

**PROJECT ADMINISTRATION AGREEMENT BETWEEN
THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY
AND THE PORT OF SEATTLE FOR THE
WEST SEATTLE AND BALLARD LINK EXTENSIONS PROJECT**

GA 0214 – 20

THIS PROJECT ADMINISTRATION AGREEMENT ("Agreement") is between the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority organized under 81.112 RCW ("Sound Transit"), and the PORT OF SEATTLE, a Washington municipal corporation (the "Port") (collectively, the "Parties" and each individually a "Party")

RECITALS

- A. The West Seattle and Ballard Link Extensions (WSBLE) Project ("Project") is an approximately 11.8-mile Link light rail expansion from downtown Seattle to West Seattle's Alaska Junction neighborhood and from downtown Seattle to Ballard's Market Street area. The Project is part of the Sound Transit 3 (ST3) System Plan of regional transit system investments, approved for funding by voters in the region in 2016.
- B. The Port, Northwest SeaPort Alliance ("NWSA") and Sound Transit executed a Partnering Agreement for the Project (GA 0089-20) on August 24, 2020 (the "Partnering Agreement"), to document and confirm a mutual understanding of general terms and conditions to advance the implementation of the Project.
- C. This Agreement addresses the commitment in Section 10.1.2 of the Partnering Agreement for the Parties to work cooperatively to negotiate in good faith a funding agreement to provide reimbursement to the Port for the costs of certain services and products related to the Project.
- D. The Partnering Agreement guided the development of this Agreement, and the applicable terms and conditions of the Partnering Agreement will also apply to this Agreement as described herein.

AGREEMENT

1. General

- 1.1. Purpose. The Project is located within the City of Seattle. The Port operates facilities in the Project area. The Port facilities will be affected by the Project and the Port's involvement in Project planning is critical to the successful and timely delivery of the Project. The Port, NWSA, and Sound Transit will work together to prepare, review, and approve agreements between or among one another, and Sound Transit will prepare construction plans and secure property rights and approvals from the Port, NWSA, and

other entities for the construction of Sound Transit's facilities. The intent of this Agreement is to establish a Task Order process for Sound Transit to reimburse the Port for certain costs related to Project development. It is anticipated that a separate agreement or amendments to this Agreement may be needed and developed by the Parties for reimbursement of certain Project-related construction services and assistance.

- 1.2. Incorporation of Recitals. The foregoing recitals are incorporated into this Agreement as if set forth in full herein.

2. Task Orders for Port Services

- 2.1 Principles for Determining Eligible Reimbursable Costs. Sound Transit agrees to pay the Port for the costs associated with particular tasks that:

- a. Are required because of implementation of the Project in proximity to Port facilities and are not otherwise the Port's responsibility to undertake; or
- b. Are directly related to the Project, are essential to meeting Project objectives and schedule, and support Project design, permitting, and construction activities, such as documentation of durable and specific Project commitments and approval services, documented decisions and other types of agreements furthering implementation of the Project; or
- c. Respond to requests made by Sound Transit to provide Project-related technical information such as data, reports, or studies or to provide engineering or design services for Port owned utilities or other public works affected by the Project; or
- d. Sound Transit asks the Port to undertake and has negotiated a Task Order as described in Section 2.3, or other written agreement, for payment to the Port.

- 2.2 In general, Sound Transit will not pay the Port for costs associated with the following:

- a. Coordination between Sound Transit and the Port normally provided between government agencies.
- b. Port services provided in the ordinary course of business and on the Port's usual time and schedule for which the Port does not ordinarily charge fees.
- c. Port services or costs associated with betterments or other improvements that the Parties agree are not part of the Project scope.

- 2.3 Task Order Development. Sound Transit will request that the Port perform specific

work under this Agreement through written Task Orders. This Agreement applies to Project work beginning after [REDACTED], 2022. Task Orders will be prepared by Sound Transit, reviewed by the Port, and executed by the Parties for each work effort to be covered by this Agreement. Task Orders will be in a format similar to that shown in Exhibit A. Each Task Order will include a scope of work, a schedule of work, and a detailed cost estimate that establishes a maximum funding level for the Task Order. Each Task Order will be executed by the authorized designees of Sound Transit and the Port and will incorporate by reference the terms and conditions of this Agreement.

2.4 Task Order Management. For each Task Order, the Port will provide quarterly progress reports to Sound Transit indicating the amount spent and estimated cost to complete each scope and budget element included in the Task Order. If actual costs are anticipated to exceed the amount of the Task Order, the Designated Representatives (or designees) will prepare a mutually agreeable cost estimate to complete the work and develop an appropriate course of action, which may include amending the Task Order or executing a new Task Order.

2.5 Eligible Costs.

- a. The following costs will be eligible for reimbursement:
 - i. Employees: (1) the applicable employees' direct salaries and benefits; and (2) associated indirect costs as adopted in a Port fee schedule, provided that the fee schedule is reasonable and consistent with subsection (b) of this section; charged on an hourly basis at the rates in effect at the time the charges are incurred.
 - ii. Consultants. Direct costs incurred by the Port to retain consultants to work on the Project for otherwise reimbursable activities as set forth in this Agreement.
- b. Ineligible Costs. This Agreement does not cover Port's normal capital and operating expenses such as buildings, office equipment, maintenance, security, utilities, or vehicles.

2.6 Performance. If the Port does not perform the services described in the Task Orders, and if the failure to perform is solely attributable to the Port's actions or inactions, appropriate corrective action will be discussed and agreed upon by the Designated Representatives. Should the corrective action not be agreed upon or resolve the problem within one (1) week, the Dispute Resolution Process identified in the Partnering Agreement may be invoked and Sound Transit may request specific resolutions including a reduction of reimbursable costs owed by Sound Transit to the Port.

3. Invoicing

- 3.1 The Port will submit quarterly invoices and supporting documentation for Task Order payments. The invoices must include a signed invoice template, which Sound Transit will provide, a progress report including a description of services provided by the Port, Sound Transit purchase order number, and supporting documentation detailing the work completed, associated eligible costs (such as rates, paid invoices of other eligible direct costs, etc.), and an estimated cost to complete each scope and budget element included in the Task Order.
- 3.2 The Port will submit its invoices with the required documentation via email to AccountsPayable@SoundTransit.org. Invoices will be paid within thirty (30) days of Sound Transit's receipt of the invoice and acceptable and complete supporting documentation pursuant to Section 3.3, below.
- 3.3 If Sound Transit determines that an invoice lacks sufficient documentation to support payment, Sound Transit will notify the Port's Designated Representative of its determination within thirty (30) days of receipt of the invoice and will request that the Port provide additional documentation. Sound Transit may withhold payment of the disputed portion of the invoice until supporting documentation is provided. However, such approval will not be unreasonably withheld.

4. Suspension and Termination

- 4.1 If the Port has not received payment from Sound Transit as provided in Section 3.2, the Port may suspend performance of all or any part of the associated work after giving Sound Transit thirty (30) days' notice of the Port's intent to do so. Such suspension will remain in effect until payment is made in full, at which time the suspension will be lifted.
- 4.2 Either Party may terminate this Agreement for cause in the event that the other Party fails to fulfill its material obligations under this Agreement in a timely manner or breaches any material provision of this Agreement and the Dispute Resolution Process identified in Section 10 of the Partnering Agreement has failed to reach resolution within the timelines described therein. The Party wishing to terminate this Agreement for cause will provide the other Party with notice of its intent to terminate and will give the other Party an opportunity to correct the failure to perform or breach within thirty (30) days of the notice or within such longer period as may be necessary in the event that correction cannot reasonably be accomplished within thirty (30) days. If the failure or breach is not corrected or cured, this Agreement may be terminated by the aggrieved Party by giving ninety (90) days' notice to the other Party.

- 4.3 This Agreement will also terminate upon written mutual consent of the Parties.
- 4.4 Except as provided in this Section, a termination by either Party will not extinguish or release either Party from liability for costs or obligations existing as of the date of termination. Any costs incurred prior to proper notification of termination will be borne by the Parties in accordance with the terms of this Agreement.

5. Indemnity

- 5.1. Each Party (an "Indemnifying Party") agrees to hold harmless, indemnify, and defend the other Party's elected officials, officers, agents, and employees (the "Indemnified Party"), from and against any and all claims, losses or liability, for injuries, sickness or death of persons, including employees of the Indemnifying Party, or damages, arising out of any willful misconduct or negligent act, error, or omission of the indemnifying Party, its officers, agents, or employees, in connection with the services required by this Agreement, provided, however, that: (A) the Indemnifying Party's obligations to indemnify, defend and hold harmless will not extend to injuries, sickness, death, or damage caused by or resulting from the sole willful misconduct or sole negligence of the Indemnified Party; and (b) the Indemnifying Party's obligations to indemnify, defend and hold harmless for injuries, sickness, death, or damage caused by or resulting from the concurrent negligence or willful misconduct of the Indemnifying Party and the Indemnified Party, or of the Indemnifying Party and a third party other than an elected official, officer, agent, or employee of the Indemnifying Party, will apply only to the extent of the negligence or willful misconduct of the Indemnifying Party's elected officials, officers, agents, or employees. The Indemnifying Party specifically assumes potential liability for any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents against the Indemnified Party. FOR THIS PURPOSE, EACH INDEMNIFYING PARTY, BY MUTUAL NEGOTIATION, HEREBY WAIVES, WITH RESPECT TO THE INDEMNIFIED PARTY ONLY, ANY IMMUNITY THAT WOULD OTHERWISE BE AVAILABLE TO IT AGAINST SUCH CLAIMS UNDER THE INDUSTRIAL INSURANCE PROVISIONS OF TITLE 51 RCW OR ANY APPLICABLE INDUSTRIAL INSURANCE, DISABILITY, OR EMPLOYEE BENEFIT ACT OF ANY OTHER JURISDICTION THAT WOULD BE APPLICABLE IN CASE OF SUCH A CLAIM.
- 5.2. Each Party agrees to bear full responsibility for any and all tax liabilities owed that may arise in relation to this Agreement, and each Party will fully indemnify and hold the other Party, its officers, agents and employees harmless from any tax liability owed by the other Party arising from or related to the transactions set forth herein, including, but not limited to, any taxes, penalties, fines, and/or interest assessed by any tax authority against the indemnifying Party and further including all attorneys' fees and

costs incurred in response to any claims or assessments by any tax authority against the Indemnifying Party, its officers, agents, and employees.

- 5.3. The obligations in this Section 5 will survive termination or completion of this Agreement as to any claim, loss, or liability arising from events occurring prior to such termination or completion.

6. Audits

- 6.1. Each Party will maintain accounts and records following Generally Accepted Accounting Principles, including contract and financial records that sufficiently and properly reflect all direct and indirect costs of any nature expended for work performed under this Agreement so as to ensure proper accounting for all monies paid to the Port by Sound Transit. These records will be maintained for a period of six (6) years after termination or expiration of this Agreement unless permission to destroy the records is granted by the Office of the Archivist pursuant to chapter 40.14 RCW and agreed upon by the Parties.
- 6.2. The Port will make all Project records available for Sound Transit inspection upon Sound Transit's reasonable request for same. Audits may be performed by Sound Transit or its independent public accountants to ensure compliance with and enforcement of this Agreement. Should the audit determine that funds from Sound Transit have been used for expenses that were ineligible, the Port will reimburse Sound Transit for such amounts.

7. General Provisions

- 7.1. Neither Party will be relieved of its obligations to comply promptly with any provision of this Agreement by reason of any failure by the other Party to enforce prompt compliance therewith, and such failure to enforce will not constitute a waiver of rights or acquiescence in the other Party's conduct.
- 7.2. If either Party brings any claim or lawsuit arising from this Agreement, each Party will pay all its legal costs and attorneys' fees and expenses incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; however, nothing in this paragraph will be construed to limit the Parties' rights to indemnification.
- 7.3. The following terms and conditions of the Partnering Agreement are incorporated by reference into this Agreement: 1. Project Management, 11. Dispute Resolution, 16. Notices, 17. Federal Provisions, 18. General Provisions, 19. Amendments, and 20. Severability.
- 7.4. Sound Transit's Project may become subject to a financial assistance contract

between Sound Transit and the Federal Transit Administration (FTA). The Parties recognize that changes to this Agreement may be necessary to comply with the FTA funding requirements.

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

Port OF SEATTLE, a municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Marie Quasius, Senior Port Counsel

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority:

By: _____

Name: Peter M. Rogoff

Title: Chief Executive Officer

Date: _____

Authorized by Motion No: _____

Approved as to form:

By: _____

Natalie Moore, Legal Counsel

Exhibits

A.Task Order Format

Exhibit A
Task Order Format

Task Order to the
PROJECT ADMINISTRATION AGREEMENT BETWEEN THE Port AND
SOUND TRANSIT
FOR THE WEST SEATTLE AND BALLARD LINK EXTENSIONS PROJECT

This Task Order is issued under the Project Administration Agreement between the Port and Sound Transit executed on _____ (GA _____) "Project Administration Agreement." This Task Order establishes the scope, schedule, and budget for the services ("Services") provided by the Port for the Sound Transit West Seattle and Ballard Link Extensions Project. The Port agrees to perform the Services in the manner set forth in this Task Order. The terms and conditions of the Project Administration Agreement are incorporated by reference into this Task Order.

The effective date of this Task Order is _____ 20__ ,

The end date of this Task Order is _____ 20__ , or as otherwise agreed to in writing by the Designated Representatives of the Parties.

Task Order Description. General Description of the work to be performed. May also include definitions if helpful/appropriate.

- The Scope of Work is included as Exhibit 1.
- The Schedule is included as Exhibit 2.
- The Cost Estimate is included as Exhibit 3.

Each of the Parties has executed this Task Order by having its authorized representative affix his/her name in the appropriate space below:

For the Port:

For Sound Transit:

Signature

Signature

Printed Name

Title

Date

Name, Port Counsel

Printed Name

Title

Date

Name, Legal Counsel

Task Order Exhibit 1: Scope of Work.

The scope should be fully developed and provide a detailed description of work to be provided under each Task Order.

Task Order Exhibit 3. Cost Estimate.

Spreadsheet to be inserted. Use tasks and schedule to develop cost estimate based on labor rate and expenses.