Thirty-five Thousand Dollars (\$135,000).
 - b) Upon completion of thirty percent (30%) of the value of the construction contract, as determined by the City, Sound Transit shall pay the City an amount not to exceed One Hundred Eighty-five Thousand Dollars (\$185,000).
 - c) Upon completion of sixty percent (60%) of the value of the construction contract, as determined by the City, Sound Transit shall pay the City an amount not to exceed One Hundred Eighty-five Thousand Dollars (\$185,000).
 - d) Upon completion of one hundred percent (100%) of the value of the construction contract, as determined by the City, and final acceptance of the Project by the City, Sound Transit shall pay the City a maximum of the remaining amount of the capped contribution or the remaining actual cost, whichever is less.
- 7.4 The City shall submit invoices together with supporting documentation, to:

Barry Alavi, Project Manager
Sound Transit, Capital Project Department
401 S. Jackson Street
Seattle, WA 98104-2826

Sound Transit for each of the milestones identified above requesting payment for costs incurred by the City up to the "not to exceed" installment amounts described in Section 7.1 (a)-(d) above. Invoices may include any work supported by documentation on the Project through the date of the corresponding milestone. Sound Transit shall review the invoices and within ten calendar days after receipt of such invoices shall notify the City, in writing, of the amount approved for payment and the amount (if any) that will be rejected along with the reason for rejected amounts. Sound Transit shall not withhold payment for those portions of invoices that are not in dispute. For the amount of invoices that are approved, Sound Transit shall pay the City within thirty calendar days after approval of each such invoice.

7.5 There may be unforeseen conditions requiring immediate resolution during the construction of the Utility Pipeline Work such as construction disputes and claims, changed conditions and changes in the construction work. Reimbursement for increased construction contract amounts for the Utility Pipeline Work shall be limited to costs covered by a modification, change order or extra work order approved as identified in Section 4.7.

7.6 Sound Transit shall reimburse the City for costs associated with construction of temporary transit facilities.

8. REPORTING RESPONSIBILITIES

8.1 The City shall furnish reports and documentation to Sound Transit as outlined in Section 7.0. In addition, the City shall provide documentation with each invoice to verify that the City's reimbursable expenditures are related to the Project funded by this Agreement. Documentation may include but is not limited to: (1) work statements or payroll records; (2) invoices for

materials and supplies; (3) statements from professionals for services rendered; and (4) itemized listings of charges incurred supported by copies of original bills, invoices, expense accounts, and miscellaneous supporting data retained by the City.

8.2 All Project records in support of all costs incurred and actual expenditures kept by the Parties shall be maintained in accordance with procedures prescribed by the Washington Secretary of State's Office. Each Party's records shall be reasonably available for inspection by the other Party during normal business hours, and shall be retained and made available for such inspection for a period as defined by State Law from the date of Sound Transit's final payment to the City. Copies of said records shall be furnished to the requesting Party and/or government personnel upon request. This requirement shall be included in all subcontracts related to the work entered into by the City to fulfill the terms of this Agreement.

8.3 If a Party or the state or federal government requests an audit pursuant to any applicable state or federal agency requirements, the other Party shall cooperate with such audit and auditor.

8.4 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 to this Agreement. All contracts shall comply with all applicable public works and procurement laws and regulations, including, but not limited to, bonding, prevailing wage, nondiscrimination, retainage, insurance, and workers compensation requirements.

9. ENVIRONMENTAL COMPLIANCE AND PERMITS

9.1 Sound Transit has completed the necessary environmental review and environmental documentation necessary for the Project and issued a Determination of Non-Significance "DNS" on May 12, 2008.

9.2 Sound Transit, at its sole cost and expense, shall (i) secure and maintain in effect, all federal, state and local permits and licenses required for the construction, operation and maintenance of the Project, including, without limitation, zoning, building, health, environmental, and communication permits and licenses, and (ii) indemnify the City against payment of the costs thereof and against any fines or penalties that may be levied for failure to procure, or to comply with, such permits or licenses, as well as any remedial costs incurred by the City in curing any such failures.

9.3 The City shall not hinder Sound Transit's attempts to secure, obtain, and maintain, at Sound Transit's sole cost and expense, any permits, licenses or approvals of other governmental agencies or authorities, or of any necessary third parties, for the use of any structures or facilities (including streets, roads or utility poles). The City shall exercise due diligence to review and issue decisions on any subsequent permits and approvals efficiently and in an expedited manner. In consideration of the commitments contained herein, the Parties have agreed that the total cost to Sound Transit of any permit or processing fees associated with the Project shall not exceed \$55,000.00.

9.4 The City shall issue to Sound Transit a street use permit for use of a portion of Park Lane and a portion of Central Avenue for the duration of the construction of the Transit Center Project. Upon completion of the project, Park Lane and Central Avenue shall be returned to their respective existing conditions; in the event that KCDNR proceeds with the reconstruction of the Downtown Kirkland Pump Station, the City hereby authorizes the assignment of that Street Use

Permit from Sound Transit to the KCDNR and shall authorize the extension of the duration of the Street Use Permit until the County's substantial completion of the Kirkland Pump Station Project which is to commence at completion of the Transit Center and Utility Project Work. Restoration obligations shall transfer with the street use permit.

10. UTILITY RELOCATION

10.1 All conflicting utilities shall be relocated by Sound Transit at its expense pursuant to applicable provisions of the Kirkland Municipal Code ("KMC"). Sound Transit shall fully indemnify the City for any claim and undertake the defense of any litigation directed at the City arising from such relocation to accommodate the construction of the Project. The City shall cooperate with Sound Transit in the defense of any such claim. Notwithstanding the foregoing, the Parties agree that Sound Transit shall pay for any relocation or protection of City-owned utilities that the City determines is necessary due to construction or operation of the Project. The Parties acknowledge that certain utilities owned by King County and located on City Property will be relocated by Sound Transit and that the terms and conditions related to that work will be addressed in a separate agreement between Sound Transit and King County. The Parties acknowledge that certain utilities owned by the City and located on City property or within public right of way will be relocated and, or impacted by the Project. That portion of Sound Transit's Contractor's work consisting of the City's watermain and storm system and appertanences shall not be given final acceptance until it is approved in writing by the City. The City shall not unreasonably withhold approval for final acceptance here to. The watermain shall become the property of the City upon final acceptance.

10.2 The City shall exercise its normal powers to cause the owners of any utilities located in the public rights of way under the jurisdiction of the City to relocate or adjust utility facilities as may be required by the Project. The City shall assert its right, to the extent legally permissible, to cause said relocation or adjustment necessitated by the Project at the utility owner's cost, consistent with state law and applicable franchise utility permits and schedule agreements.

10.3 Sound Transit will be responsible for all utility relocation costs that are not subject to the City's franchise agreements, however the City will continue to pursue timely agreements the such utilities so as not to impact the overall schedule. Payments associated with relocation agreements will be due within 30 days of their submittal to Sound Transit.

10.4 Sound Transit and the City agree to meet at least weekly and confer throughout performance of the Utility Pipeline Work to analyze status and anticipated completion. Kirkland designates Ray Steiger as its representative for such meetings. Sound Transit designates Jerry Dahl, Construction Manager, as its representative for such meetings.

Sound Transit agrees to provide the City with copies of progress reports, status reports, construction contract reports, inspection reports, RFI logs, submittal logs, and schedule updates as required in the construction contract for the Transit Center and Utility Pipeline Work.

11. MUTUAL INDEMNITY AND HOLD HARMLESS

11.1 To the extent permitted by law, each of the Parties 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 judgments 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 section shall survive the termination of this Agreement.

12. INSURANCE

12.1 Sound Transit shall maintain, throughout the term of this Agreement and for six years after its termination, insurance adequate to protect the City against claims that may arise as a result of the construction, operation, or maintenance of the Project, including, without limitation: (i) comprehensive general liability insurance; (ii) property damage liability insurance (including coverage for explosion, collapse, and instability); (iii) workers' compensation insurance (to the extent required by law); (iv) employer's liability insurance; and (v) comprehensive auto liability coverage (including owned, hired, and non-owned vehicles).

12.2 Sound Transit shall carry such insurance with responsible insurers or self-insure or participate in an insurance pool or pools at levels of coverage or with reserves adequate, in the reasonable judgment of Sound Transit, to protect Sound Transit and the City against loss, and as are ordinarily carried by municipal or privately owned entities engaged in the operation of similar systems.

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

12.4 If Sound Transit fails to maintain the required insurance, the City may order Sound Transit to stop operating the Project on the City Property until the required insurance is obtained.

12.5 The City shall secure and maintain in full force and effect sufficient insurance to cover any claims that may arise from its responsibilities for the work pursuant to this Agreement, including environmental and professional liability. The aforementioned insurance requirements shall be fulfilled by the City's membership in Washington Cities Insurance Authority, a municipal insurance pool. The City shall further require any contractors and subcontractors it retains in connection with the Project to maintain sufficient insurance pursuant to this Section and to add Sound Transit as an additional insured on all such policies.

13. LIENS

13.1 The Project is not subject to a claim of lien. In the event that any City property becomes subject to any claims for mechanics', artisans' or materialmen's liens, or other encumbrances chargeable to or through Sound Transit that Sound Transit does not contest in good faith, Sound Transit shall promptly, and in any event within thirty (30) days, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit or other means), without cost to the City, and shall indemnify the City against all costs and expenses (including attorneys' fees) incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of Sound Transit after first giving Sound Transit seven (7) days' advance notice of its intention to do so. The City shall use its reasonable best efforts to keep Sound Transit's facilities free of all liens that may adversely affect the Project.

13.2 Nothing herein shall preclude Sound Transit's or the City's contest of a claim for lien or other encumbrance chargeable to or through Sound Transit or the City, or of a contract or action upon which the same arose.

14. COVENANTS AND WARRANTIES

14.1 By execution of this Agreement, the City warrants:

- a) That the City has the full right and authority to enter into and perform this Agreement and any permits that may be granted in accordance with the terms hereof, and that by entering into or performing this Agreement the City is not in violation of its charter or by-laws, or any law, regulation or agreement by which it is bound or to which it is bound or to which it is subject; and
- b) That the execution, delivery and performance of this Agreement by the City has been duly authorized by all requisite corporate action, that the signatories for the City hereto are authorized to sign this Agreement, and that, upon approval by the City, the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement.

14.2 By execution of this Agreement, Sound Transit warrants:

- a) That Sound Transit has full right and authority to enter into and perform this Agreement in accordance with the terms hereof, and by entering into or performing under this Agreement, Sound Transit is not in violation of any of its agency governance rules, or any law, regulation or agreement by which it is bound or to which it is subject; and
- b) That the execution, delivery and performance of this Agreement by Sound Transit has been duly authorized by all requisite Board action, that the signatories for Sound Transit hereto are authorized to sign this Agreement, and that the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement.

15. DESIGNATED REPRESENTATIVES

15.1 To ensure effective and efficient cooperation and review, each Party shall designate a representative ("Designated Representative") responsible for communications between the Parties and as a central point of contact for the Project. The Designated Representatives will be:

City of Kirkland:

Ray Steiger, Capital Projects Manager
123 Fifth Avenue
Kirkland, WA 98033
Phone: (425) 587-3833
Fax: (425) 587-3807
rsteiger@ci.kirkland.wa.us

Sound Transit:

Barry Alavi, Project Manager
401 South Jackson Street
Seattle, WA 98104
Phone: (206) 398-5433
Fax: (206) 398-5216
barry.alavi@soundtransit.org

15.2 The Designated Representatives are responsible for ensuring that the purpose, schedule, budget, and funding limitation objectives are met. Designated Representatives are also responsible for coordinating the various agency or department staff assigned to the Project. The Parties reserve the right to change Designated Representatives, with notice to the other parties, as the Project progresses through design and construction. This list may be updated whenever any Designated Representative is changed by supplement attached to this Agreement.

16. PUBLIC COMMUNICATION

16.1 In a cooperative effort, Sound Transit, the City, King County Wastewater Treatment Division, and the King County Library System are working together to coordinate public information and outreach efforts. The communication plan will be jointly supported by the Parties and is intended to accomplish the following objectives:

- Minimize construction impacts to those who live, work, and visit downtown Kirkland;
- Exchange information among the Parties, contractors and subcontractors that are responsible for design, construction, and operation;
- Provide timely, accurate and consistent public information through a variety of communication methods

17. AUTHORITY WITHIN PARTIES

17.1 Each Party will establish clear lines of authority within its organization and identify staff members within each Party who will provide technical/professional expertise and approvals. Each Party's staff shall be responsible to their respective Designated Representative, providing technical/professional expertise and input to support the Project. Each Party's staff are responsible for coordinating their department's/division's/section's involvement with the Project and shall work through the Designated Representative to ensure that the Project objectives, including the scope, schedule and budget, are met.

18. DEFAULT

cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any issues or disputes arising during the term of this Agreement.

- b) Each Designated Representative shall notify the others in writing of any problem or dispute that the Designated Representative believes needs formal resolution. The Designated Representatives shall meet within three (3) business days of receiving the written notice in an attempt to resolve the dispute. The Parties may, but shall not be required to, utilize the services of a mediator to assist with problem identification and resolution.
- c) In the event the Designated Representatives cannot resolve the dispute, the City's Public Works Director, Sound Transit's Capital Projects Department Director or designees shall meet and engage in good faith negotiations to resolve the dispute.
- d) In the event the City's Public Works Director and Sound Transit's Capital Projects Department Director cannot resolve the dispute, the City Manager and Sound Transit's Chief Executive Officer shall meet and engage in good faith negotiations to resolve the dispute.
- e) The Parties agree that they shall have no right to seek relief under this Agreement in a court of law until and unless each of these procedural steps is exhausted. The preceding sentence shall not apply to the extent that any applicable statute of limitations will or may run during the time that may be required to exhaust the procedural steps set forth above provided, however, that the Parties agree that any legal proceeding brought during such period may be stayed, if consistent with applicable law and if the rights of the Parties will not be prejudiced thereby, while the procedural steps set forth above are satisfied. Nothing in this paragraph is intended to limit the City's right or ability to enforce any conditions of approval for the Project.

21. TERMINATION

21.1 Either Party may terminate this Agreement, in whole or in part, in writing, if the other Party substantially fails to fulfill any or all of its obligations under this Agreement through no fault of the other party, provided that insofar as practicable, the Party terminating the Agreement will give:

- a) Written notice of intent to terminate at least thirty (30) calendar days prior to the date of termination stating the manner in which the other Party has failed to perform the obligations under this Agreement; and
- b) An opportunity for the other Party to cure the default within at least thirty (30) calendar days of notice of the intent to terminate. In such case, the notice of intent to terminate will state the time period in which cure is permitted and any other appropriate conditions.

21.2 If the other Party fails to remedy the default or the breach to the satisfaction of the other Party within the time period established in the notice of intent to terminate or any extension thereof, granted by the Party not at fault, this Agreement shall be deemed terminated.

21.3 A termination by any Party shall not extinguish or release either Party from liability, claims or obligations to third parties existing as of the time of termination. Any costs incurred

prior to proper notification of termination will be borne by the Parties in accordance with the terms of this Agreement and this Section. The indemnification provisions set forth in this Agreement and all remedial provisions shall survive termination of this Agreement. In the event of termination by default or breach, Sound Transit shall be obligated to compensate the City only for the portion of the Project that has been satisfactorily rendered to the date of termination.

22. GENERAL LEGAL PROVISIONS

22.1 Rights and Remedies -- The rights and remedies of the Parties to this Agreement are in addition to any other rights and remedies provided by law, except as otherwise provided in this Agreement.

22.2 No Agency -- No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of any other party.

22.3 No Third Party Rights -- It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties.

22.4 Compliance with Laws -- 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. The work performed by each Party under this Agreement shall comply with all applicable public works and procurement laws and regulations, including but not limited to bonding, prevailing wage, nondiscrimination, retainage, insurance, and workers compensation requirements.

22.5 Governing Law and Venue -- This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be King County, Washington.

22.6 No Employee Relationship -- In performing work and services hereunder, each Party and its respective employees, agents, consultants and representatives shall be acting as an independent contractor and shall not be deemed or construed to be employees or agents of the other Party in any manner whatsoever. No employee of any Party shall hold himself/herself out as or claim to be an officer or employee of the other Party by reason of this Agreement and shall not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the other Party. Each Party shall be solely responsible for any claims for wages or compensation by its employees, agents, and representatives, including consultants, and shall hold the other Party harmless therefrom.

22.7 Waiver of Default -- Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of a provision of this Agreement, including failure to require full and timely performance of any provision, shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by authorized parties, and attached to the original Agreement.

22.8 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. Neither this Agreement nor any term or provision hereof, or any

inclusion by reference, shall be construed as being for the benefit of any party not a signatory hereto.

22.9 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.

22.10 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 or condition.

22.11 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.

22.12 Exhibits -- All exhibits referenced in and attached to this Agreement are incorporated herein, except to the extent otherwise provided herein.

22.13 Entire Agreement -- This Agreement constitutes the entire Agreement of the parties with respect to the subject matters hereof, and supersedes any and all prior negotiations (oral and written), understandings and agreements with respect hereto.

22.14 Execution and Amendments -- This Agreement shall become effective as of the date the last Party signs. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument. This Agreement may be amended only by a written instrument executed by each of the Parties hereto and upon the appropriate written authorization of each Party's respective governing body or authorized representative as may be required.

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

CITY OF KIRKLAND

By: Marilynne Beard
~~David Ramsay~~ Marilynne Beard
Its: _____
Asst. City Manager

SOUND TRANSIT

By: Ronald Earl
Joan M. Earl
Its: _____
Dep Chief Executive Officer

ATTEST/AUTHENTICATED:

By: Helen Anderson
City Clerk

APPROVED AS TO FORM:

By: Oslem Rey

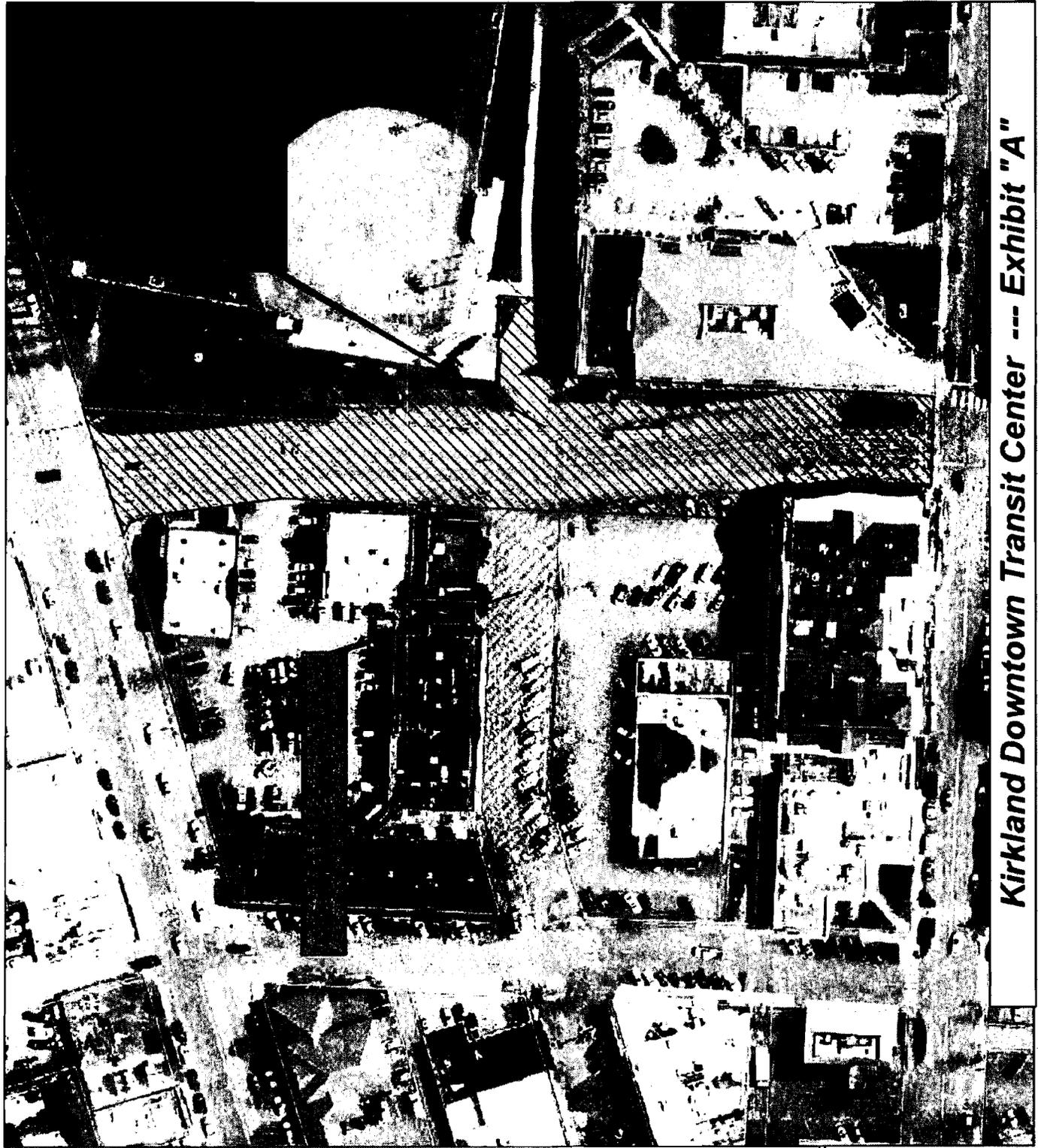
APPROVED AS TO FORM:

By: Stephen Shreeve

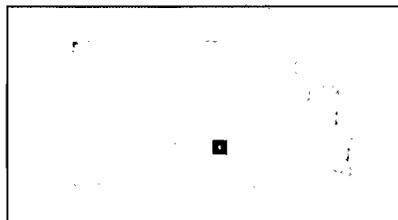
Oskar Rey
~~Robin Jenkinson~~
Asst. City Attorney

Stephen G. Sheehy
Sound Transit Legal Counsel

Exhibit A	Site Plan
Exhibit B	Legal Description of Transit Center
Exhibit C	Matrix of Facility Ownership/maintenance responsibility

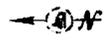


Kirkland Downtown Transit Center --- Exhibit "A"



Map Legend

See Panels

A legend box containing the text "Map Legend" and "See Panels".

City of Kirkland
18000 1st Avenue, Suite 100
Kirkland, WA 98033
Phone: (206) 835-1000
Fax: (206) 835-1001
www.kirklandwa.gov

Exhibit B

Transit Center legal description to be included here

**Exhibit of Operations & Maintenance Responsibilities
July 2009**

Exhibit C

Project Element	Sound Transit	City of Kirkland	King County Metro
Four bus bays accommodating up to a total of ten buses on 3 rd Street <ul style="list-style-type: none"> • Striping repair • Roadway repair 	X		
Trellis, with weather protection, at entry to Peter Kirk Park <ul style="list-style-type: none"> • Trellis maintenance and repair • Landscaping at trellis 		X	
Stairs at NW corner of Library <ul style="list-style-type: none"> • Maintenance of new stair 		X	
Repair of elements of City parking garage necessary to allow construction of 1) new stairs along north side of garage and 2) landscaping areas on west side of garage		X	
Park Quadrant improvements: <ul style="list-style-type: none"> • Stairs/handrails at Park restroom & overlook • Trellis on restroom • Benches at ball field • Stairs/sidewalk at ball field berm 		X	
Repair of elements of Park restroom structure necessary to allow construction of Park quadrant improvements.		X	
Third Street planted medians <ul style="list-style-type: none"> • landscaping & irrigation system • pedestrian barrier • lighting • payment of water bill 		X	

Project Element	Sound Transit	City of Kirkland	King County Metro
Bus canopies <ul style="list-style-type: none"> • maintenance and repair 	X		
Lighting (bus canopies and trellis lighting) <ul style="list-style-type: none"> • maintain and repair • payment of power bill 	X		
Lighting (street, pedestrian, and Plaza area lighting) <ul style="list-style-type: none"> • maintain and repair • payment of power bill 		X	
Landscaping <ul style="list-style-type: none"> • all plant material within project • maintain and repair irrigation systems • payment of water bill 		X	
Benches <ul style="list-style-type: none"> • maintenance 		X (all others)	
Bicycle storage (racks and alcove) <ul style="list-style-type: none"> • administration • maintenance (except lighting) 	X		
Sound Transit signage (bus schedules, rider information, stop identification) <ul style="list-style-type: none"> • maintenance 	X		
MUTCD (traffic) signage		X	
Public Art <ul style="list-style-type: none"> • maintenance 	X		
Pavers (stone or concrete) at crosswalks & in hardscape		X	
In-pavement crosswalk at Park Lane/3 rd Street Crosswalk <ul style="list-style-type: none"> • Maintenance 		X	

<ul style="list-style-type: none"> • Crosswalk striping • Payment of power bill 			
Project Element	Sound Transit	City of Kirkland	King County Metro
Maintain and operate traffic signal systems <ul style="list-style-type: none"> • Kirkland Avenue/ 3rd Street • Central Way/ 3rd Street • 68th/ 108th 		X	
Conduit for a future traffic signal at Park Lane/3 rd Street installed by project <ul style="list-style-type: none"> • Installation and maintenance of future signal 		X	
Means for display of event banners (Summerfest, parades, etc.) <ul style="list-style-type: none"> • Design • Installation • Maintenance 		X	
Public telephone (<i>not included in project</i>) <ul style="list-style-type: none"> • maintenance 			
Variable Message Signs (with "next bus" information) <ul style="list-style-type: none"> • maintenance 	X		
Conduit for future installation of CCTV <ul style="list-style-type: none"> • (maintenance responsibility assigned to owner of CCTV system when installed) 			
Trash receptacles <ul style="list-style-type: none"> • maintenance and servicing 	X		
Recycle receptacles <ul style="list-style-type: none"> • maintenance and servicing 		X	
Equipment Room <ul style="list-style-type: none"> • Maintenance 	X	(City has access)	(KCM has access)

Project Element	Sound Transit	City of Kirkland	King County Metro
Offsite traffic signal improvements at NE 68 th Street/108 th Ave NE <ul style="list-style-type: none"> • maintenance 		X	
Operator Restrooms (drivers to use park restroom per agreement between KCM and COK) <ul style="list-style-type: none"> • maintenance 		X	X
Coffee Cart – water and power <ul style="list-style-type: none"> • maintenance • utility bills 		X	