

SOUND TRANSIT

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Contract #2080

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INTERGOVERNMENTAL AGREEMENT

BETWEEN

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

AND

THE CITY OF LYNNWOOD

FOR REIMBURSEMENT OF SOUND TRANSIT'S COSTS RELATED TO LYNNWOOD
CITY CENTER ANALYSIS

IN CONJUNCTION WITH THE NORTH CORRIDOR TRANSIT PROJECT

This INTERGOVERNMENTAL AGREEMENT (hereinafter this "Agreement"), is made and entered into this _____ day of _____, 2011, by and between CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (hereinafter "Sound Transit") and the CITY OF LYNNWOOD (hereinafter "Lynnwood" or the "City"), each of which is hereinafter referred to individually as a "Party" or collectively as "Parties".

1.0 RECITALS

WHEREAS, Sound Transit is a duly organized regional transit authority existing under Chapters 81.104 and 81.112 RCW and has all powers necessary to implement a high capacity transportation ("HCT") system; and

WHEREAS, pursuant to Chapter 81.112.070 RCW, Sound Transit is authorized to perform regional public transportation functions; and

WHEREAS, pursuant to RCW 81.104.070 Sound Transit may implement necessary contracts, including joint development agreements, and intergovernmental agreements for the planning of high capacity transportation system facilities within Sound Transit's boundaries; and

WHEREAS, Lynnwood is a municipal corporation under the laws of the State of Washington and has all powers necessary for the purposes of this Agreement; and

WHEREAS, Sound Transit is currently analyzing high capacity transit extension alternatives between Northgate and Lynnwood through the North Corridor Project, or "Project"; and

WHEREAS, Lynnwood's City Center has been designated as the only Regional Growth Center between Seattle and Everett and as such is slated to accommodate a large amount of employment and population growth in the coming decades; and

WHEREAS, the 2009 City of Lynnwood Mode Split for City Center Street Master Plan has concluded that the extension of the North Corridor line to provide a City Center station is essential to serving the regionally significant Regional Growth Center; and

WHEREAS, Lynnwood desires to add additional planning analysis for the purpose of helping Lynnwood gain a better understanding of one potential alignment and configuration for a light rail guideway extension and station, including development of cost and ridership estimates and a general assessment of potential environmental issues that would have to be addressed if the extension were pursued (the Lynnwood City Center Analysis); and

WHEREAS, the Parties have agreed that Sound Transit, as the regional authority of transit services and facilities, should administer the Lynnwood City Center Analysis contemporaneously with the Project; and

NOW, THEREFORE, in consideration of the covenants, assurances and mutual promises herein, the Parties agree as follows:

2.0 PURPOSE

Sound Transit and Lynnwood have agreed that the Lynnwood City Center Analysis Scope of Work (**Exhibit A**, and hereinafter referred to as "Scope of Work") will be performed by Sound Transit's consultant team, North Corridor Transit Partners (NCTP). All work that is not a direct benefit to the Project will be fully paid for by the City consistent with Sound Transit's scope control policies. The work will be separate from, and is not expected to be a part of, or incorporated to Project work under NEPA, SEPA or New Starts, including the Draft and Final Environmental Impact Statement. The purpose of this Agreement is to define the scope, cost, and payment schedule for Lynnwood City Center Analysis, and to establish the respective roles and responsibilities between Sound Transit and Lynnwood for the Lynnwood City Center Analysis.

3.0 EFFECTIVE DATE OF AGREEMENT

This Agreement shall be effective upon execution by both Parties.

4.0 SCOPE OF WORK

4.1 Work to be Performed

Sound Transit agrees to perform the Scope of Work.

4.2 Public Outreach

Sound Transit shall be responsible for all public communications concerning the Project. The Parties shall work together to coordinate public communications for their respective projects.

4.3 Changes in Work

No work is to occur that would exceed the maximum amount covered by this Agreement. Lynnwood or Sound Transit may request changes in the Scope of Work. The requesting Party shall give notice to the other Party and the Parties may amend or supplement this agreement in writing to provide for any increase in costs arising from changes in the scope of work.

5.0 FUNDING AND BUDGET

5.1 Budget

The budget for the Lynnwood City Center Analysis is seventy-five thousand dollars (\$75,000).

This amount reflects the best estimates of the amounts that may be required to accomplish the Scope of Work. In the event it is determined that the Scope of Work has been accomplished for a lesser amount than identified in this Section, only actual costs shall be reimbursed. In no event shall payment be made for costs that are not documented pursuant to the requirements of this Agreement.

5.2 Increases in Spending

Sound Transit shall give Lynnwood prompt notice of anticipated increases in spending beyond the estimated amount of the Scope of Work, and shall provide such documentation as required to support its request for payments in excess of the estimated amount.

All anticipated increases in costs beyond seventy-five thousand dollars (\$75,000) shall be approved in writing by both Parties in advance of incurring any increased costs.

6.0 PROGRESS PAYMENT, INVOICES AND FINAL PAYMENT

6.1 Invoices and Documentation

6.1.1 To secure payment Sound Transit shall submit all documentation required under 6.1.2 to Lynnwood's Designated Representative identified in 9.0.

Reimbursements will be paid directly to Sound Transit, at the following address:

ATTN: Treasury Division
Central Puget Sound Regional Transit Authority
Sound Transit
401 S. Jackson St.
Seattle, WA 98104

6.1.2 Reimbursement of the eligible costs shall be made upon approval by Lynnwood. Such approval and reimbursement shall occur within thirty (30) days of receipt by Lynnwood of a request for reimbursement from Sound Transit. The request for reimbursement shall include an invoice and a progress report.

7.0 REPORTING RESPONSIBILITIES

7.1 Availability of Records

All project records in support of all costs incurred and actual expenditures kept by Sound Transit shall be maintained in accordance with procedures prescribed by the Washington State Auditor's

Office. The records shall be open to inspection by the City during normal business hours. Copies of said records shall be furnished to the City upon request. This requirement shall be included in all subcontracts related to the work entered into by Sound Transit to fulfill the terms of this Agreement.

8.0 CONTRACT ADMINISTRATION BY SOUND TRANSIT

8.1 Responsibility for Contracts

To fulfill its respective responsibilities under this Agreement, Sound Transit shall be solely responsible for the administration of, and the completion and quality of work performed under, its contracts. The City, in exercising its right to inspect or accept the work performed by Sound Transit, shall not be deemed or construed to be in control of the work under this Agreement. In no event shall any contract executed by Sound Transit be construed as obligating the City to this Agreement.

8.2 Contract Requirements

Sound Transit shall ensure that all contracts shall comply with all applicable procurement laws and regulations.

9.0 DESIGNATED REPRESENTATIVES, INTERGOVERNMENTAL COORDINATION, AND ROLES AND RESPONSIBILITIES

The parties each designate a representative ("Designated Representative") who shall be responsible for coordination of communications between the Parties and shall act as a central point of contact for each agency in the event disputes arise. The Designated Representatives shall be responsible for the performance of the goals, objectives, and scope of work of this Agreement, as well as ensuring that schedule, budget and funding limitations of this Agreement are satisfied.

Each Designated Representative is also responsible for coordinating the input and work of various governmental agency or department staff, consultants and contractors as it relates to the scope of this Agreement. The Parties reserve the right to change Designated Representatives by written notice to the other Party during the term of this Agreement. Each Party's Designated Representative is named below with the individual's contact information.

Sound Transit

Matt Sheldon, North Corridor Program Manager
Sound Transit
401 S Jackson Street
Seattle, WA 98144
Telephone: (206) 398-5292
Fax: (206) 903-7498
E-mail: matt.sheldon@soundtransit.org

City of Lynnwood

Paul Krauss, AICP, Community Development Director
City of Lynnwood
PO Box 5008Address
Lynnwood, WA 98046-5008City, State Zip
Telephone: (425) 670-5401
Fax: (425) 771-6585
E-mail: pkrauss@ci.lynnwood.wa.us

10.0 DISPUTE RESOLUTION

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

The Designated Representatives shall use their best efforts to resolve disputes and issues arising out of, or related to, this Agreement. Each Designated Representative shall notify the other in writing of any problem or dispute the Designated Representative believes needs formal resolution. This written notice shall include:

1. a description of the issue to be resolved;
2. a description of the difference between the Parties on the issue; and
3. a summary of steps taken by Designated Representative to resolve the issue.

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

The Parties agree 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, the Parties agree that any legal law and the rights of the Parties will not be prejudiced thereby, while the procedural steps set forth above are satisfied.

11.0 INDEMNIFICATION

To the extent permitted by law, each of the Parties to this Agreement shall protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, Indemnifying Party's negligent acts or omissions. 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 other Party. 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 that a Party incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this section, all such fees, expenses, and costs shall be recoverable by the prevailing Party. This indemnification shall survive the termination of this Agreement.

12.0 PUBLIC COMMUNICATIONS

The Parties to this Agreement shall not make any formal press releases, news conferences or similar public statements concerning this Agreement without prior consultation with the other Party and coordination with such Parties' public relations objectives for this Agreement. Notwithstanding the foregoing, without consulting or coordinating with Sound Transit, the other Party may issue press releases and make public statements regarding operational information, lane closures, detours and other matters typical in the ordinary course of completing the scope of work in this Agreement. The City and Sound Transit shall coordinate public meetings, newsletters, and press releases to provide information to the community in a timely and accurate manner.

13.0 GENERAL PROVISIONS

13.1 Notice

All notices or requests required or permitted under this Agreement shall be in writing, shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, or by facsimile transmission and shall be deemed received three (3) business days following the date

when mailed or on the date when delivered or faxed (provided the fax machine has issued a printed confirmation of receipt). All notices or requests shall be sent to the Designated Representatives of each Party.

13.2 Termination of Agreement

Either Party for their convenience upon thirty (30) days written notice may terminate this Agreement. Either Party shall provide the other Party a Notice of Termination stating the effective date of the termination.

13.3 Rights and Duties of Parties Upon Termination

The release and indemnification provisions set forth in this Agreement and all remedial provisions shall survive termination of this Agreement. In the event of termination of this Agreement for any reason, the City shall compensate Sound Transit for all costs expended up to the date of termination along with any reasonable closeout costs to complete or vacate the project.

13.4 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.

13.5 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.

13.6 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.

13.7 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.

13.8 Governing Law and Venue

This Agreement shall be governed and construed and enforced in accordance with the laws of the State of Washington. Any legal action brought under or resulting from this Agreement shall be

brought in the Superior Court of King County.

13.9 No Employee Relationship

No employee of any Party shall hold him/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.

13.10 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.

13.11 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.

13.12 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.

13.13 Severability

If any of the terms and conditions of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and conditions unaffected thereby shall remain in full force and effect. The Parties agree to negotiate in good faith to reform the Agreement to replace any invalid or unenforceable term and/or condition with a valid and enforceable term and/or condition that comes as close as possible to the intention of the stricken term and/or condition.

13.14 Exhibits

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

13.15 Amendments/Supplements

The Parties reserve the right to amend this Agreement as necessary. No addition or modification

to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized representative of each of the Parties.

13.16 Execution of Agreement

This Agreement shall be executed in two (2) counterparts, any one of which shall be regarded for all purposes as one original.

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

For the City of Lynnwood:

By: Don Gough 5-25-11
Don Gough
Mayor, City of Lynnwood

Approved as to Form:

By: Rosemary A. Larsen
City Attorney

For Sound Transit:

By: Mike Williams 6/28/11
Mike Williams
Title: Light Rail Project Development
Director

Approved as to Form:

By: Robin Murphy
Sound Transit Legal Counsel

EXHIBIT A: Scope & Cost for Lynnwood City Center Analysis

1 **Lynnwood City Center Analysis**

2 At the request of the City of Lynnwood, this new task will develop one representative extension of light
3 rail from the Lynnwood Transit Center to Lynnwood's planned City Center area, beyond Sound Transit's
4 approved North Corridor Transit Project extending regional mass transit from Northgate to Lynnwood
5 Transit Center. City Center is a regionally recognized Regional Growth Center and is slated for significant
6 growth by accommodating PSRC projected residents and employment in the coming decades. In
7 addition to supporting the growth projected for the City Center, extension of the LRT line through this
8 area could help define future extensions to Everett should that be approved by the voters in the future.
9 Lynnwood intends to utilize this work product to advance the potential for building a City Center Station
10 by using the information to secure funding for its construction.

11 The work will be performed by Sound Transit's consultant team, North Corridor Transit Partners (NCTP)
12 and will be fully paid for by the city consistent with Sound Transit's scope control policies. The work will
13 be separate from and will not be incorporated into Sound Transit's North Corridor project work under
14 NEPA, SEPA or New Starts. The extension will be developed for the purpose of helping Lynnwood gain a
15 better understanding of one potential alignment and configuration for a light rail guideway extension
16 and station, including development of cost and ridership estimates and a general assessment of
17 potential environmental issues that would have to be addressed if the extension were pursued. The
18 extension will be developed consistent with the light rail extension alternatives between Northgate and
19 Lynnwood currently being analyzed by Sound Transit.

20 **Task 1: Route Alignment**

21 Based on the alignment and most likely station location and configuration(s) developed for the
22 Lynnwood Transit Center Station as part of Sound Transit's Level 2 alternatives development and
23 evaluation process, identify probable horizontal and vertical alignment concepts for extensions of the
24 line beyond the Lynnwood Transit Center to the City of Lynnwood's proposed City Center. These
25 concepts will be reviewed with Sound Transit and City of Lynnwood staff and one will be chosen as most
26 probable given the current level of project development. A conceptual plan and profile will be
27 developed for the selected alignment.

28 **Task 2: Station Design, Urban Design and Access Planning**

29 A program for the City Center Station will be developed and reviewed with Sound Transit and City of
30 Lynnwood staff. It is assumed that due to its "downtown" location, the new station will focus primarily
31 on non-vehicular access with no provisions for park and ride facilities and limited bus and kiss and ride
32 access. In consultation with Sound Transit and Lynnwood staff, one most probable station location and
33 type (aerial or at-grade) will be identified, considering previous urban design, planning, economic
34 development, rail station integration, and transportation studies developed by the City of Lynnwood. A
35 conceptual, sketch-plan level design for the agreed upon station in the context of the urban design
36 parameters and regional transportation access for Lynnwood City Center will then be developed.

37 **Task 3: Transit Planning, Service Integration, Rail Transit Operations and Ridership Forecasting**

EXHIBIT A: Scope & Cost for Lynnwood City Center Analysis

1 Transit planning activities will include general development of a service integration concept associated
2 with the proposed station in conjunction with a conceptual rail operations plan compatible with the
3 proposed route and station facilities design. This task will explore various approaches to the operation
4 of this station in conjunction with an interim terminus at the Lynnwood Transit Center. This could
5 include operation of a shuttle or single track service, as well as full double track operations between the
6 two Lynnwood stations prior to Sound Transit's extension of the line north of the Lynnwood Transit
7 Center.

8 The existing Sound Transit incremental model will be used to perform ridership forecasting analysis in
9 support of this task. This model will be supplemented by the current PSRC model databases. Year 2030
10 ridership associated with the rail extension will be generated based on one assumed alignment
11 alternative for the Northgate to Lynnwood Transit Center segment. Ridership with the Lynnwood City
12 Center rail extension will be compared to ridership without the extension as one means of evaluating
13 the effectiveness of the extension. Sound Transit staff will code the appropriate transit networks for
14 modeling by NCTP.

15 **Task 4: Preliminary Environmental Evaluation**

16 Based on the conceptual route alignment and station design identified in tasks 1 and 2 above, the
17 project team will provide a general evaluation of environmental issues that the alignment and station
18 would involve. The level of detail will be similar to the evaluation of concepts performed in Sound
19 Transit's initial screening of alternatives for the North Corridor. This effort estimated the likely right of
20 way effects, considering the alignment and station descriptions, which then were used to roughly
21 estimate the magnitude of potential impacts. Specific quantities and impacts will not be quantified and
22 detailed impact analysis will not be performed. The environmental evaluation will be separate from and
23 not incorporated into Sound Transit's NEPA or SEPA environmental documentation for the North
24 Corridor project.

25 **Task 5: Capital and O&M Cost Estimating**

26 For the selected alignment (Task 1), station configuration (Task 2), and operating plan (Task 3),
27 determine the additional capital and operating & maintenance costs and projected revenues associated
28 with extending the LRT line from Lynnwood Transit Center to Lynnwood City Center. Sound Transit's
29 alternatives analysis-level capital and O&M cost estimation methodology will be used to estimate the
30 costs for the extension.

31 **Task 6: Prepare Technical Memorandum, Presentation to the Lynnwood City Council**

32 Prepare a draft technical memorandum summarizing results of tasks 1 through 5. Graphics will include
33 conceptual plan and profile of the selected alignment and a conceptual site plan of the selected station
34 configuration. After review by Sound Transit and Lynnwood staff, finalize the technical memorandum
35 incorporating changes agreed to by Sound Transit and city staff. Attend a City Council work session to
36 review the findings and respond to questions.

EXHIBIT A: Scope & Cost for Lynnwood City Center Analysis

1 Work Products

- 2 Draft and final technical memoranda summarizing the results of subtasks 1 through 5. Graphics will
- 3 include conceptual plan and profile of the selected alignment and a conceptual site plan of the selected
- 4 station configuration.

5 Cost

Task No.	Subtask	Hours of Effort	Cost
1	Route Alignment	82	5,365
2	Station Design, Urban Design and Access Planning	244	14,677
3	Transit Planning, Service Integration, Rail Transit Operations and Ridership Forecasting	26	1,632
4	Preliminary Environmental Assessment	24	1,552
5	Capital and O&M Cost Estimating	32	1,990
6	Prepare Technical Memorandum	86	4,606
	Subtotal Labor	494	\$29,822
	Overhead		38,381
	Subtotal Labor + Overhead		\$68,203
	Fixed Fee @ 8.5%		5,261
	Subtotal Labor + OH + Fee		\$73,464
	Unallocated escalation @ 2%		1,469
	Direct expenses	Included	0
	TOTAL COST		\$74,933

6