

RESOLUTION R- 4354

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE INTERLOCAL AGREEMENT BETWEEN WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (WSDOT), CITY OF KIRKLAND (CITY), AND THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (SOUND TRANSIT) DESCRIBING THE OPERATION AND MAINTENANCE OF THE I-405 DIRECT ACCESS FACILITY AT NE 128TH STREET.

WHEREAS, a facility called the Kirkland/Totem Lake Direct Access will be constructed by Sound Transit and WSDOT using in part federal funds for the purpose of allowing Regional Express buses and other high capacity transportation uses to enter and exit I-405 at the intersection of I-405 and NE 128<sup>th</sup> Street in Kirkland, Washington; and

WHEREAS, Kirkland has requested accommodation of general purpose traffic on NE 128th Street; and

WHEREAS, the Kirkland/Totem Lake Direct Access project, including the interchange and associated arterial widening, will be located at the intersection of I-405 and NE 128<sup>th</sup> Street in Totem Lake, and on the segment of NE 128<sup>th</sup> Street directly to the east — between Totem Lake Boulevard and 120<sup>th</sup> Avenue NE; and

WHEREAS, the City of Kirkland, Sound Transit and the WSDOT agree that the PROJECT's primary goal is to improve travel speed, reliability and access of transit to and from the regional transportation system; and

WHEREAS, the parties seek to identify the responsibilities of individual parties and resolve certain issues regarding the configuration, operation, and maintenance of the PROJECT through this Agreement.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City an Interlocal Agreement substantially similar to that attached as Exhibit A.

Passed by majority vote of the Kirkland City Council in open meeting this 6th day of August, 2002.

Signed in authentication thereof this 6th day of August, 2002.

MAYOR

Attest:

City Clerk

**GCA 3338**  
**AGREEMENT FOR**  
**OPERATION AND MAINTENANCE OF THE I-405 DIRECT ACCESS**  
**FACILITY AT NE 128TH STREET**

This agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_, 2002, by and between Washington State Department of Transportation (WSDOT), City of Kirkland (CITY), and the Central Puget Sound Regional Transit Authority (SOUND TRANSIT) to address issues regarding the design, operation, and maintenance of the proposed interchange for the Kirkland/Totem Lake Direct Access and the associated local street improvements.

WHEREAS, an undercrossing called the Kirkland/Totem Lake Direct Access will be constructed by SOUND TRANSIT and WSDOT using in part federal funds for the purpose of allowing Regional Express buses and other high capacity transportation uses to enter and exit I-405 at the intersection of I-405 and NE 128<sup>th</sup> Street in Kirkland, Washington.

WHEREAS, the CITY has requested arterial widening to accommodate general purpose traffic on the undercrossing.

WHEREAS, the Kirkland/Totem Lake Direct Access undercrossing, including the interchange and associated arterial widening, will be located at the intersection of I-405 and NE 128<sup>th</sup> Street in Totem Lake, and on the segment of NE 128<sup>th</sup> Street directly to the east — between Totem Lake Boulevard and 120<sup>th</sup> Avenue NE; and

WHEREAS, in recognition of the interdependence of the interchange and arterial components described above, hereinafter referred to as the "PROJECT," SOUND TRANSIT and WSDOT have incorporated both into the PROJECT's Environmental Assessment, Eight Point Access Report, and Design File; and

WHEREAS, the parties agree that the PROJECT's primary goal is to improve travel speed, reliability and access of transit to and from the regional transportation system; and

WHEREAS, the parties seek to identify the responsibilities of individual parties and resolve certain issues regarding the design, operation, and maintenance of the PROJECT through this Agreement.

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

**1. GENERAL GOALS**

1.1 The intent of this Agreement is to reinforce and uphold the tenets of SOUND TRANSIT's Ten Year Regional Transit Plan (SOUND MOVE) and SOUND TRANSIT Board Policy. The parties to this Agreement agree that the PROJECT's primary goal is to improve travel speed, reliability and access of transit to and from the regional transportation system and to implement the federal funding requirements by maintaining the primary use of the undercrossing for regional express bus service. Therefore, to the extent possible,

operational strategy shall accommodate speed and reliability for users of the PROJECT in the following order:

1. Regional Express bus service is highest priority.
2. Local transit is second priority.
3. Carpools and vanpools are third priority.
4. General purpose (GP) traffic is lowest priority.

1.2 SOUND TRANSIT and WSDOT are currently in the process of preparing an Access Point Decision Report and Design File for the PROJECT. It is the intent of the Parties of this Agreement to modify the design of the NE 128<sup>th</sup> Street undercrossing to allow GP traffic to cross I-405 on NE 128<sup>th</sup> Street but not access to/from I-405 via NE 128<sup>th</sup> Street. A diagram of the proposed project improvements is attached as Exhibit A and is incorporated herein by reference. The design therefore includes, the following:

1. Increasing the number of lanes on the NE 128<sup>th</sup> Street structure from four to six;
2. Widening NE 128<sup>th</sup> Street to provide additional lanes to accommodate GP us of the undercrossing.

1.3 General purpose traffic use of the NE 128<sup>th</sup> Street crossing may over time affect traffic operations such that the parties of this Agreement would need to consider operational changes to the general purpose lanes to maintain the user priority outlined in Section 1.1. Operational changes shall comply with the user priority listing in Section 1.

1.4 The traffic operation within the project area will require consideration of these priorities in a balanced manner — with location-specific and system-level mobility and safety needs.

In recognition of this fact, SOUND TRANSIT, the CITY, and WSDOT (in coordination with FHWA) agree to the design modifications in section 1.2, subject to the following terms and conditions.

## **2.0 CITY RESPONSIBILITIES**

The CITY shall:

2.1 Ensure that the NE 128<sup>th</sup> Street arterial widening and associated improvements as identified in the attached Exhibit A are completed prior to or as part of the construction of the interchange improvements. If this arterial widening is not constructed, WSDOT, after consultation with SOUND TRANSIT, may restrict the use of the NE 128<sup>th</sup> Street undercrossing.

2.2 Support transit operation along NE 128<sup>th</sup> Street by operating and maintaining Transit Signal Priority (TSP) at the NE 128<sup>th</sup> Street & 120<sup>th</sup> Avenue NE intersection.

2.3 Provide enforcement on the undercrossing and at the adjacent intersections, as is provided at all other freeway ramps in Kirkland. This includes enforcement of the restricted Transit/HOV only use of the access ramps.

2.4 Include the following three intersections within the CITY's concurrency assessment, as appropriate, consistent with the CITY's treatment of other freeway interchanges in its concurrency system :

- NE 128<sup>th</sup> Street & 116<sup>th</sup> Avenue NE/116<sup>th</sup> Way NE
- NE 128<sup>th</sup> Street & Totem Lake Boulevard
- NE 128<sup>th</sup> Street & I-405 Direct Access Ramps

2.5 Collaborate with WSDOT, King County Department of Transportation (KCDOT) and with SOUND TRANSIT on operational implementations that maintain safe and efficient operations along the entire PROJECT, in keeping with the user priority outlined in Section 1.1. Make reasonable changes to CITY components of the PROJECT only after consultation with WSDOT, KCDOT and with SOUND TRANSIT.

### **3. SOUND TRANSIT RESPONSIBILITIES**

#### SOUND TRANSIT shall:

3.1 Provide Transit Signal Priority equipment for the CITY to install as part of Kirkland's intersection and traffic signal improvements at the intersection of NE 128<sup>th</sup> Street & 120<sup>th</sup> Avenue NE .

3.2 Provide appropriate detection and monitoring equipment to WSDOT for the monitoring of traffic flow on NE 128<sup>th</sup> Street from 116<sup>th</sup> Avenue NE/116<sup>th</sup> Way NE to Totem Lake Boulevard.

3.3 Provide input to WSDOT and the CITY regarding the operation of the PROJECT.

### **4. WSDOT RESPONSIBILITIES**

#### WSDOT shall:

4.1 Own, operate and maintain the traffic signals at NE 128<sup>th</sup> Street & 116<sup>th</sup> Avenue NE/116<sup>th</sup> Way NE; NE 128<sup>th</sup> Street & I-405 Direct Access Ramps; and NE 128<sup>th</sup> Street & Totem Lake Boulevard. WSDOT will enter into a separate agreement with the CITY regarding other maintenance responsibilities, including but not limited to those associated with pavement condition and markings, sweeping, and drainage.

4.2 Collaborate with the CITY, KCDOT and with SOUND TRANSIT to implement operational strategies that maintain safe and efficient operations within the PROJECT area, consistent with the user priority in Section 1. Operational strategy will focus on:

- Minimizing queues on the freeway off-ramps to prevent recurrent adverse impacts to I-405 traffic flow.
- Maintaining transit speed and reliability along NE 128<sup>th</sup> Street and along 116<sup>th</sup> Avenue NE, between Kingsgate Park and Ride lot and the NE 128<sup>th</sup> Street intersection.
- Ensuring safe pedestrian access within the limited access area.

Accommodation of GP traffic through the PROJECT area, as noted previously, is lower priority.

4.3 Prohibit left turn movements for all vehicles from NE 128<sup>th</sup> Street to Totem Lake Boulevard.

4.4 Reserve exclusive rights to modify the facility operation within the limited access, including restricting access for GP and/or HOV traffic. WSDOT will confer with the CITY, KCDOT and SOUND TRANSIT, and consider their interests, in determining whether an operational change should be implemented. Operational changes will be considered only after other less restrictive changes have been considered. Occurrence of one or more of the following are examples of the conditions that may bring about an operational change. This is not considered a complete list of conditions; there may be other circumstances that require WSDOT response.

- Unacceptable queue lengths routinely occur at the interchange off-ramps during any one-hour period. An unacceptable queue is one that extends into the ramp deceleration area, as determined by field observations and calculated deceleration length in accordance with WSDOT's HOV Direct Access Design Guide and Design Manual, Chapter 940.
- Either a High Accident Corridor (HAC), High Accident Location (HAL), or Pedestrian Accident Location (PAL) is identified within the NE 128<sup>th</sup> Street interchange limited access area, and operational modifications would be the only reasonable means to mitigate for the contributing causes. HAC's, HAL's and PAL's, are current methods for WSDOT to determine need to investigate safety solutions. WSDOT may perform other safety and operational reviews that could result in modifications, including but not limited to signing, signal timing and pavement stripe/markings.
- An unacceptable level of delay for transit coaches. This level of delay is determined to be unacceptable when transit coaches approaching the intersections of NE 128th Street & 116th Avenue NE/116<sup>th</sup> Way NE, NE 128th Street & the I-405 HOV Direct Access Ramps, or NE 128th Street & Totem Lake Boulevard often fail to clear the intersection within a one cycle of the traffic signal.

## **5. DURATION AND TERMINATION**

5.1 This Agreement shall become effective as of the date entered into above and shall continue in effect in perpetuity unless terminated earlier as provided herein.

5.2 Any party may terminate this Agreement in the event a party substantially fails to fulfill any or all of its obligations under this Agreement through no fault of the other Parties, provided that insofar as practicable, the Party terminating the Agreement will give:

- A. Written notice of intent to terminate at least thirty (30) calendar 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
- B. An opportunity for the other Party to cure the default within at least thirty (30) calendar 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.
- C. If the other party fails to remedy the default or the breach to the satisfaction of the other parties within the time period established in the Notice of Termination or any extension thereof, granted by the parties not at fault, this Agreement shall be deemed terminated.

5.3 In the event this Agreement is terminated, the improvements that are constructed with federal funds shall be operated in accordance with the continuing control agreement executed between WSDOT and SOUND TRANSIT as a condition of receiving federal funds.

## **6. ENTIRE AGREEMENT**

This Agreement contains all terms, conditions and provisions agreed upon by the Parties hereto, and shall not be modified except by written amendment.

## **7. FUNDING**

Each Party shall use its own resources to undertake its obligations under this Agreement. In general the Parties shall pay the costs of their own participation in coordination activities related to this Agreement, including attendance at meetings, policy discussions, involvement in siting and design processes where no specific work product is being delivered by a party under separate agreement.

## **8. DISPUTE RESOLUTION**

The Parties shall work collaboratively to resolve disagreements arising from activities performed under this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy. To this end, the following guidelines shall apply to any dispute between the Parties:

A. The Designated Representatives shall use their best efforts to resolve disputes and issues arising out of, or related to this Agreement. The Designated Representatives shall communicate regularly to discuss the status of the tasks to be performed hereunder and to resolve any issues or disputes related to the successful performance of this Agreement. The Designated Representatives shall cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any issues or disputes arising during the term of this Agreement.

B. One Party's Designated Representative shall notify the other in writing of any problem or dispute that the Designated Representative believes requires formal resolution according to the dispute resolution provisions of this Agreement. The Designated Representatives shall meet within five (5) business days of receiving the written notice and attempt to resolve the dispute.

C. In the event the Designated Representatives cannot resolve the dispute, the SOUND TRANSIT Director of Regional Express and the Mayor of the CITY, and the WSDOT Regional Administrator or their respective designees shall meet and engage in good faith negotiations to resolve the dispute. The Parties agree that they shall have no right to seek relief under this Agreement in a court of law until and unless each of these procedural steps is exhausted.

## 9. INDEMNIFICATION

Each of the parties to this Agreement shall protect, defend, indemnify, and save harmless the other parties, 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, each of the parties's negligent acts or omissions. No party will be required to indemnify, defend, or save harmless any party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of another party. Where such claims, suits, or actions result from concurrent negligence of a party, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the party's own negligence. Each of the parties agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the parties, by mutual negotiation, hereby waives, with respect to each of the other parties only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that any of the parties or combination of the parties incurs any judgment, award, and/or cost arising there from, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be recoverable from the responsible party or combination of the parties to the extent of that party's/those parties' culpability. This indemnification shall survive the termination of this Agreement.



**10. ASSIGNMENT**

Any party may transfer and assign its interests in this Agreement to any other public agency or public entity as permitted by law, provided that the successor or assignee has assumed all the obligations, duties and liabilities of the assignor under this Agreement then in effect, and has provided the other parties with reasonable assurance of its legal and financial authority to honor and perform the same. An assignment permitted under this Section shall be effective only upon the other parties' receipt of written notice of the assignment and a written assumption by the assignee of all the obligations, duties and liabilities of the assignor under this Agreement then in effect. The assignor and the assignee shall give the other parties written notice of the assignment not less than thirty (30) days prior to the effective date thereof.

**11. ATTORNEY'S FEE AND COST**

In any suit, action or appeal therefrom, to enforce this Agreement or any term or provision hereof, or to interpret this Agreement, each party shall bear its costs incurred therein, including reasonable attorneys' fees

**12. AMENDMENT, MODIFICATION OR WAIVER**

No amendment, modification or waiver of any provision of this Agreement shall be valid unless made in writing and signed by both parties. Any waiver by any party of any default of the other party shall not effect or impair any right arising from any subsequent default.

**13. APPLICABLE LAW**

This Agreement and the rights of the parties hereunder shall be governed by the laws of the State of Washington and venue for any action hereunder shall be Thurston County, State of Washington.

**14. INVALIDITY OR UNCONSTITUTIONALITY**

If any section, sentence, clause or phrase of the Agreement should be held to be invalid or unconstitutional by a court of competent jurisdiction, the parties will substitute a new provision to replace the invalidated section, sentence or clause to enable the Agreement to continue. If the parties cannot unanimously agree upon a new provision, the Agreement will be deemed terminated as of the date of the finding of invalidity or unconstitutionality or any other date unanimously agreed upon by the parties.



By signing this Agreement WSDOT, the CITY, and SOUND TRANSIT agree to the terms and conditions outlined above.

CENTRAL PUGET SOUND  
REGIONAL TRANSIT  
AUTHORITY

WASHINGTON STATE  
DEPARTMENT OF  
TRANSPORTATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

CITY OF KIRKLAND

WASHINGTON STATE  
ATTORNEY GENERAL OFFICE

By: \_\_\_\_\_

By: \_\_\_\_\_

Title \_\_\_\_\_

Title: \_\_\_\_\_

Date \_\_\_\_\_

Date: \_\_\_\_\_

**GCA 3338**  
**EXHIBIT A**

**I-405 DIRECT ACCESS at NE 128<sup>th</sup> STREET**

