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**Agreement
regarding the
Design, Construction, Operation and Maintenance
of the
Downtown Seattle Transit Tunnel and Related Facilities
between and among
King County,
The City of Seattle
And
The Central Puget Sound Regional Transit Authority**

Revised June 24, 2002

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THIS AGREEMENT ("Agreement") is entered between and among King County ("County"), The City of Seattle ("City") and the Central Puget Sound Regional Transit Authority ("Sound Transit"). Collectively, the agencies are referred to as the "Parties."

RECITALS

A. The County is a home rule charter county with broad powers to provide public transportation within the County's geographic boundaries. The County owns and operates an extensive system of buses, vanpools, accessible services vehicles, park and ride lots, transit centers, transit hubs, and other transportation facilities within the County.

B. 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 ("HCT") system. On November 5, 1996, central Puget Sound area voters approved local funding for *Sound Move*, Sound Transit's ten-year regional transit plan. The plan includes light rail, commuter rail, and regional express bus/high occupancy vehicle (HOV) systems that will be integrated with local transit systems and use a single or integrated, regional fare structure.

C. The City is a city of the first class in the State of Washington with its own charter, and as such, has authority co-extensive with the State unless the exercise of a City power would violate the Constitution or a general law of the State, and all of the powers conferred upon incorporated cities and towns by Title 35 RCW and other laws of the state, and all powers that are usually exercised by municipal corporations of like character and degree. The City is responsible for, and has authority over, the laying out and supervision of all transportation public works within the City and on property belonging to or controlled by the City (including but not limited to street rights-of-way); and the management, construction, repair, maintenance, and control of all streets, gutters, and sidewalks; and the enforcement and implementation of City ordinances, contracts, and rules that relate to matters within the jurisdiction of the City administrative unit responsible therefor, namely Seattle Transportation. The City has specific statutory authority to prescribe the terms and conditions under which any street, avenue, alley, sidewalk, or other public ground may be used and to regulate all such use.

D. This Agreement is entered into consistent with the principles articulated in the Memorandum of Understanding Establishing a Cooperative Relationship entered into between Sound Transit and the County on May 11, 1998, and the April 20, 1998 Memorandum of Agreement for Intergovernmental Cooperation between Sound Transit and the City regarding Light Rail Development authorized

by City Ordinance 118927, and the subsequent supplements to that Memorandum of Agreement.

E. The Agreement between the City and Sound Transit for Grant of Non-Exclusive Use of a Light Rail Transit Way as Related to the Central Link Light Rail Project, dated July 2000, and authorized by City Ordinance 119975 ("Light Rail Transit Way Agreement") authorizes Sound Transit's construction and operation of Link light rail within City of Seattle rights-of-way.

F. The Municipality of Metropolitan Seattle ("Metro"), now merged with the County, constructed the Downtown Seattle Transit Tunnel ("Tunnel") to provide an additional right-of-way in downtown Seattle for buses and, at a future date, possibly trains. The Tunnel was constructed using a combination of federal and Metro funds and bond proceeds. The County continues to pay debt service on the bonds. Since 1990, the Tunnel has provided fast, reliable and comfortable service exclusively for bus riders from throughout the County. The County currently operates its own buses and Sound Transit Express Route 550 buses in the Tunnel.

G. Most of the Tunnel is located within the City's right-of-way, under downtown Seattle streets. The City holds its streets and other public rights-of-way, including but not limited to the right-of-way for the Tunnel, in trust for the convenience of public travel, and has legal authority to regulate and control the use of such streets and public rights-of-way for that purpose. Through the Master Cooperation Agreement between the City and Metro that was authorized by City Ordinance 112462 (the "Master Cooperation Agreement"), the City granted Metro the right to use the City right-of-way for the Tunnel for so long as it is used for public transportation purposes, subject to the terms and conditions of that Master Cooperation Agreement, future agreements between the City and Metro, and the City's authority over its streets and other public rights-of-way.

H. On June 1, 2000, the County, the City and Sound Transit entered into that certain Downtown Seattle Transit Tunnel Transfer Agreement ("Transfer Agreement") that established the terms and conditions for a conveyance of the Tunnel to Sound Transit for Sound Transit's use of the Tunnel solely for light rail operations. Because of changed circumstances, the Parties intend that this Agreement supersede the Transfer Agreement.

I. On November 29, 2001 the Sound Transit Board of Directors adopted Resolution 2001-16 selecting the alignment and profiles, station locations, and vehicle maintenance base site to be built for the Minimum Operable Segment of the Central Link Light Rail Project. Said Minimum Operable Segment (hereinafter, "Initial Segment") would utilize the Tunnel and extend from a train turn-around track located in a Tunnel Annex to be built east of the Tunnel's Westlake Station to a southern terminus at South 154th Street in the City of Tukwila.

J. Sound Transit is proceeding to obtain a full funding grant agreement from the Federal Transit Administration ("FTA") for the construction of the Initial Segment. Sound Transit is also proceeding with planning for extensions of the Initial Segment to the north and the south.

K. The regional transportation system will be improved if both buses and light rail trains operate through downtown Seattle in the Tunnel. Continued operation of buses in the Tunnel will enable regional bus routes to use the Tunnel and benefit transit patrons not directly served by light rail.

L. The County and Sound Transit recognize, however, that operation of both buses and light rail trains within the Tunnel will require a safe and efficient coordination of vehicle movements that is best accomplished by a single agency operating County buses, Sound Transit Express buses and Sound Transit trains.

M. Retrofitting the Tunnel to permit the addition of train operations in the Tunnel will require the rerouting of buses onto surface streets during the Closure Period. The Parties will make significant downtown transit-oriented improvements to the surface streets to promote effective downtown streets for all users. These improvements will take into consideration the needs of local businesses as well as transit riders, auto users, bicyclists, commercial traffic, pedestrians, and emergency response vehicles. The surface improvements are intended to implement the conditions of the FTA Record of Decision on the Central Link Light Rail Project issued on May 8, 2002 (the "ROD").

N. The County and Sound Transit agree that the County likely has the resources and skills needed to operate and maintain the Central Link light rail system when it begins operating revenue service.

O. This Agreement is intended to establish that Sound Transit shall have the right to own or use the Tunnel for High Capacity Transportation ("HCT") purposes subject to the terms of this Agreement and the subsequent agreements contemplated herein.

P. The environmental impacts relating to this Agreement have been disclosed and evaluated as part of an Environmental Assessment of the Central Link Light Rail Transit Project (February, 2002).

Q. The Parties are authorized to enter into this Agreement pursuant to RCW 81.112.070, Chapters 39.33 and 39.34 RCW and other applicable laws.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1.0 DEFINITIONS

The terms defined in this section shall have the meanings respectively assigned to them in the subsections set forth below unless a different meaning is obvious from the context. Words in the singular include the plural and vice-versa. Any capitalized word is a defined term unless such capitalization results from the application of standard capitalization or style rules.

1.1 "Bus Element" means all, or a portion of, a system, structure, piece of equipment or other element in the Tunnel and the Merge Zone that is solely for the benefit of the operation and maintenance of bus service.

1.2 "Bus Modification" means all, or a portion of, a system, structure, piece of equipment or other element in the Tunnel and Merge Zone that is replaced, built or installed during the Closure Period and is (a) solely for the benefit of the operation and maintenance of bus service in the Tunnel and (b) is not necessary for retrofitting the Tunnel.

1.3 "Calendar Day" means a Calendar Day except when the last day for taking any action falls on a Saturday or Sunday or legal holiday, in which case the next Calendar Day that is not a Saturday, Sunday or legal holiday shall be the final day for such action.

1.4 "Closure Date" means the date on which bus service is removed from the Tunnel for commencement of the Closure Period Construction Work.

1.5 "Closure Period" means the period of time commencing on the Closure Date and terminating on the last day before buses resume revenue service in the Tunnel after construction of the Closure Period Tunnel Modifications.

1.6 "Closure Period Construction Work" means all permitting, preparation, demolition, disposal, excavation, construction, installation, clean-up, testing, commissioning and other work necessary to complete the Tunnel Annex, the Closure Period Tunnel Modifications and the Merge Zone Improvements.

1.7 "Closure Period Tunnel Modifications" means the Light Rail Modifications, Common Modifications, Bus Modifications and Preparation/Restoration Modifications that the County and Sound Transit agree shall be made to the Tunnel during the Closure Period.

1.8 "Common Element" means all, or a portion of, a system, structure, piece of equipment or other element in the Tunnel that is neither a Light Rail Element nor a Bus Element. After the Closure Period Construction Work is completed, a Light Rail Modification identified in subsection 1.16c will be deemed a "Common Element."

1.9 "Common Modification" means all, or a portion of, a system, structure, piece of equipment or other element in the Tunnel that is replaced, built or installed during the Closure Period and is neither a Light Rail Modification nor a Bus Modification.

1.10 "CPI" means the U.S. Department of Labor Consumer Price Index for Urban Wage Earners and Clerical Workers (all Cities: 1982-1984=100), or subsequent revisions of this index, commonly referred to as the CPI-W.

1.11 "Downtown Seattle Traffic and Street Improvements" means those surface street improvements specified in Exhibit 3 and intended to mitigate the impacts of re-routing buses from the Tunnel onto surface streets during the Tunnel Closure Period and to promote bus operation and reliability on surface streets after the Tunnel is re-opened.

1.12 "FTA" means the Federal Transit Administration of the United States Department of Transportation.

1.13 "Hazardous Materials" means all those substances identified as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq., and the Washington Model Toxics Control Act, RCW 70.105D et seq., and shall include gasoline and other petroleum products.

1.14 "High Capacity Transportation" means high capacity transportation as defined in RCW 81.104.015.

1.15 "Initial Segment" means the light rail system extending from a train turn-around track located in a Tunnel Annex to be built east of the Tunnel's Westlake Station to a southern terminus at South 154th Street in the City of Tukwila.

1.16 "Light Rail Element" means all the systems, structures, pieces of equipment or other elements of the Tunnel Annex, the Tunnel Control Center and the Merge Zone and all, or a portion of, a system, structure, piece of equipment or other element in the Tunnel that:

- a. also exists throughout the Initial Segment (e.g. the light rail signal system); or

b. is uniquely required for light rail operations in the Tunnel or is specified by Sound Transit (e.g. back-up Tunnel control facility in the Tunnel; software necessary to integrate the independent train and bus radio systems).

1.17 "Light Rail Modification" means all the systems, structures, pieces of equipment or other elements of the Tunnel Annex, the Tunnel Control Center and the Merge Zone that are built or installed during the Closure Period; and all, or a portion of, a system, structure, piece of equipment or other element in the Tunnel that:

- a. also exists throughout the Initial Segment (e.g. the signal system);
- b. is required for light rail operations in the Tunnel or is specified by Sound Transit (e.g. back-up Tunnel control facility in the Tunnel; software necessary to integrate the independent train and bus radio systems); or
- c. is not a light rail element in the Tunnel but must be replaced or modified in order for Sound Transit to retrofit the Tunnel for joint bus/rail operations (e.g. station fans)

and that are replaced, built or installed during the Closure Period. After the Closure Period Construction Work is completed, a Light Rail Modification under subsection (c) above will be deemed a "Common Element" for purposes of Sections 15 and 16.

1.18 "Light Rail Transit Way Agreement" means the Agreement between The City of Seattle and Sound Transit for Grant of Non-Exclusive Use of a Light Rail Transit Way as Related to the Central Link Light Rail Project, dated July 2000, and authorized by City Ordinance 119975.

1.19 "Master Cooperation Agreement" means the 1985 Master Cooperation Agreement by and between The City of Seattle and the Municipality of Metropolitan Seattle for the Downtown Seattle Transit Project that was authorized by City Ordinance 112462.

1.20 "Merge Zone" means that portion of the limited access area owned by the Washington State Department of Transportation that extends from the Tunnel south to the Merge Point north of Royal Brougham Way, where northbound buses and light rail trains commence shared use of the same right-of-way.

1.21 "Merge Zone Improvements" means those systems, structures, pieces of equipment or other elements necessary for the operation and maintenance of light rail and bus service in the Merge Zone.

1.22 "Monitor and Maintain (or "M&M") Committee" means the committee responsible for monitoring the downtown Seattle transportation system performance and making recommendations to the Parties to take actions to maintain downtown Seattle transportation system performance after the Tunnel is closed.

1.23 "Preparation/Restoration Modification" means the installation, construction or removal of all or a portion of an existing or new system, structure, piece of equipment or other element in order to: protect the Tunnel from damage during closure; protect people and properties in the vicinity of the Tunnel from the effects of construction activities during closure; enable the other modifications to be installed or constructed; limit access; enable certain areas, facilities or systems of the Tunnel to be operated and maintained during closure; and restore the Tunnel to a clean and working condition after closure.

1.24 "Primary Mitigation Projects" means those five Downtown Seattle Traffic and Street Improvements specified in Section 10.2.

1.25 "ROD" means the FTA Record of Decision on the Central Link Light Rail Project issued on May 8, 2002.

1.26 "Technical Steering Committee" means the Committee comprised of two representatives of the County and two representatives of Sound Transit that shall be responsible for, among other things, agreeing to (a) the Closure Period Tunnel Modifications and the Merge Zone Improvements to be designed by Sound Transit's contractors and (b) the final designs for the Closure Period Construction Work.

1.27 "Transfer Agreement" means that certain Downtown Seattle Transit Tunnel Transfer Agreement entered into by the Parties on June 1, 2000.

1.28 "Tunnel" means the Downtown Seattle Transit Tunnel as described in Exhibit 1.

1.29 "Tunnel Annex" means the extension to the Tunnel for the train turn-around track located east of the Tunnel's Westlake Station, including all systems, structures, pieces of equipment and other elements related thereto.

1.30 "Tunnel Control Center" means the facility that controls and/or monitors the movement of movement of trains and buses while in the tunnel and controls and/or monitors the various tunnel mechanical and electrical systems.

1.31 "Twenty-four/seven" or "24/7" means twenty-four hours a day, seven days a week and describes continuous, uninterrupted operation or availability.

2.0 TERM OF AGREEMENT AND TERMINATION OF PRIOR TRANSFER AGREEMENT

2.1 Term

This Agreement shall take effect upon its signing by all Parties and shall continue in effect unless and until it is terminated as provided herein.

2.2 Prior Transfer Agreement Terminated

Upon this Agreement taking effect, the Parties agree that their Downtown Seattle Transit Tunnel Transfer Agreement, dated June 1, 2000, is terminated in its entirety, notwithstanding the provisions of those sections referenced in Section 34 thereof, entitled "Survival of Terms." The Parties are hereby released from all obligations under that agreement.

3.0 SOUND TRANSIT'S USE OF TUNNEL FOR HIGH CAPACITY TRANSPORTATION PURPOSES

3.1 Provisions Affording High Capacity Transportation ("HCT") Use of the Tunnel

Sound Transit shall have the right to use the Tunnel for HCT purposes subject to the terms of this Agreement and the subsequent agreements contemplated herein. As is more specifically provided herein:

- a. Commencing on the date of this Agreement, Sound Transit's employees and contractors may access the Tunnel in order to conduct inspections, assessments and design activities subject to the terms of Section 7. Access to the Tunnel shall be at such times and conditions as may be reasonably established by the County.
- b. If by March 31, 2003, the County and Sound Transit have executed a Closure Period O&M Agreement in accordance with Section 8 and a Closure Period Construction Agreement in accordance with Section 9, Sound Transit's employees and contractors may access the Tunnel to perform the Closure Period Construction Work.
- c. If by March 31, 2003, the County and Sound Transit have executed an O&M Agreement in accordance with Section 16, the Tunnel shall be used for Sound Transit's HCT operations in accordance with Section 12 and said O&M Agreement.
- d. If, however, the County and Sound Transit do not execute the aforesaid agreements by March 31, 2003 (or by the date of an extension agreed to by the

County's Director of Transportation and Sound Transit's Executive Director), or if in the future the County ceases to be the operator of Sound Transit's light rail service, then Section 19 of this Agreement provides alternatively for Sound Transit to purchase the Tunnel and, as the owner, continue use of the Tunnel for its light rail operations.

3.2 City Acknowledgement

The City hereby acknowledges that the uses of the Tunnel and the Tunnel Annex contemplated in this Agreement are consistent with the public transportation purposes authorized in the Master Cooperation Agreement and are specifically authorized under the terms of the 2000 Light Rail Transit Way Agreement.

3.3 Consideration

In exchange for the County's agreement of Sound Transit's light rail use of the Tunnel and the City's acknowledgement of such use of the street right-of-way, Sound Transit is providing the County with a share of the outstanding debt service owed for the Tunnel and is reimbursing the City for certain costs or paying City fees imposed by applicable law, ordinance, rule or regulation. The value provided by Sound Transit includes, but is not limited to, payments to the County as required herein, delivery to the County of property at Convention Place Station or payments in lieu thereof, assumption of a share of the costs for maintenance and operation of the Tunnel, assumption of certain costs associated with the Downtown Seattle Traffic and Street Improvements, assumption of the costs of constructing certain bus facility improvements near light rail stations, and payment of funds to the Rainier Valley Transit-Oriented Community Development Fund. The mutual benefits and satisfaction of the promises set forth in this Agreement, and in the subsequent agreements contemplated herein, shall constitute adequate consideration and full value for the grant of the use of the Tunnel.

3.4 Recording

Upon execution, a copy of this Agreement shall be recorded in the real property records of King County.

4.0 CLOSURE PERIOD CONTINGENCIES

4.1 Setting of Closure Date

The schedule for the Closure Period Construction Work shall include an anticipated Closure Date. The Closure Date shall be set to coincide with the date of a County bus service change and shall be set (a) at least nine (9) months after Sound Transit and the County have agreed upon the final design and schedule for the Closure Period Construction Work and (b) at least four months after

Sound Transit has provided written notice to the County and the FTA that the conditions precedent set forth below in Section 4.2 ("Contingencies") have been satisfied and County has agreed that the Contingencies have been satisfied, which agreement shall not be unreasonably withheld or delayed. If the County finds that the Contingencies have been satisfied, the Closure Date shall be established consistent with this Agreement and the County shall, on that date, remove bus service from the Tunnel.

4.2 Contingencies

- a. Sound Transit has executed, with the necessary authorization of its Board, a full funding grant agreement with the FTA for the construction of the Initial Segment.
- b. Sound Transit has obtained, and provided to the County copies of, all permits, street use franchises, authorizations, approvals and property interests necessary for Sound Transit, and its contractors to construct, operate and maintain the light rail system within the Merge Zone, the Tunnel and the Tunnel Annex.
- c. The Downtown Seattle Traffic and Street Improvements as identified herein have been satisfactorily completed.
- d. The County and Sound Transit have agreed in writing to the final design and the construction schedule for the Closure Period Construction Work.
- e. The County and Sound Transit have agreed in writing to a Tunnel Closure and Interim Bus Operations Plan.
- f. Sound Transit has executed a procurement contract providing for the delivery of the required fleet of light rail vehicles not later than the date scheduled for the start of testing of light rail service in the Tunnel.
- g. Sound Transit and the County have each executed the Closure Period O&M Agreement referenced in Section 8.0, the Closure Period Construction Agreement referenced in this Section 9.0, the Operation and Maintenance Agreement referenced in Section 16.0 and an agreement providing that the County shall operate and maintain those Sound Transit Express Bus routes that use the Tunnel.
- h. Sound Transit has provided written assurances acceptable to the County and the City that Sound Transit will be able to open the Initial Segment for revenue service not later than July 1, 2010.

i. Sound Transit has provided written assurances acceptable to the County and the City that bus service will be able to resume in the Tunnel within two years after the Closure Date.

j. No bankruptcy, insolvency, dissolution, rearrangement or similar action involving the County, Sound Transit or the Tunnel, whether voluntary or involuntary, is pending, threatened by a third party, or contemplated by the County or Sound Transit.

k. No action has been taken by the Sound Transit Board to stop the planning, construction or operation of the Initial Segment.

l. Sound Transit has timely paid all payments required under this Agreement that became due to the County and the City prior to the commencement of the Closure Period Construction Work.

m. The City, Sound Transit, and County are duly authorized to enter this Agreement and to undertake all actions required herein.

5.0 REAL PROPERTY AUTHORIZATIONS

5.1 Property Owners

Sound Transit has examined the recorded deeds, easements, agreements, leases, licenses, permits and other authorizations related to the real property underlying or affected by the Tunnel and the Merge Zone. Sound Transit warrants that no further rights, titles, interests, notices or permissions are required in order to construct, conduct, maintain, repair and replace the light rail facilities and operations in the Tunnel and the Merge Zone. Sound Transit shall, at no expense to the County, acquire or obtain any further rights, titles, interests, notices or permissions if it is subsequently determined that any of the same is required in order to construct, conduct, maintain, repair and replace the light rail facilities and operations in the Tunnel, the Tunnel Annex and the Merge Zone without infringing upon any other person or entity's legal rights or interests. As owner of the Tunnel, the County shall not create, amend, modify or change any easement, license or right of entry directly affecting the Tunnel without Sound Transit's written consent having been first obtained, which consent shall not be unreasonably withheld.

5.2 Defense and Indemnity

Sound Transit specifically agrees to defend, indemnify and hold harmless the County against any and all claims, damages, costs, expenses (including reasonable attorney fees), demands, defenses, administrative appeals, causes of action, protests, grievances, and lawsuits (collectively referred to as "Claims") in which it is claimed or alleged that the use of the Tunnel, Tunnel Annex and/or

Merge Zone for construction, operation and maintenance activities related to HCT use (a) affects the validity or adequacy of any existing recorded easement, agreement, lease, license, permit and other authorization related to the real property underlying or affected by the Tunnel, the Tunnel Annex and/or Merge Zone or any such instrument that has not been recorded but is listed in Exhibit 1-B or (b) creates a nuisance, trespass, taking, waste or other impact on such property or property interests requiring compensation or other payment.

6.0 CONVENTION PLACE STATION

6.1 General

The County is planning a two-phase transit-oriented development ("TOD") at the Convention Place Station ("CPS") site. Phase One may involve construction of a below-grade bus transit station and a parking structure. Phase Two is anticipated to involve private commercial development and may include upward expansion of the parking structure. Both the County and Sound Transit would benefit from increased density and economic activity in the vicinity of their public transportation services. Additionally, Sound Transit may need access to a portion of the Convention Place Station for construction staging during the Closure Period Construction Work.

6.2 Street and Alley Vacation

In 1988, in response to the County's petition, the City granted conceptual approval to the vacation of the alley within Block 32, Heirs of Sarah A. Bell's Second Addition to the City of Seattle according to the plat recorded in Vol. 1 of Plats, page 121, Records of King County, Washington, and that portion of Terry Avenue lying adjacent to Lots 7, 8 and 9 of that same block and Lots 4, 5 and 6 of Block 44 in the same addition. Final vacation of the subject alley and portion of Terry Avenue was conditioned upon the County's providing pedestrian access between Olive Way and Pine Streets as noted in City Clerk's File No. 295303. To date, the County has not satisfied those conditions so the vacation of the alley and the specified portion of Terry Avenue has not been completed.

In order to accomplish the TOD, vacation of Terry Avenue and the alley within the Convention Place Station property is necessary. The City supports the development of the Convention Place Station in an intensive and transit-oriented manner and the provision of a public pedestrian access through the Convention Place Station property between Olive Way and Pine Street. Accordingly, the City's legislative authority is willing, upon request of the County or its proposed developer and the presentation to the City's legislative authority of a master plan for the redevelopment of Convention Place Station area, to consider modifying the conditions imposed with respect to the County's 1988 petition to vacate such alley and portion of Terry Avenue.

The County shall use its best efforts to ensure that the conditions imposed with respect to the County's 1988 petition or such modified conditions as the City's legislative authority and the County may agree upon are implemented in connection with any redevelopment of the Convention Place Station area. Included in such County efforts shall be the making of one or more presentations to the City's legislative authority to keep such officials fully informed regarding the status of redevelopment efforts with respect to such area. The City agrees to expedite its review of any modification of the conditions associated with such alley and street vacation proposed by the County or its site developer. It is the intent of the County to ensure that in any conveyance of the Convention Place Station site or a substantial portion thereof for redevelopment, the grantee is obligated to provide free, public pedestrian access between Olive Way and Pine Street through such site and to otherwise comply with the design review, development, and other conditions imposed both with respect to the vacation of such alley and portion of Terry Avenue and new construction at the time such development occurs. The County recognizes that additional conditions may be imposed by the City's legislative authority in response to a request to modify the conditions described in City Clerk's File No. 295303, including, but not limited to, requiring that the City be named as a third party beneficiary of such obligation, and that the City be granted the right to specifically enforce such obligation.

6.3 Sound Transit Conveyance

At no cost to the County, Sound Transit shall convey or cause to be conveyed to the County in fee simple certain property owned by the Washington State Department of Transportation (WSDOT) and existing in the Convention Place Station. Said conveyance shall occur on or before January 31, 2004. The property to be conveyed includes the property described in Exhibit 2, which is attached hereto and made a part hereof, and all other property associated therewith by virtue of any adjacent street vacations. If this property is not conveyed to the County on or before January 31, 2004, Sound Transit shall make a payment on said date to the County in lieu of providing the property to the County, in an amount equal to the fair market value of the property at that time.

6.4 Bus Layover Spaces

The Parties agree to work together to resolve on and off-street bus layover issues in the north downtown Seattle area.

6.5 Possible Sound Transit Utilization of Convention Place Station Site

6.5.1 Sound Transit shall evaluate the potential environmental impacts of the light rail project alternatives in its North Link Supplemental Environmental Impact Statement ("SEIS") on the County's proposed Phase One TOD structure. Design of the North Link alternatives shall accommodate construction of the Phase One TOD structure. The County agrees to assist Sound Transit in specifying working assumptions for Convention Place Station bus passenger facilities, ramps and layover as well as auto access points, ramps and parking capacity for said North Link SEIS.

6.5.2 Should Sound Transit request that it be able to use any portion of the Convention Place Station site for construction staging or tunnel construction activities related to the Initial Segment, the County and Sound Transit will negotiate the terms and conditions of such use, provided that any such use shall not unduly interfere with construction of the TOD or the operation of buses through CPS during the Closure Period or with the operation of buses through the Tunnel or CPS prior to the Closure Date. The County shall not charge any fee for such use, unless such use unduly interferes with construction of the TOD during the Closure Period or with the operation of buses through the Tunnel or CPS.

6.5.3 Should Sound Transit determine that it will build a North Link extension along an alignment that passes through the Convention Place Station, the County shall grant Sound Transit, at no additional cost, a permanent subterranean easement for construction and light rail use of the specific alignment through the property that comprises the Convention Place Station (including the property conveyed under Section 6.3). Provided that Sound Transit may only exercise its rights under said easement in a manner that does not interfere with the County's operation of buses through CPS and Sound Transit shall be responsible for all construction costs and impacts associated with the light rail alignment through CPS.

6.6 Existing Convention Place Station Use and Staging Agreement

The Convention Place Station Use and Staging Agreement, entered into by the County and Sound Transit on September 13, 2000, is hereby amended to eliminate any rights on the part of Sound Transit under said Agreement to enter and use the Convention Place Station site and any obligations on the part of the County under said agreement to undertake future work or activities.

6.7 Modifications to Convention Place Station

Any Sound Transit modifications to or use of the Convention Place Station shall be negotiated in a separate agreement.

7.0 TUNNEL ASSESSMENT AND DESIGN OF CLOSURE PERIOD CONSTRUCTION WORK

7.1 Technical Steering Committee

The County and Sound Transit hereby establish a Technical Steering Committee consisting of two representatives from each. Said Committee shall (a) determine the Light Rail Modifications, Common Modifications and Bus Modifications, if any, that will comprise the Closure Period Tunnel Modifications; (b) develop the scopes of work necessary for Sound Transit's design firms to complete final design of the Closure Period Construction Work, (c) monitor the satisfactory completion of said design scopes of work, and (d) perform such other activities as are specified herein or agreed to by the County and Sound Transit. Decisions of the Technical Steering Committee shall require agreement of both the County and Sound Transit acting through their representatives. The County and Sound Transit will work to finalize these scopes of work within ninety (90) Calendar Days after the execution of this Agreement. If said representatives are not in agreement on a matter, or if it does not appear that the scopes of work will be able to be negotiated within ninety (90) Calendar Days after execution of this agreement, either party may commence the dispute resolution process specified in Section 7.9.

7.2 Tunnel Assessment

As provided elsewhere in this Agreement, the County makes no warranties as to the condition of the Tunnel or its fitness for modifications and operation of Sound Transit service. Sound Transit acknowledges that the Tunnel is made available for operation of its service on an "as is" and "with all faults" basis. The County and Sound Transit agree that it will be necessary and beneficial to make modifications to the Tunnel in addition to those identified in Sound Transit's "60% Design Documents" prepared by its consultants. To identify those additional structures, systems and other elements to be modified, the County and Sound Transit shall create technical working groups consisting of their respective employees and contractors to perform a Tunnel assessment. Sound Transit shall retain consultants necessary to perform the Tunnel assessment at its expense. Each party shall be responsible for the cost of its own staff and contractors assigned to the Technical Steering Committee or technical working groups.

7.3 Design of Closure Period Construction Work

7.3.1 Sound Transit, at its sole expense, shall be responsible for the preparation of all designs, specifications and preliminary cost estimates, the revision of design documents before and during construction, the preparation of as-built plans and any other design work that is necessary to install and construct the Tunnel Annex, the Merge Zone Improvements and the Closure Period Tunnel

Modifications (collectively referred to herein as the "design work"). The Closure Period Tunnel Modifications shall include those modifications that have been agreed upon and categorized by the Technical Steering Committee as one of the following: Light Rail Modifications; Bus Modifications; Common Modifications; or Preparation/Restoration Modifications.

7.3.2 Sound Transit expressly acknowledges and agrees that the County's participation in the assessment and design work under this Agreement, including but not limited to, providing information and reviewing, commenting on, and disapproving and/or accepting designs, plans and specifications (i) is solely for the benefit and protection of the County, (ii) does not create or impose upon the County any standard or duty of care toward Sound Transit, all of which are hereby disclaimed, (iii) may not be relied upon by Sound Transit in determining whether Sound Transit has satisfied any and all applicable standards and requirements and (iv) may not be asserted, nor may the County's exercise or failure to exercise any such rights be asserted, against the County by Sound Transit as a defense, legal or equitable, to Sound Transit's obligation to fulfill such standards and requirements and regardless of any acceptance of work by the County.

7.4 Additional Design Work

Following completion of the Tunnel assessment work described above, the Technical Steering Committee shall determine how to add to or modify the scopes of work for Sound Transit's existing design contracts and any other design contracts as necessary to complete final design of all Closure Period Construction Work. Sound Transit shall not authorize any of its contractors to commence final design of the Closure Period Construction Work until scopes of work for such design work have been agreed upon by the Technical Steering Committee. In the event the Technical Steering Committee cannot reach agreement on the scopes of work, either the County or Sound Transit may commence the dispute resolution process specified in Section 7.9.

7.5 County Participation

The County's designated employees or contractors shall be fully included by Sound Transit and its design contractors in any communications and meetings regarding any design work related to the Closure Period Construction Work. The County's designees shall respond to requests for information concerning the Tunnel and shall present the County's position on design matters but shall at no time direct Sound Transit's design contractors.

7.6 Review of Design Work

Upon execution of this Agreement, the Technical Steering Committee shall meet at least monthly with Sound Transit's project managers and design contractors

and the County's designated employees and contractors to monitor progress, make decisions on alternatives and review deliverables. Sound Transit shall not accept any design work until it has been agreed upon by the Technical Steering Committee. In the event the Technical Steering Committee cannot reach agreement on the acceptance of the design work, either the County or Sound Transit may commence the dispute resolution process specified in Section 7.9.

7.7 Cost of Design Work

Sound Transit shall pay for all consultant design work related to the Tunnel Annex, the Merge Zone Improvements and the Closure Period Tunnel Modifications. The County and Sound Transit shall each be responsible for the cost of its own staff and contractors assigned to the Technical Steering Committee or technical working groups except to the extent Sound Transit has already agreed to make payments to the County for County staff costs during 2002 under Addendum Five to the Project Agreement for Services Regarding a Regional Integrated Public Transportation System.

7.8 Indemnification and Insurance

7.8.1 Sound Transit shall protect, defend, indemnify, and save harmless the County, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from acts or omissions of Sound Transit, its officers, employees, contractors of any tier and/or agents acting within the scope of their obligations under this Agreement. Sound Transit 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, Sound Transit, by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the County incurs attorney fees and/or costs in the defense of claims, for damages within the scope of this section, such fees and costs shall be recoverable from Sound Transit. In addition the County shall be entitled to recover from Sound Transit fees and costs incurred to enforce the provisions of this section.

7.8.2. Sound Transit shall include in its existing and any new contracts with contractors performing assessment and design-related work, contract terms that provide (a) that the contractors shall defend, indemnify and hold harmless the County, its officials, employees and contractors to the same extent as they defend, indemnify and hold harmless Sound Transit and its officials, employees and contractors; and (b) that approval by Sound Transit and the County of any plans, drawings, designs, specifications, reports and other products and deliverables prepared by the contractors shall not in any way relieve the contractors of responsibility for the technical adequacy or accuracy thereof.

7.8.3 Sound Transit agrees that any claims, demands, lawsuits or liability arising out of, or in connection with, the acts or omissions of the County and its officials, employees and contractors of any tier in participating in any of the assessment and design activities related to the Closure Period Construction Work shall be adjusted, defended, and indemnified by Sound Transit, at its sole expense, through its SIR and OCIP to the same extent claims, demands, lawsuits and liability against Sound Transit's officials, employees and contractors are adjusted, defended and indemnified through its SIR and OCIP.

7.8.4 Sound Transit has established an Owner Controlled Insurance Program ("OCIP") for all design work related to the Closure Period Construction Work and the participation therein by its employees and contractors. Said OCIP includes both (1) a self-insured retention ("SIR") and (2) insurance coverages. Sound Transit agrees to add the County as a Named Insured to all policies of insurance except Professional Liability. Sound Transit agrees to add all County contractors on the tunnel project as an enrollee to the Sound Transit OCIP program. Said policies shall provide protection to the County and its contractors for acts and/or omissions of King County and its officials, employees and contractors. Sound Transit shall fully fund and pay for SIR provisions. Liability on the part of the County and its officials, employees and contractors of any tier for damages shall first be satisfied by the SIR and insurance coverages of the OCIP. If, and only if, the County's coverage under the OCIP is exhausted shall the County have out-of-pocket exposure for damages, which out-of-pocket exposure shall in no event exceed an aggregate one million dollars. Liability for damages in excess of that amount shall be the responsibility of Sound Transit.

7.8.5 Sound Transit, at its sole expense through its OCIP, shall provide at a minimum the insurance coverages described below, and cause to be added to said coverages, as Named Insureds, except as noted above, the County, its officials, employees and contractors of any tier. Said coverages shall not exclude or limit claims made by the County, as a Named Insured, against other covered parties including but not limited to Sound Transit, its contractors of any tier or a County contractor.

The parties acknowledge that insurance markets change and that insurance in the amounts described in this section may not be available in the future. The parties agree that the limits of insurance herein, at the discretion of the Risk Managers of King County and Sound Transit, may be reviewed and adjusted within ninety (90) Calendar Days of the expiration of each project policy. Any adjustment in limits must be agreed to by the County. Adjustment, if any, to insurance premiums shall be the sole responsibility of Sound Transit.

a. Commercial General Liability

Coverage is written on an "occurrence" basis with the standard Insurance Service Office (ISO) 1998 or equivalent coverage form. The

policy includes premises and operations coverage, and completed operations coverage extending for at least 3 years after the completion of the Closure Period Construction Work. This policy also covers employers liability, or Washington "stop-gap" liability, personal injury liability, and contractual coverage for liability assumed under an "insured" contract as defined by the insurance policy.

The policy shall not contain exclusions for broad form property damage or for the hazards commonly known as "explosion, collapse, and underground (XCU)." Directors, officers and employees shall be insured under the policy, and policy terms shall include "Separation of Insureds" as defined by the standard ISO policy form.

Minimum Policy limits are:

Not less than \$2,000,000 - each occurrence - bodily injury and property damage

Not less than \$2,000,000 - each occurrence - personal injury

Not less than \$2,000,000 - each occurrence - employers liability

This Commercial General Liability policy will be primary insurance for claims arising from this Contract, and non-contributing with respect to any other insurance carried by the County and its officials, employees and contractors of any tier.

b. Excess Liability

Excess liability insurance consists of a combination of layered placements, which provide excess liability coverage to the Commercial General Liability insurance described above.

Minimum policy limits are:

Not less than \$100,000,000 - per occurrence

Not less than \$100,000,000 - annual aggregate

c. Environmental / Pollution Liability

One or more policies shall provide coverage for claims from third parties for bodily injury, property damage, and for offsite clean up costs caused by "pollution conditions" as defined by the insurance policies including liability arising from Sound Transit's employees and contractors of any tier and the County and its officials, employees and contractors of any tier.

Policy limits are:

Not less than \$50,000,000 -- per occurrence

Not less than \$50,000,000 -- policy aggregate

d. Professional Liability

Coverage shall be written on a "Claims Made" basis that includes Professional Liability with an extension for Pollution related specifically to Professional Liability. The policy shall contain an extended reporting period of ten (10) years. Coverage shall be provided for Sound Transit's employees and contractors of any tier and the County and its officials, employees and contractors of any tier. Sound Transit shall provide an "Owners Endorsement" to include King County.

Policy limits are:

Not less than \$50,000,000 - per claim

Not less than \$50,000,000 - policy aggregate

e. Railroad Protective Liability

Coverage shall be written on an industry standard Railroad Protective Liability (RRP) "occurrence" coverage form, and name Sound Transit and the County as insured for all construction operations performed by Sound Transit's employees and contractors of any tier and the County and its officials, employees and contractors of any tier, who will be designated on this Railroad Protection policy.

Policy limits are:

\$ 5,000,000 - per occurrence

\$10,000,000 - policy aggregate

7.8.6 Sound Transit will provide the County with appropriate certificates evidencing the insurance coverage described in the OCIP. The actual insurance policies will be available for inspection at Sound Transit's office at Union Station, 401 South Jackson Street, Seattle, WA 98104-2826.

7.8.7 The County and Sound Transit shall each maintain for their own employees, and require their contractors of any tier to provide, the following minimum coverages, which are not included in the OCIP.

a. Automobile Liability Insurance for On-Site Activities

\$1,000,000 combined single limit for bodily injury and property damage per occurrence for owned, non-owned, and hired vehicles.

b. Workers Compensation for On-Site Activities

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington.

The County and Sound Transit acknowledge and agree that each other may self-insure 7.8.7.

7.8.8 The County shall cooperate with Sound Transit or its authorized representative with regard to administration and operation of the OCIP. The County's contractors of any tier shall be enrolled into the OCIP and shall be provided the OCIP Insurance Manual.

7.8.9 While it is Sound Transit's current intent to maintain the OCIP throughout the term of all Sound Transit Construction Projects, Sound Transit reserves the right to terminate or modify the OCIP or any portion thereof. To exercise this option, Sound Transit must provide sixty (60) Calendar Days advance written notice to its contractors and the County. Upon receipt of such notice, the contractors and the County shall immediately notify their subcontractors and obtain replacement insurance coverage as required above. The actual auditable cost of such approved replacement insurance shall be reimbursed by Sound Transit. Contractors and the County shall provide written evidence of such replacement insurance to Sound Transit prior to the actual termination date of the OCIP.

7.8.10 Notwithstanding other provisions of this Section, Sound Transit reserves the right to exclude any person or entity other than the County from the OCIP. Any such exclusion will be at Sound Transit's sole discretion. Any contractors excluded from the OCIP will be required to provide insurance coverage as required by Sound Transit. The actual auditable cost of such insurance will be reimbursed by Sound Transit.

7.8.11 Sound Transit shall waive with respect to its payments and costs, and shall cause the underwriters of insurance policies described above to waive any subrogation of claims arising from the County's acts or omissions under this Agreement, which Sound Transit may have against the County for any loss, including personal injury, bodily injury, death, and property damage, including loss of use thereof, to the extent covered by SIR and insurance as described herein, and occurring in the course of or in any way related to the County's acts or omissions under this Agreement.

7.8.12 Claims or incidents covered under OCIP will not require the payment of deductibles, self-insured retentions, or defense expenses by the County and its officials, employees and contractors of any tier.

7.8.13 The coverages provided by the OCIP, including associated deductibles or self-insured retentions, shall be primary to any insurance maintained by the County or its contractors whose policies shall not contribute with or benefit Sound Transit or its contractors of any tier in any way.

7.8.14 The County shall:

a. Not violate or knowingly permit violation of any conditions of the policies of insurance, and shall at all times satisfy the requirements of the insurance companies issuing them.

b. Agree to bind affirmatively its contractors to the provisions of this Agreement, including the provisions of the OCIP.

c. Notify Sound Transit during the course of design or construction, in advance of the County's intent to award any consultant contract related to the assessment and design work of this Section 7.0. It is Sound Transit's intent to enroll all County contractors into the OCIP. Each contractor shall exclude costs for insurance from its bid or proposal that would duplicate or provide similar coverage to any of the insurance coverages in the OCIP.

7.8.15 The cost of the premiums for insurance provided under the OCIP will be paid by Sound Transit, and Sound Transit will receive and pay, as the case may be, all adjustments in such costs, whether by way of dividends, audits, or otherwise.

7.8.16 The County recognizes and agrees that, as respects the OCIP coverages provided herein, MARSH USA Inc. is the Broker of Record; that Sound Transit's contractors of any tier and the County have the affirmative obligation and right to notify and request correction of any insurance deficiencies, omissions or errors to MARSH USA Inc.

7.8.17 The OCIP coverage will include coverage for consequential damages.

7.8.18 The design work on behalf of Sound Transit and the County, their officials and employees by its contractors of any tier performed under this Agreement is covered by the OCIP regardless of the location where the work is performed.

7.8.19 Except as expressly provided elsewhere in this Agreement, the OCIP provided by Sound Transit is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Sound Transit, its contractors of any tier under their contracts or imposed by applicable laws or regulations.