

Item No. 6c Attach 1

Date of Meeting February 14, 2012

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE
CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY
AND THE PORT OF SEATTLE
REGARDING PLANNING AND DESIGN SERVICES
FOR THE SOUTH ACCESS AND SOUTH LINK PROJECTS**

THIS Agreement is made this 14 day of December 2010 between the Central Puget Sound Regional Transit Authority (hereinafter referred to as "Sound Transit" or "ST") and the Port of Seattle, a municipal corporation (hereinafter referred to as the "Port").

RECITALS

WHEREAS, subject to the availability of funding consistent with the voter approved ST2 plan, Sound Transit is evaluating the possibility of accelerating extension of the Central Link Light Rail System ("Link") from the SeaTac/Airport Station to a new station at South 200th Street (hereinafter referred to as the "South Link" project); and

WHEREAS, a portion of the proposed South Link rail alignment is co-located with elements of the Port's planned roadways extending from the Terminal and the North Airport Expressway to the future extension of SR 509 to I-5 (hereinafter referred to as the "South Access" project); and

WHEREAS, as part of implementing the South Link project, the Parties desire further definition of the South Access project through a roadway systems planning effort which advances the design of both projects; and

WHEREAS, the Parties will derive benefit from the additional information and documentation produced through this effort.

NOW THEREFORE, the parties enter into this Agreement as provided herein.

1. PURPOSE

The purpose of this Agreement is to document the Parties' intent to work together to advance the design of the South Link and South Access projects and to define cost-sharing responsibility for the planning and design work to be performed.

2. COOPERATION AND GOOD FAITH EFFORTS

2.1 Both parties acknowledge that the success of the regional transportation program requires their willingness to work collaboratively to achieve the goals and objectives articulated in this Agreement. The Parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. In this regard, communication of issues, changes, or problems that arise with regard to any aspect of the work should occur as early as possible in the process. Each party agrees to work cooperatively and in good faith toward resolution of any such issues.

2.2 Each Party shall be responsible for the quality, technical accuracy, timeliness and coordination of all work products and services performed by such Party, its employees and consultants pursuant to this Agreement. All work products and services performed under this Agreement shall be performed in accordance with any professional or industry standards of care applicable to such work product and/or services, and in any event in no less than a commercially reasonable manner.

3. COSTS AND SCOPE

3.1 The Parties agree that the Scope of Work, attached and incorporated herein as Exhibit A, is an accurate representation of the level of effort required to advance the planning and design of the South Link and South Access projects. The Parties estimate that the total cost to complete the work described in Exhibit A will not exceed Six Hundred Thousand Dollars (\$600,000) and have agreed to split the cost of this work on a 50/50 basis except as noted on Exhibit A. Sound Transit shall reimburse the Port for 50% of the actual costs incurred for completion of the work described in Exhibit A, up to but not to exceed Three Hundred Thousand Dollars (\$300,000) plus, if applicable, any Business and Occupation Tax ("B & O") tax imposed by the State upon the Port pursuant to paragraph 3.4. Once the Parties have completed traffic modeling and roadway planning, the Port and Sound Transit will collaborate on an iterative process to coordinate South Access roadways and South Link design. The Parties shall work cooperatively to manage and control the cost of the work described in Attachment A.

3.2 The Parties recognize that in order to advance the design of the South Link project, Sound Transit may require Port staff review of plans and other coordination from departments such as Facilities and Infrastructure, Maintenance, Environmental, and Fire. Sound Transit shall reimburse the Port for its staff time attributed to work performed, as mutually agreed in advance by the Parties, for a total amount of up to but not to exceed Twenty Five Thousand Dollars (\$25,000) plus, if applicable, any B & O tax imposed by the State upon the Port pursuant to paragraph 3.4. The \$25,000 and the B & O tax is in addition to the not to exceed Three Hundred Thousand (\$300,000) amount referenced in Section 3.1 of this Agreement. The Parties agree that Sound Transit shall not be required to reimburse the Port for the liaison from the Port Project Management Group and Planning assigned to assist in coordinating design of the South Link and South Access projects.

3.3 The Parties acknowledge that federal funding will not be used to pay for the work described in this Agreement; therefore, it is not necessary to include federal requirements in this Agreement.

3.4 If State of Washington requires the Port to pay B&O tax for the work performed by the Port pursuant to this Agreement, Sound Transit shall reimburse the Port for the B & O tax imposed by the State.

4. SCHEDULE

4.1 Sound Transit's proposed schedule for completing the South Link project by the end of 2015, anticipates that cost estimates and schedule refinements will be complete by the end of February 2011. Completion of this work will require preliminary design of the roadway, aerial guideway, utility relocations, and other significant elements affecting cost and schedule. The Parties agree to strive to complete the required design work in a timely manner to advance cost estimating and schedule refinement.

4.2 The Port shall strive to complete all work described in Exhibit A in a timely manner to facilitate the proposed South Link project schedule. The Parties acknowledge that timely completion of this work is in part dependent on the timely execution of the work to be performed by Sound Transit and the collaborative efforts of the parties to define elements of the South Link alignment and roadways.

4.3 In order to meet the proposed schedule, the Parties agree to strive to develop sufficient conceptual roadway and track designs within six weeks of execution of this Agreement and begin the process of environmental documentation of significant changes to the South Link project from what was described in the May 2005 Airport Link Environmental Assessment.

4.5 The Parties recognize that further advancement of the South Link project to final design and construction will depend on review by both Parties of the results of the traffic modeling and analysis performed by the Port. If adjustments of the light rail alignment design are determined necessary to accommodate changes to the roadway design as required for conformance with the traffic analysis, the Parties acknowledge that adjustments to the baseline construction cost estimates and schedules for the South Link project may be required.

5. GENERAL TERMS

The following general terms are applicable to this Agreement:

5.1 Indemnification. To the extent permitted by law, the Parties to this Agreement shall protect, defend, indemnify, and save harmless the other Party, and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgments, 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 acts or omissions of the indemnifying Party. No Party shall 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 Party agrees that its obligations under this indemnification section 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 Party, 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. This indemnification shall survive the termination of this Agreement.

5.2 Payment Due. Sound Transit shall pay the Port for work performed by the Port under this Agreement upon the satisfactory completion of actual work performed as completed and described under this Agreement and upon receipt of an invoice with supporting documentation as described in Section 5.3 of this Agreement. Sound Transit shall not transfer nor be obligated to transfer any funds in advance of the completion of the actual work described in this Agreement. The Port shall invoice Sound Transit on a monthly basis for work performed under this agreement. The Parties acknowledge that work described in Attachment A will be performed as needed at the direction of the Port and will likely be spread out over several invoice periods. The Parties further acknowledge that Sound Transit reimbursement will not be dependent on the delivery of discrete work products.

5.3 Invoices and Payment. Sound Transit shall pay the Port within thirty (30) calendar days of receipt of properly submitted invoice. The Port shall submit all invoices and supporting documentation necessary to verify the actual costs it incurred in completing its responsibilities under this Agreement to: Sound Transit, Accounts Payable, 401 South Jackson, Seattle, Washington 98104-2826. Invoices shall bear the name and address of the party's Designated Representative, and reference this Agreement.

5.4 Reports and Documentation. Sound Transit may require the Port to submit financial documents to satisfy requests from federal funding agencies for information to

comply with Sound Transit's funding requirements, including, but not limited to: (1) work statements or payroll records, (2) invoices for materials and supplies, (3) statements from professionals for services rendered, and (4) an itemized listing of the charges supported by copies of original bills, invoices, expense accounts, and miscellaneous supporting data retained by the Port.

5.5 Availability of Records. All records kept by the Port in support of all costs incurred and actual expenditures in performing services pursuant to the terms of this Agreement shall be open to inspection by Sound Transit or its federal funding agency during normal business hours, and shall be retained and made available for such inspection for a period of not less than six (6) years from final payment of funds under this Agreement to the Port. Copies of these records shall be furnished to Sound Transit and/or its federal funding agency upon request. This requirement shall be included in all subcontracts related to the work entered into by the Port to fulfill the terms of this Agreement.

5.6 Audit. If an audit is requested by Sound Transit or its federal funding agency, the Port shall cooperate fully with the auditor chosen by Sound Transit or by the federal funding agency. If an audit is required, the Port will provide documentation of all costs incurred in performing services pursuant to the terms of this Agreement. In the event that an audit finds that Sound Transit has overpaid the Port for services performed under this Agreement, the excess amount will be repaid by the Port to Sound Transit within thirty (30) days of the conclusion of the audit.

5.7 Contract Administration. The Parties shall coordinate their respective design efforts for the South Access and South Link projects. To fulfill their 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. Except as provided in this Agreement, no contract executed by a Party shall obligate the other Party to the conditions of the contract. Any claims arising out of the separate contracts of each Party for work under this Agreement are the sole responsibility of the Party executing and administering such separate contracts. All contracts shall comply with all applicable public works and procurement laws and regulations, including, but not limited to, applicable bonding, prevailing wage, nondiscrimination, retainage, insurance, and workers compensation requirements.

5.8 Dispute Resolution. The Parties will work collaboratively in accordance with the following steps to resolve disagreements arising from activities performed under this Agreement. Disagreements will be resolved promptly and at the lowest level of authority. The Designated Representatives shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. Each Designated Representative shall notify the other in writing of any problem or dispute the Designated Representative believes needs formal resolution. This written notice shall include: (1) a description of the issue to be resolved; (2) a description of the difference between the Parties on the issue; and (3) a summary of steps taken by Designated Representative to resolve the issue. In the event the Designated Representatives cannot resolve the dispute within fourteen (14) days of receipt of the notice, the Sound Transit Chief Executive Officer or his/her designee and the Port of

Seattle Managing Director, Aviation Division or her/his designee shall 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 they have followed the dispute resolution procedure described above. If any applicable statute of limitations will or may run during the time that may be required to exhaust the procedural steps set forth above, the Parties agree to seek an order to suspend any proceeding filed in a court of law while they satisfy the procedural steps set forth above.

6. TERMINATION FOR DEFAULT

6.1 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 provide: (1) Written notice of intent to terminate at least thirty (30) 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 (2) An opportunity for the other Party to cure the default within at least thirty (30) days of notice of the intent to terminate. In such case, the Notice of Termination will state the time period in which cure is permitted and any other appropriate conditions. In the event that the Parties decide to terminate this Agreement, Sound Transit shall pay the Port for all work performed by the Port under this Agreement until such time as the Port received notification of termination of this Agreement from Sound Transit. Notice of termination shall be communicated in writing to the Parties' respective Designated Representatives.

6.2 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 Termination or any extension thereof granted by the Party not at fault, this Agreement shall be deemed terminated.

7. GENERAL PROVISIONS

7.1 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington. Any action arising out of this Agreement shall be brought in King County Superior Court.

7.2 No Employment Relationship Created. The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between the Port and any employee, agent, representative or contractor of Sound Transit.

7.3 No Agency. No separate entity is created by this Agreement. 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 the other party.

7.4 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.

7.5 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.

7.6 Designated Representatives. The Designated Representative for the Port shall be the Port Planner, Tom Hooper. The Designated Representative for Sound Transit shall be the Sound Transit South Link Engineering Manager, Rod Kempkes. The Parties may unilaterally change their Designated Representatives by sending written notice to the other party as provided in this Agreement.

7.7 Notices. All notices to be provided under this Agreement shall be in writing and shall be hand-delivered or sent by US Mail, and shall be deemed received upon delivery or, in the case of notice sent by mail, five (5) days after deposit in the US Mail.

Notices to the Port shall be sent to the following address:

*Port of Seattle
P.O. Box 1209
Seattle, WA 98111*

Notices to Sound Transit shall be sent to the following address:

*Sound Transit
c/o Department of Design Engineering and Construction Management
401 S. Jackson
Seattle, WA 98104*

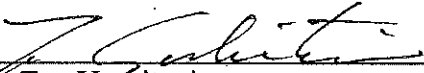
7.8 Calculation of Time. Time is of the essence in every provision of this Agreement. Unless otherwise set forth in this Agreement, the reference to "days" shall mean calendar days. If any time for action occurs on a weekend or legal holiday, then the time period shall be extended automatically to the next business day.

7.9 Entire Agreement. This Agreement, including its Recitals and Exhibits, embodies the Parties' entire Agreement on the matters covered by it, except as supplemented by subsequent amendments to this Agreement. All prior negotiations and draft written agreements are superseded by this Agreement. This Agreement may be amended only by a written instrument executed by each of the Parties hereto.


7.10 Execution of Agreement. This Agreement may be executed in two (2) counterparts, any one of which shall be regarded for all purposes as one original, and all counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto hereby agree to the terms and conditions of this Agreement as of the date first written above.

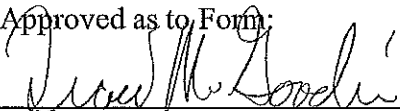
For the Port of Seattle:


By: Tay Yoshitani
Title: Chief Executive Officer

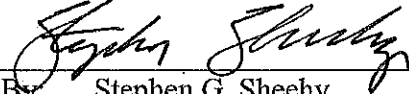
For Sound Transit:


By: Joan M. Earl
Title: Chief Executive Officer

Approved as to Form:

 12/14/10
By: Traci M. Goodwin
Title: Senior Port Counsel

Approved as to Form:

 12/20/10
By: Stephen G. Sheehy
Title: Sound Transit Legal Counsel

Attest:

By:
Title:

EXHIBIT A
South Access and South Link Projects
Scope of Work

This effort will assist the Port in defining future roadways to approximately a 15% design level in the area from the Airport terminal drives to the intersection of S. 188th Street and 28th Avenue South (known as the South Access project). These future roadways are collocated with the planned extension of Sound Transit's South Link project in this area. This effort will be coordinated with Sound Transit's efforts to advance the design of the South Link project from the SeaTac/Airport station to S. 200th Street. To facilitate Sound Transit's design effort, further definition of the future South Airport Expressway may be needed to identify roadway elements to be included as part of the South Link project design and construction. Planning and preliminary design of the South Airport Expressway will ensure that future airport facilities' needs can be accommodated in a design that is compatible with South Link project construction prior to construction of the South Airport Expressway.

For the purposes of this Agreement, the work described below will be limited to what is needed to adequately coordinate design of Port roadways with design of South Link. This includes all work necessary to determine construction and operational impacts of alternative South Link alignments and roadway configurations. Any work performed by the Port in addition to what is needed to develop and evaluate alternatives and advance the South Link design is not eligible for reimbursement by Sound Transit.

Scope of Work

Task 1: Traffic Analysis

- Working from assumptions regarding base year traffic volumes, vehicle types, mode splits, and data from recent traffic studies conducted for Port roadways, a traffic model will be developed and calibrated with regional data to determine level of service for key intersections and lane requirements for conceptual roadways.

Task 2: Conceptual Roadways Design Refinement

- Alternative roadway layouts will be developed that accommodate the access and capacity needs of existing and future facilities in an iterative process that considers alternative South Link alignments. Analysis will include compliance with roadway standards, optimization of traffic flow, and verification that the vertical and horizontal geometry of roadways can accommodate vehicle types accessing existing and future facilities.

Task 3: Geotechnical

- Conduct a geotechnical assessment within the study area. This involves review of existing documentation – no field investigation is anticipated.

Task 4: Conceptual Roadways Alternatives Evaluation

- Alternative roadway layouts will be evaluated both quantitatively and qualitatively for order of magnitude cost, operational efficiency, ease of access, impact to adjacent land uses, operational impacts, and constructability.