

RESOLUTION R-5539

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE A FUNDING AGREEMENT WITH SOUND TRANSIT RELATED TO TRANSPORTATION IMPROVEMENTS ON NE 85TH STREET.

1 WHEREAS, the voter-approved 2016 Sound Transit 3 (ST3)
2 funding package includes Bus Rapid Transit (BRT) to serve the I-
3 405 Corridor from Lynnwood to Burien; and
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5 WHEREAS, I-405 BRT provides for Sound Transit to fund a
6 new interchange with an inline BRT station at the I-405/NE 85th
7 Street Interchange; and
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9 WHEREAS, Sound Transit and WSDOT have agreed that
10 Sound Transit will fund and WSDOT will design and construct the
11 I-405/NE 85th Street Interchange; and
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13 WHEREAS, the I-405/NE 85th Street Interchange design
14 concept developed by WSDOT, Sound Transit, and the City
15 creates a valuable new access point to the region's high-capacity
16 transit network, improving mobility and access for people
17 traveling between Kirkland, surrounding communities, and the
18 greater region; and
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20 WHEREAS, WSDOT, Sound Transit and the City have
21 identified arterial improvements that need to be made to the NE
22 85th Street corridor to ensure the success of the I-405/NE 85th
23 Street Interchange project; and
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25 WHEREAS, Sound Transit and the City determined Sound
26 Transit will provide the funding for those projects; and
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28 WHEREAS, the improvements are located outside of the
29 project limits of WSDOT's I-405/NE 85th Street Interchange
30 project and ultimately will be within City right-of-way, so WSDOT,
31 Sound Transit, and the City determined that the City will take the
32 lead role in delivering those projects.
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34 NOW, THEREFORE, be it resolved by the City Council of the
35 City of Kirkland as follows:
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37 Section 1. The City Manager is hereby authorized and
38 directed to execute on behalf of the City of Kirkland a funding
39 agreement with Sound Transit substantially similar to the one
40 attached to this Resolution as Exhibit A.
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46 Passed by majority vote of the Kirkland City Council in open
47 meeting this 17 day of May 2022.

Signed in authentication thereof this 17 day of May 2022.



Penny Sweet, Mayor

Attest:



Kathi Anderson, City Clerk

FUNDING AGREEMENT
BETWEEN SOUND TRANSIT AND THE CITY OF KIRKLAND
FOR THE
NE 85TH STREET ARTERIAL IMPROVEMENTS
GA 0303-19

This agreement is between the Central Puget Sound Regional Transit Authority, a regional transit authority organized under RCW 81.112 ("Sound Transit"), and the City of Kirkland, a Washington municipal corporation ("City"), for the purposes set forth below. Sound Transit and the City are collectively referred to hereafter as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, Sound Transit is a regional transit authority created pursuant to Chapters 81.104 and 81.112 RCW with all powers necessary to implement a high capacity transit system within its boundaries in King, Pierce, and Snohomish Counties; and

WHEREAS, the City is responsible for administering land use laws and development regulations that will apply to Sound Transit projects located within the City jurisdiction; and the City is responsible for managing streets and municipal utilities within its jurisdiction and for providing municipal services such as public safety; and

WHEREAS, in 1996, 2008, and 2016, pursuant to state law, SOUND TRANSIT proposed, and Central Puget Sound voters approved, financing for regional transit system plans known as Sound Move, ST2, and ST3, respectively, that include among other projects, the I-405 Bus Rapid Transit (BRT) Project; and

WHEREAS, after Sound Transit completed environmental review of the BRT Project in 2021, Sound Transit Board of Directors approved Resolution R2021-08 selecting the I-405 BRT Project "project to be built" that includes "inline BRT stations along direct access ramps at a reconstructed I-405/NE 85th Street interchange to serve downtown Kirkland and surrounding neighborhoods" (I-405/NE 85th Street Interchange Project), and "NE 85th Street arterial improvements to facilitate transit and non-motorized access to the NE 85th BRT station from downtown Kirkland and surrounding neighborhoods"; and

WHEREAS, Sound Transit and WSDOT have executed a construction funding agreement to rebuild the existing I-405/NE 85th Street Interchange to include new transit stops and a Pick Up/Drop Off facility for transit passengers as part of Sound Transit's I-405 Bus Rapid Transit program; and

WHEREAS, the Interchange Access Revision Report prepared by the Washington State Department of Transportation that addressed the I-405/NE 185th Street interchange Project, identifies necessary improvements that the eastbound third lane on NE 85th Street shall extend from the northbound general-purpose off-ramp terminal at the I-405 interchange through 120th Avenue NE and terminate as a right turn drop lane at 122nd Avenue NE; and the lane is intended to be open to all traffic to ensure

queues on eastbound NE 85th Street do not adversely impact roundabout operations and to improve safety and transit reliability along the corridor; and

WHEREAS, the Growth Management Act ("GMA") (Chapter 36.70A RCW) requires that the City plan for and encourage regional high capacity transit facilities such as I-405 Bus Rapid Transit ("BRT") (36.70A.020) and accommodate within the City such essential public facilities (36.70A.200); and

WHEREAS, the City adopted a Comprehensive Plan update in 2015, consistent with the GMA, which presents a Vision and Guiding Principles that include statements supporting livability, sustainability, and connectedness, that calls for "safe, walkable, bikeable and friendly neighborhoods that are connected to each other..." and that state "convenient transit service provides a viable alternative to driving"; and

WHEREAS, in December 2015, the City adopted a Transportation Master Plan as the transportation element of the Comprehensive Plan, which included four principles for transportation, including Safely Moving People, Linking to Land Use, Being Sustainable, and Being an Active Partner, which principles guide the City's interactions with local and regional transportation partners; and

WHEREAS, the City is the "Lead Agency" for the NE 85th Street Arterial Improvements for purposes of compliance with the State Environmental Policy Act ("SEPA"), as included in this Agreement; and

WHEREAS, both Sound Transit and the City have determined that public purpose is served to coordinate efforts to construct these Project improvements along the NE 85th Street corridor.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the Parties agree to the following:

AGREEMENT

1. Purpose.

This Agreement sets forth the terms and conditions for Sound Transit to provide funding for the City complete all aspects of the NE 85th Street Arterial Improvements Project to support the I-405 BRT Project.

2. Scope of NE 85th Street Arterial Improvements ("Improvements").

2.1 The NE 85th Street Arterial Improvements contemplated in this agreement consist of three elements (further described in Exhibit A).

- "Lane" adds an eastbound general purpose lane to NE 85th Street between the east side of the NE 85th Street/120th Avenue NE intersection and the west side of the NE 85th Street/122nd Avenue NE intersection
- "Path" adds a non-motorized pedestrian and bicycle path on the south side of NE 85th Street between the west side of the NE 85th Street/114th Avenue NE/Kirkland Way roundabout and the east side of 6th Street.
- "Queue Jump" would add a westbound transit queue jump (bus bypass lane) and transit signal priority improvements at the intersection of 6th Street, NE 85th Street, and Central Way, the length and signal system to be determined by the City.

2.2 The funding provided by this Agreement must be prioritized for completion of the Lane as described in Exhibit A and completion of a Path connecting 6th Street and Kirkland Way. The City may adjust the scope of the Path as needed for budgetary or other reasons. Funding that remains after ensuring completion of the Lane and the Path may be allocated to the Queue Jump.

3. Designated Representatives

To establish consistent and effective communication, the City and Sound Transit have designated personnel as formal points of contact and coordination (“Designated Representatives”). Either Party may change its Designated Representative with written notice, after consultation with the other Party, provided that the new Designated Representative has the appropriate qualifications and level of authority to fulfill the expectations of the role. All interagency correspondence outlined herein, will be sent through the following:

City

Tony Marti
Project Engineer
Telephone: 425-587-3244
Email: TMarti@kirklandwa.gov

Sound Transit

Cynthia Padilla
HCT Development Manager
Telephone: 206-903-7385
Email: cynthia.padilla@soundtransit.org

Designated Representatives will be responsible for coordinating work and communications between the Parties and for coordinating various reviews or input required by departmental staff or consultants. Designated Representatives will be responsible for providing required written notifications or authorizations required, and for initiating dispute resolution processes, as provided herein.

4. City Responsibilities

4.1 The City agrees that Improvements resulting from this Agreement will have environmental review in accordance with state SEPA requirements, be designed and constructed in accordance with all applicable laws, regulations, ordinances, codes and requirements and in a manner consistent with, and to operate to support, Sound Transit’s I-405 BRT Project as described in Sound Transit Board Resolution R2021-08 and referenced in the Recitals above.

4.2 The City is responsible for all activities related to the environmental review, development, construction, and operation of the Improvements including but not limited to preliminary and final engineering, preparation of updated cost estimates at each Milestone (as described in Section 6 and Exhibit B), right of way acquisition if needed, public and private utility relocations, construction, and any landscape or other establishment periods.

4.4 The City is responsible for performing all geotechnical field exploration, including but not limited to the Minimum Field Exploration Requirements identified in Exhibit D “Geotechnical Information”.

4.5 In performing or causing others to perform the Improvement work contemplated under this Agreement, the City shall comply with all applicable laws and regulations regarding public works including, but not limited to, applicable provisions of Title 39 RCW pertaining to public contracting requirements for procuring professional services and Public Works, including without limitation, procurement procedures, prevailing wages, and performance bonds.

4.6 Contracting Goals and Reporting. The City agrees to include in all contracts for construction funded in whole or in part by this Agreement terms that:

- a. Set project-wide goals matching Sound Transit labor compliance goals in place at the time of execution of each contract, that at the time of execution of this Agreement are :
 - o 20% of all hours worked, are to be worked by Washington State registered apprentices,
 - o 21% of all hours worked are to be worked by workers of color, and
 - o 12% of all hours worked are to be worked by women; and
- b. Require all contactors, of every tier level, to utilize the Sound Transit "LCP Tracker" to track, monitor and collect all workforce data through the collection of certified payroll information. Sound Transit will provide project level access to LCP Tracker, training on its use, assistance with information extraction, and electronic copies of the certified payrolls submitted by all contractors on the projects.
- c. Include Milestone dates to ensure completion of construction to Substantial Completion and Final Completion of each Improvement under this Agreement no later than the Milestone dates identified in **Exhibit B** of this Agreement.

4.7 Signage. The City will ensure that signage used during the construction of the NE 85th Street Arterial Improvement identifies Sound Transit as a funding partner.

4.8 The City will administer the projects to meet mutually agreed schedule to assure completion on or before Milestone dates identified in **Exhibit B**, and assure that all work complies with all federal, state, local laws, ordinances, permits and any other requirements.

4.9 Operations and Maintenance. The City agrees to operate and maintain to City standards, the Improvements completed under this Agreement, continuously for the life of the facilities with the intent of providing the necessary operational benefit to the I-405/NE 85th Street Interchange. The City is responsible for all costs relating to the operations or maintenance of the NE 85th Street Arterial Improvements. Sound Transit has no responsibility or liability for the operation or maintenance of any of the Improvements or any work under this Agreement.

4.10 Coordination Meetings. The City Designated Representative is responsible for establishing regularly scheduled coordination meetings with Sound Transit Designated Representative, not less than one time per month, for the Parties to provide schedule and budget updates and to discuss project progress pursuant to the requirements in this agreement.

5. Sound Transit Responsibilities

5.1 Sound Transit is responsible to pay for valid costs incurred for City performance of work under this agreement, in accordance with the payment and funding terms of this Agreement.

5.2 Sound Transit will cooperate with the City to provide other information, reviews, comments, approvals and payment in a timely and thorough manner to achieve the purposes of this Agreement.

5.3 Sound Transit will provide comments, reviews, and approvals within 14 calendar days, and agrees to expedite reviews as reasonably requested to achieve the agreed schedules of the Lane and Path Improvements to achieve completion of these Improvements in accordance with the terms of this Agreement.

5.4 The Sound Transit representatives will participate in regularly scheduled project coordination meetings. The Sound Transit Designated Representative will ensure review comments and responses to comments are coordinated within Sound Transit.

5.5. Sound Transit will inform the City as soon as practicable of any changes to funding, schedule, BRT implementation or other matters that impact the Improvements or the terms of this Agreement.

6. Milestones/Sequencing

6.1 The City must achieve Substantial Completion of the Lane on or before the date the interchange is open to traffic, currently scheduled for summer 2026 and the Path on or before December 31, 2026. Sound Transit and the City of Kirkland may mutually agree to modify the Substantial Completion dates based on the WSDOT I-405/NE 85th Street Interchange Design-Build Contractor's schedule, final design, and construction phasing. Substantial Completion means contract construction is complete to allow the Improvement to be used for its intended purpose, in the manner intended with no defects or unfinished work that could impact the public use of the Improvement.

6.2 The Parties have identified three phases of work for each of the three Improvements identified in Section 2.1 and **Exhibit A**, with the Parties assuming that the Improvement project delivery will be Design-Bid-Build in one or more City contracts. Milestone dates for completion of each of the three phases of work, for each of the Improvements are shown in **Exhibit B**.

- a. **Preliminary Design phase** is all work for project development, beginning the environmental review process, and geotechnical documentation. This phase includes 30% and 60% design and may include design work as deemed appropriate by the City. No work to implement any Improvement, including but not limited to any necessary property acquisition(s) (excluding preparation of the documentation necessary for said acquisition(s)), or construction activities including procurement for construction, may occur until environmental review of that Improvement is complete and Sound Transit has provided written authorization of funding of the Construction phase for construction of that Improvement.
- b. **Final Design Phase and Environmental Documentation** completes design of the Improvement at the 90% and 100% design levels, completes environmental documentation and permitting, and prepares solicitation(s) ready for advertisement for construction of the Improvements. City shall have in place its plan for administering the contract(s) and for construction management of the Improvement project.
- c. **Construction phase** begins at advertisement of Contract(s) for construction of the Improvement(s) and is complete when the Contract work is completed and finally accepted by the City, with no known defects or incomplete work, to the point of Final Acceptance and the Improvement is ready for public use as intended. Construction phase Milestones for Substantial Completion and Completion are included in Exhibit B.

6.3 Sequencing.

- a. The Parties intend that the Preliminary Design phase work for all three Improvements may begin upon execution of this Agreement, and Sound Transit has committed funds in the amounts identified in Exhibit B Budget chart to complete for the Preliminary Design phase work for all three Improvements.

b. If additional funding beyond what is specified in Exhibit B is required for Preliminary Design phase, funding of the Lane and Path Improvements will be the priority for spending, and funding may be reduced for the Queue Jump Improvement. In such circumstances, Sound Transit may, at its sole discretion, authorize use of contingency funds to allow completion of Preliminary Design phase of all three Improvements.

c. If additional funding beyond what is specified in Exhibit B is required for Final Design Phase and Environmental Documentation, funding of the Lane and Path Improvements will be the priority for spending, and funding may be reduced or eliminated for the Queue Jump improvement. In such circumstances, Sound Transit may, at its sole discretion, authorize use of contingency funds to allow completion of Final Design Phase and Environmental Documentation of all three improvements.

d. If additional funding beyond what is specified in Exhibit B is required for Construction Phase, funding of the Lane and Path Improvements will be the priority for spending, and funding may be reduced or eliminated for the Queue Jump improvement. In such circumstances, Sound Transit may, at its sole discretion, authorize use of contingency funds to allow completion of Construction Phase of all three Improvements.

e. If it appears that design and construction of the Lane and Path improvements will require more funding than the Total amount, including contingency, shown in Exhibit B, Sound Transit and the City will work together to expeditiously resolve the issue as to not impact the Substantial Completion dates in Section 6.1 by either modifying the project scopes or by identifying additional project funding, or by some combination of the two approaches.

f. The City agrees to complete all work related to the Preliminary Design and Final Design Phase and Environmental Documentation Milestones for both the Lane and the Path Improvements before any Sound Transit funding is committed to begin Final Design or Construction phases for the Queue Jump Improvement.

g. By mutual written agreement, the Parties may agree to modify Milestone dates or allocation of funds for the completion of the Improvement phases and Milestones identified in **Exhibit B**; using the following stated priorities for completion dates:

- i. Lane Improvement Final Design and Substantial Completion Milestone
- ii. Lane Improvement Final Completion
- iii. Path Improvement Final Design Completion
- iv. Path Improvement Substantial Completion and Final Completion
- v. Queue Jump Final Design
- vi. Queue Jump Completion Milestones

h. If the WSDOT Interchange Project impacts the Milestone for Substantial Completion dates, or Milestone for Substantial Completion dates need to be adjusted to coordinate with the WSDOT Interchange Project schedule, the Parties may revise the Milestone for Substantial Completion dated in Exhibit B accordingly, and in a manner consistent with the priorities identified above, by written agreement signed by authorized representatives of the Parties.

7. Funding

7.1 The maximum funding obligation for all amounts Sound Transit is obligated to pay under this Agreement is Fourteen Million, Four Hundred Eighty Thousand dollars (\$14,480,000). This amount has been established based on the sum of mutually agreed cost estimates for completion of all phases of all three Improvements.

7.2 Sound Transit has established a Contingency of an additional One Million, Four Hundred Forty-eight Thousand dollars (\$1,448,000) within the Sound Transit budget funding this Agreement. Use of any Contingency funds is at the sole discretion of Sound Transit. Contingency funds shall not be allocated without prior written authorization from the Sound Transit Designated Representative.

7.3 The funding for each Improvement will be authorized in phases and is dependent on the completion of Milestones in accordance with Section 6 and as shown in Exhibit B.

7.3.1 Upon execution of this Agreement, funding for the Preliminary Design phase for each Improvement is authorized, as shown in the column marked "Preliminary Design" on the Budget Phase chart in **Exhibit B**.

7.3.1.1 At each of the 30% and 60% design milestones, the City shall meet with Sound Transit to review the scope, schedule, and cost estimate of each Improvement. The Parties shall mutually agree that the scope, schedule, and cost estimate are meeting the individual improvements' and overall budget and schedule prior to continuing to the next design milestone. Sound Transit will have 14 calendar days to provide comments to the City upon receipt of each milestone's documentation. The City shall give preferably 45 calendar days notice, with a minimum of 30 calendar days notice, before a milestone will be completed.

7.3.1.2 At each of the 90% and 100% design milestones, the City shall meet with Sound Transit to review the scope, schedule, and cost estimate of each Improvement. The Parties shall mutually agree that the scope, schedule, and cost estimate are meeting the individual improvements' and overall budget and schedule and the completion priorities prior to continuing to the next design, environmental documentation and permitting, or solicitation development milestone. Sound Transit will have 14 calendar days to provide comments to the City upon receipt of each milestone's documentation. The City shall give preferably 45 calendar days notice, with a minimum of 30 calendar days notice, before a milestone will be completed.

7.3.1.3 Before award of the construction contracts, and at a mutually agreed upon frequency during the progress of the construction of each improvement, the City shall meet with Sound Transit to review the scope, schedule, and any current cost estimates or projections (including any pending or final change orders) of each Improvement. The Parties shall mutually agree that the scope, schedule, and cost estimate are meeting the individual Improvement and overall budget and schedule and the completion priorities or assess need for adjustments to any of these factors for any of the Improvements.

7.3.2 Sound Transit will determine authorization of funds for the Final Design Phase and Environmental Documentation for each Improvement upon completion of the Preliminary Design phase Milestone for that Improvement. City will recommend Sound Transit provide

written authorization for the amounts shown in the column marked "Final Design" in Exhibit B (as may be revised) or suggest a revised allocation of funds. Sound Transit will allocate the amount identified in Exhibit B, or the Parties will confer and agree on fund allocation in accordance with current conditions and the priorities in this Agreement.

7.3.3 Sound Transit will determine authorization of funds for the Construction phase for each Improvement upon completion of Final Design Phase and Environmental Documentation Milestone for that Improvement. City will recommend Sound Transit provide written authorization for the amounts shown in the column marked "Construction" in Exhibit B (as may be revised) or suggest a revised allocation of funds. Sound Transit will allocate the amount identified in Exhibit B, or the Parties will confer and agree on fund allocation in accordance with current conditions and the priorities in this Agreement.

7.4 The City and Sound Transit may agree to update the tables in Exhibit B to adjust funds between the Improvements or between phases of any Improvement, provided that the completion date priorities identified in Section 6.3.g are honored as described in Exhibit A.

7.5 The City may contribute funds at any time to complete Improvements, to revise scope or design of an Improvement (as agreed in advance by Sound Transit) provided the schedule for completion of the Lane and the Path Improvements and priorities identified in Section 6.3.g are not impacted. The City and Sound Transit may jointly identify additional funding to address budget shortfall. Any betterment to an Improvement described in Exhibit A must be fully funded by the City and must not impact the Substantial Completion Milestones described in Exhibit B or extend the term of this Agreement.

7.6 Sound Transit funding is intended to be reimbursement of actual costs incurred by the City to complete the phases of work for each Improvement. If the Improvements are completed for a lower cost than the maximum funding obligation, any Sound Transit budget or allocated funds remain the property of Sound Transit and the City is not entitled to such remaining funds.

7.7 Unless the parties mutually agree, the NE 85th Arterial Improvements will not be funded using Federal financial assistance,

8. Payment and Invoicing

8.1 Sound Transit will reimburse the actual costs incurred by the City to complete the Improvements under this agreement, up to the maximum funding obligation authorized by this Agreement as identified in funding Section 7.1 of this Agreement. Within the maximum funding authorized, Sound Transit agrees to pay actual, validly supported costs incurred by the City to complete the Improvements under this Agreement, including but not limited to consultant costs for work under Preliminary Design, Final Design phases and construction management; cost of construction contract(s) for Construction phase work; City staff costs incurred for procurement and oversight of all phases; permits, taxes, and other valid direct costs incurred by the City. City agrees that overhead costs for City staff will not be charged to nor paid by Sound Transit. Sound Transit will not pay any amounts arising out of or resulting from negligent acts or omissions by the City or any of its consultants or contractors, in fulfilling its obligations under this Agreement.

8.2 The City will submit monthly invoices to Sound Transit reflecting current actual costs incurred by the City and their Consultants for work performed under this Agreement on the NE 85th Street Arterial

Improvements Project. The invoices must include a detailed list of costs incurred identified by Improvement on a signed invoice template consistent with Exhibit C; a progress report including a description of activities performed during the period, 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.), labor compliance documentation for the period, and an estimated cost to complete each element.

8.3 The City shall submit invoices with the required documentation via email to AccountsPayable@SoundTransit.org and copied to additional email addresses as provided by Sound Transit. Invoices are payable thirty days upon Sound Transit's receipt of the invoice and acceptable documentation.

8.4 If Sound Transit questions costs or identifies ineligible costs or determines that an invoice lacks sufficient documentation to support payment, Sound transit will notify the City of its determination and request that the City provide additional documentation to support such costs. Sound Transit may withhold payment for contested portions of the invoice until supporting documentation for the contested portions are provided, however such approval shall not be unreasonably withheld.

8.5 Sound Transit will make final payment under this Agreement upon evidence of final completion of Improvements, and completion of all City obligations under this Agreement.

9. Term

This Agreement shall take effect upon the last date of signature by the Parties as set forth below. This Agreement will expire on December 31, 2026 unless this Agreement is extended by mutual agreement of the Parties in accordance with Section 17.6, or is terminated in accordance with Section 10 Termination.

10. Termination

The Parties intend to cooperate throughout the term of this Agreement to complete the Improvements using the Sound Transit funding commitment amount in Section 7.1. The Parties agree that this funding amount is estimated to be sufficient to complete all three Improvements. If this is not possible despite the best reasonable efforts of the Parties, the Parties intend to reallocate funding from the Queue Jump to complete the Lane and the Path. In addition to such reallocated funding, design, scope, and schedule adjustments will be considered to achieve the shared intent to complete both the Lane and the Path within the funding amount and within the time frames identified in this Agreement. Sound Transit also will consider use of contingency funds identified in Section 7.2 for this purpose. If, however, and despite budget reallocation and design, scope, and schedule adjustment efforts, it becomes reasonably apparent that the City cannot timely complete the Lane and the Path, and after providing the City opportunity to cure as provided for in this Agreement, Sound Transit reserves the right to terminate this Agreement for cause and provide for completion of the Lane and Path, including by use of its own forces or with existing City contracts. In this circumstance, the Parties agree that Sound Transit funds will be used to pay reasonable amounts required to complete the work, and that the City would be responsible for reasonable, documented amounts in excess of the Sound Transit committed funds, including reallocations.

10.1 Dispute Resolution. The parties agree to attempt to seek resolution through the dispute resolution process set forth in Section 11 before this Agreement is terminated. Dispute Resolution may proceed concurrently with the initiation of a termination process.

10.2 Progress. In the event that the City does not make reasonably satisfactory progress during any phase of the work to allow Substantial Completion of the Lane or Path by the agreed dates, despite the budget reallocation cooperative efforts identified in this Article 10, Sound Transit may provide notice to the City of its concerns regarding ability to achieve timely Substantial Completion. If the City does not provide reasonable assurances of its ability to achieve timely Substantial Completion of the Improvement within thirty (30) days of such notice, Sound Transit may terminate all or part of this Agreement and may, at its own discretion, complete the Improvement with its own forces or using existing City contracts.

10.3 Default. In addition to circumstances identified for termination in Section 10.2, either party may terminate this Agreement for default if the other Party fails to fulfill a material obligation or breaches any material provision of this Agreement (“default”). The Party wishing to terminate this Agreement must provide the other party with written notice of its intent to terminate. The written notice must describe the failure to perform or material breach and give the other Party an opportunity to cure the default within thirty (30) days of receipt of the notice. If the default is not reasonably corrected within the thirty (30) days, or the party notified has not taken substantial steps toward curing the default within such period, this Agreement or relevant part may be terminated with a 7 day notice.

10.4 Sound Transit funding upon Termination. Unless the Parties agree otherwise in writing, if this Agreement is terminated pursuant to this Section 10, funds remaining in the Sound Transit funding commitment in Section 7.1 will be used to complete the Lane and the Path. If termination is for City failure to make progress or default, the City will be responsible for reasonable, documented costs in excess of the Sound Transit funding commitment, to complete the Lane and the Path and for damages directly resulting from its failure to perform or breach. If termination is for Sound Transit’s default, Sound Transit will also provide any remaining funds in the Sound Transit contingency (Section 7.2) to pay reasonable, documented costs for completion of the Lane and Path and any damages directly resulting from its default. The extent of Sound Transit’s total liability is limited to the maximum funding amounts in Section 7.1 and 7.2, except for any damages resulting from Sound Transit’s intentional misconduct, negligence or gross negligence as provided for in Article 12.

10.5 If Sound Transit completes the work on the Lane or Path improvements following a termination for lack of progress or default by the City as provided for in this Agreement:

10.5.1 City will provide all relevant design documents, permits, and contractor/subcontractor information and assist Sound Transit to identify the scope of work completed by the City and cooperate to allow Sound Transit to complete the work;

10.5.2 Sound Transit will have the right to assume any contracts or subcontracts entered into for performance of the NE 85th Arterial Improvements projects under the terms of the existing contracts or with its own contractors or forces, at Sound Transit’s discretion; and

10.5.3 Sound Transit will have the rights to any materials or completed work for which Sound Transit has made payment.

11. Dispute Resolution

11.1 The Parties agree that cooperation and communication are essential to resolving issues efficiently. The City and Sound Transit shall confer to resolve disputes that arise under this Agreement, and to prevent and resolve conflict at the lowest level possible.

11.2 Either Party may refer a dispute to the dispute resolution process by providing written notice of such referral to the other Party's Designated Representative. The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute resolution process should any such disputes arise:

11.2.1 Level One - Designated Representatives are responsible for resolving disputes that arise under this Agreement. Designated Representative shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within 10 working days after referral of that dispute to Level One, either party may refer the dispute to Level Two.

11.2.2 Level Two - The Sound Transit Strategic Project Director and City Public Works Director shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within 10 working days after referral of that dispute to Level Two, either Party may refer the dispute to Level Three.

11.2.3 Level Three - Sound Transit Program Executive and City Manager shall meet to discuss and attempt to resolve the dispute in a timely manner.

The Parties may then agree to refer the dispute to mediation or other alternative dispute resolution process. The City and Sound Transit agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted. At all times prior to the resolution of the dispute, the Parties must continue to perform any undisputed obligations and make any undisputed required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

12. Indemnity

12.1 Each Party 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 that Party's negligent or grossly negligent acts or omissions or its intentional misconduct or that of its officers, officials, employees or agents. Neither 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 Party 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 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 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 from the responsible Party to the extent of that Party's liability.

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

13. Insurance

13.1 Coverage. During the term of this Agreement, the City shall provide primary insurance coverage in the amounts that it deems necessary for to protect the City's interests on projects of similar size and cost. If the City is self-insured, it shall provide to Sound Transit's risk manager a certificate of self-insurance. The City shall require their contractor(s) and sub-contractors to obtain and maintain insurance in amounts and types suitable to protect Sound Transit and the City from exposures presented by the work performed under this Agreement. The minimum insurance requirements during the entire term of this Agreement are set forth below:

13.1.1 Commercial General Liability in the amount of two million dollars (\$2,000,000) each occurrence limit, two million dollars (\$2,000,000) general aggregate limit, covering bodily injury including death, personal injury, property damage, Employers' Liability and contractual coverage endorsements, and utilize insurers and coverage forms acceptable to Sound Transit.

13.1.2 Commercial Auto Liability coverage for bodily injury and property damage utilizing insurers and coverage forms acceptable to Sound Transit, with a limit of at least one million dollars (\$1,000,000) combined single limit.

13.1.3 Worker's Compensation insurance coverage, where applicable, shall comply with State of Washington Labor and Industries requirements.

13.1.4 Builders Risk coverage will be the responsibility of all contractors and subcontractors.

13.1.5 Pollution Liability (if there is any potential environmental liability exposure) in the amount of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

13.1.6 Professional Liability (if there is a potential professional liability exposure) in the amount of one million dollars (\$1,000,000) per claim.

13.2 Certificates. Certificates of insurance must name Sound Transit as an "Additional Insured," and shall reference the number and title of this Agreement. Certificates of Insurance will be provided to Sound Transit before the start of any work performed under this Agreement. All insurance coverage obtained by the City or its contractors and subcontractors must name Sound Transit, its officers and employees as "additional insured's" and contain "severability of interest" (cross liability) provisions. The City's and the contractor's insurance policies shall be primary to and not contributing with any insurance or self-insurance that may be carried by Sound Transit and waive their right of Subrogation against Sound Transit.

14. Audit Access and Maintenance of Records

The Parties will each maintain accounts and records, 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 and for all costs identified for payment by Sound Transit. City and its contractors shall allow Sound Transit or any government agency access to such documents at any time during normal business hours, upon reasonable request.

These records must 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 in accordance with chapter 40.14 RCW, and agreed to by the City and Sound Transit.

15. Insurance and Indemnification

The City shall extend the insurance and indemnification provisions of its contract related to performance of work under this Agreement to include Sound Transit in the same manner as they are applied to the City. When the City is an additional insured under contracts related to the Improvements, the City will include Sound Transit as an additional insured in the same manner as the City, and will include Sound Transit as an indemnified party in the same manner as is the City.

16. Notices

All notices required under this Agreement must be in writing and addressed to the other Party's Designated Representative. All notices must be either: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered electronically to the other Party's Designated Representative with evidence of receipt. Notice under Section 10, Termination, must be delivered in person or by certified mail, return receipt requested.

17. General Provisions

17.1 No Agency or Partnership. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one Party will be deemed, or represent themselves to be, employees of any other Party

17.2 No Waiver. No act or failure to act on the part of either agency with respect to the exercise or enforcement of any provision of this Agreement shall be deemed to be a waiver on the part of either Party or any provision of this Agreement. No waiver of one provision by either Party shall act as a waiver of any provision or as a subsequent waiver of the same provision. No waiver shall be effective against either Party except as express waiver in writing.

17.3 No Third-Party Rights. It is understood and agreed that this Agreement is solely for the benefit of the Parties and gives no right to any other party. Nothing in this Agreement, whether express or implied, is intended to confer any right or remedy to any person other than the Parties.

Amendments. No modification or amendment to this Agreement, including any exhibit, may be made except by written agreement signed by both parties.

17.4 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 unless otherwise noted. 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.

17.5 Force Majeure. The Parties shall not be deemed in default with provisions of this Agreement where performance is delayed or rendered impossible by events outside of its control or the control of its contractors, including but not limited to war or riots, civil disturbances, pandemics, floods, or other natural catastrophes beyond its control; the unforeseeable unavailability of labor or materials; labor stoppages or slow-downs; or power outages exceeding back-up power supplies. This Agreement shall not be revoked or a Party penalized for such noncompliance, provided that such Party takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, or integrity of both Parties' employees or property, or the health, safety, or integrity of the public, public right-of-way, public property, or private property.

17.6 This Agreement has been reviewed and revised by legal counsel for both Parties and no presumption or rule that ambiguity shall be construed against the Party drafting the document applies to the interpretation or enforcement of this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by applicable law.

17.7 Amendments. This Agreement, including exhibits, may be amended only by a written instrument executed by both Parties. The Designated Representatives may, by mutual written agreement, revise amounts and dates identified in Exhibit B as anticipated in this Agreement. Such amendments shall be binding upon the Parties without the need for formal approval by the Sound Transit Board of Directors or the Kirkland City Council as long as the amendments are consistent with this Agreement and do not exceed the funding amount identified in Section 7 or the authority delegated by the Sound Transit Board of Directors. This Agreement may be extended for an additional nine months by mutual agreement of the parties, without additional formal Sound Transit Board or Kirkland City Council approval, in order to effectuate the intent of the Agreement.

17.8 Assignment. No Party will 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.

17.9 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 thereby shall remain in full force and effect. The Parties agree to negotiate in good faith to reform the Agreement to replace any invalid or unenforceable term and/or condition with a valid and enforceable term and/or condition that comes as close as possible to the intention of the stricken term or condition.

17.10 Governing Law and Venue. This Agreement will be governed by, and construed and enforced in accordance with the laws of the State of Washington. Venue for any action or proceeding arising under this Agreement shall be in King County, Washington.

17.11 Captions. 18.1 No Agency or Partnership. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one Party will be deemed, or represent themselves to be, employees of any other Party

17.12 Entire Agreement. This Agreement including all exhibits, and any valid amendments to the above referenced documents, constitutes the entire agreement of the Parties with respect to the subject matter contained herein.

17.13. Each Party acknowledges that its signatory below is authorized to execute this Agreement and bind the respective entity to the obligations set forth herein.

Each of the Parties has executed this Agreement by having its authorized representative sign below:

CITY OF KIRKLAND

SOUND TRANSIT

By: _____
Kurt Triplett, City Manager

By: _____
Brook Belman Acting Chief Executive Officer

Date: _____

Date: _____

Approved as to form:

Approved as to form:

By: _____
Kevin Raymond, City Attorney

By: _____
Jerelyn Arbuckle, Senior Legal Counsel

Exhibit A: Description of Improvements

Exhibit B: Budget

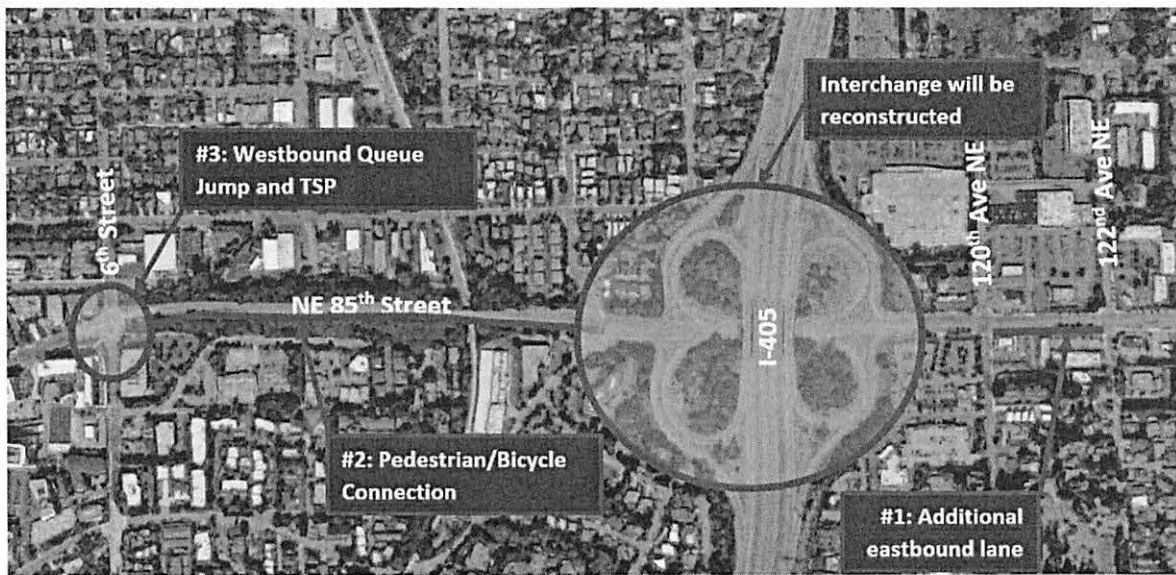
Exhibit C: Invoice Form

Exhibit D: Geotechnical Information

**FUNDING AGREEMENT
BETWEEN SOUND TRANSIT AND THE CITY OF KIRKLAND
FOR THE
NE 85TH STREET ARTERIAL IMPROVEMENTS
GA 0303-19**

Exhibit A: Description of Improvements

NE 85th Arterial Improvements



Improvement 1: (Lane)

An eastbound general purpose lane from approximately 120th Avenue NE to 122nd Avenue NE; becoming a right-turn-lane at 122nd Avenue NE. The lane is a condition of the NE 85th Street Interchange rebuild and must be in operation prior to the opening of the interchange.

Improvement 2: (Path)

An ADA accessible pedestrian/bicycle connection, on the south side of NE 85th Street between 6th Street and Kirkland Way. The trail dimensions will be designed and constructed to meet City standards. The trail will match the pedestrian improvements constructed by the NE 85th Street Interchange project for seamless integration by users.

Improvement 3: (Queue Jump)

A westbound NE 85th Street queue jump at 6th Street. This transit bypass lane, in coordination transit signal priority, will promote speed and reliability for existing and future King County Metro service. As part of the design the City will determine the length of the transit lane and how it incorporate the traffic signal into the City's system.

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Exhibit B: Budget and Milestones

Milestones and Milestone Dates

	Preliminary Design Completion	Final Design Completion	Substantial Completion
Lane	1/1/2024	10/1/2025	On or before interchange open to traffic
Path	6/1/2023	1/1/2024	12/31/2026
Queue Jump	TBD	TBD	12/31/2026*

* If it is determined that this project moves forward to completion.

Budget by Milestone

	Upon Agreement Execution for Preliminary Design Phase	Upon Completion of Preliminary Design Phase for Final Design Phase and Environmental Documentation	Upon completion of Final Design Phase and Environmental Documentation for Construction	TOTAL
Lane	\$418,400	\$174,300	\$3,017,300	\$3,610,000
Path	\$1,065,900	\$444,100	\$7,680,000	\$9,190,000
Queue Jump	\$195,300	\$81,400	\$1,403,300	\$1,680,000
Maximum Funding Obligation				\$14,480,000
<i>Contingency (must be authorized by Sound Transit Designated Representative)</i>				<i>\$1,448,000</i>
Total				\$15,928,000

**FUNDING AGREEMENT
BETWEEN SOUND TRANSIT AND THE CITY OF KIRKLAND
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NE 85TH STREET ARTERIAL IMPROVEMENTS
GA 0303-19**

Exhibit C: Invoice Form

Invoice No. _____ Dated: _____

TO: Sound Transit
Accounts Payable
401 S Jackson Street
Seattle, WA 98104

accountspayable@soundtransit.org
celine.hommais@soundtransit.org
dccapcollaboration@soundtransit.org

Attention: Accounts Payable and [Sound Transit's Designated Representative]
Re: NE 85th Street Arterial Improvements Project

The City's authorized representative certifies that the amount of \$_____ is due and payable to the City in accordance with the provisions of the Agreement, and is supported by the attached invoice and supporting documentation.

The City makes the following representations and warranties to Sound Transit in connection with the Invoice:

- All work performed to date has been, unless otherwise specifically stated by the City, performed in accordance with the terms and conditions of this Agreement.
- The amount specified above has been computed in accordance with, and is due and payable under, the terms and conditions of the Agreement, has not been the subject of any previous invoice (unless disputed or rejected for payment) and is not the subject of any pending invoice from the City.

Any liability of Sound Transit arising from these representations and warranties are governed by the terms and conditions of the Agreement.

City of Kirkland

By: _____ Date: _____
[Name, Position]

**FUNDING AGREEMENT
BETWEEN SOUND TRANSIT AND THE CITY OF KIRKLAND
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Exhibit D: Geotechnical Information

Minimum Field Exploration Requirements

General

1. For all structure types, conduct additional borings if erratic soil conditions are encountered.
2. Apply engineering judgement to increase boring frequency and depth under necessary conditions.
3. Standard Penetration Test (SPT) calibration should follow WSDOT GDM (2020) Chapter 3.5.
4. Follow WSDOT GDM Table 6-1 to conduct field investigation and testing for seismic design.
5. DOR must approve the site investigation and laboratory testing program and send to Sound Transit for review prior to initiation of the site investigation.

Walls

6. Designer of Record (DOR) must follow FHWA-NHI-14-007 Soil Nail Walls Reference Manual and WSDOT GDM 15-3.4 for field investigation regarding exploration type, depth and spacing in Soil nail wall design. Excavate at least one test pit to evaluate stand-up time of the excavation surface (WSDOT GDM 15-3.4.2.1).
7. For other retaining wall types, DOR must space borings less than 200ft apart alternating from in front of the wall to behind the wall. Minimum one boring is required for each wall. For special wall types like anchored walls, conduct additional borings. Boring depth must follow AASHTO LRFD (2020) Table 10.4.2-1.

Deep Foundations

8. For deep foundation design, DOR must conduct a minimum of one boring within the footprint of each deep foundation substructure (i.e. bridge piers and abutments).
9. The depth of exploration for aerial deep foundations must extend below the anticipated shaft or pile tip elevation a minimum of 20ft or a minimum of two times of the minimum pile group dimension, whichever is deeper.

Shallow Foundations

10. For shallow foundation design, follow AASHTO LRFD (2020) Table 10.4.2-1.

Tunnels and Underground Structures

11. For tunnel design, space borings less than 300ft.