#13

Ethan Melone
SDOT Streetcar Fare Policy and Amended First Hill Agreement ORD
September 23, 2014
Version #6

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 118218

AN ORDINANCE relating to the Seattle Streetcar System; authorizing execution of an amendment to the funding and cooperative agreement for the First Hill Streetcar; establishing fare policy objectives for the Seattle Streetcar and authorizing the Director of Transportation to set streetcar fares and establish policies and procedures for fare inspection; and ratifying and confirming certain prior acts.

WHEREAS, under that certain Funding and Cooperative Agreement between the Central Puget Sound Regional Transit Authority (Sound Transit) and the City of Seattle for the Implementation of the First Hill Streetcar Connector Project ("First Hill Streetcar Agreement") authorized by Ordinance 123118 which passed October 5, 2009, it was agreed that the City would design, build, operate, and maintain the First Hill Streetcar and that Sound Transit would make a capped capital contribution of $120 million (in 2007 dollars) and fund annual operations and maintenance costs of up to $5.2 million annually (in 2007 dollars) from 2016 to 2023 or an annual stream with an equivalent present value should the streetcar begin operations earlier than 2016; and

WHEREAS, Ordinance 123833 authorized execution of a construction contract for the First Hill Streetcar line, which is nearing substantial completion and is anticipated to begin operating in 2014; and

WHEREAS, the First Hill Streetcar Agreement was executed in 2009, prior to the start of detailed project planning, and thus the agreement provisions related to streetcar operations, while well intended, did not foresee some of the challenges now faced in administering the agreement, nor the opportunities that the City is pursuing to expand the streetcar system; and

WHEREAS, the Executive has proposed an amendment to the First Hill Streetcar Agreement that clarifies the Sound Transit funding stream, transfers fare setting responsibility and fare revenue for the First Hill Streetcar from Sound Transit to the City, removes fare enforcement criteria applicable only to the First Hill Streetcar line, and clarifies the City's operations and maintenance responsibilities; and

WHEREAS, since the South Lake Union and First Hill Streetcar lines extend the reach of the regional Link Light Rail service the City wishes to establish streetcar fare policies that are consistent with Link Light Rail fare policies for consistency and ease of use by streetcar and light rail customers; and

WHEREAS, the City is entering into the attached amended and restated Memorandum of Agreement with Sound Transit with the continuing knowledge that Sound Transit 2 provides on-going operations and maintenance funding for the First Hill Streetcar both during and beyond the term of this agreement; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Mayor or his designee is authorized to execute an Amended and Restated Funding and Cooperative Agreement between the Central Puget Sound Regional Transit Authority and the City of Seattle for the Implementation of the First Hill Streetcar Connector Project, substantially in the form of Attachment A.

Section 2. The City's policy objective for Seattle Streetcar fares is to provide consistency between streetcar and light rail service within the City of Seattle. To the extent practicable, the City intends that Seattle Streetcar fares will be consistent with Link Light Rail's base fare.

Section 3. The Director of Transportation is authorized to set and adjust fares on the Seattle Streetcar system consistent with the policy guidance provided herein in Section 2 and pursuant to applicable Federal requirements for public input, and to develop and implement various special fare types including special event service fares, peace officer fares, discounts and free fares, and employer and institutional program fares as described in Attachment B.

Section 4. The Director of Transportation is authorized to develop and implement procedures for inspection and verification of payment of fares, including but not limited to entering into contracts for fare inspection services.

Section 5. Any act consistent with the authority of this ordinance taken after its passage and prior to its effective date is ratified and confirmed.

Section 6. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2014, and signed by me in open session in authentication of its passage this _____ day of _____, 2014.

_____

President _____ of the City Council

Approved by me this ____ day of _____, 2014.

_____

Edward B. Murray, Mayor

Filed by me this ____ day of _____, 2014.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment A – AMENDED AND RESTATED FUNDING AND COOPERATIVE AGREEMENT between the Central Puget Sound Regional Transit Authority and the City of Seattle for the Implementation of the First Hill Streetcar Connector Project.

Attachment B – Special Fare Types

AMENDED AND RESTATED FUNDING AND COOPERATIVE AGREEMENT BETWEEN THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY AND THE CITY OF SEATTLE FOR THE IMPLEMENTATION OF THE FIRST HILL STREETCAR CONNECTOR PROJECT

This funding and cooperative agreement ("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 Seattle, a Washington municipal corporation ("City").

RECITALS

A. The Sound Transit Board of Directors adopted Sound Transit 2, A Mass Transit Guide, the Regional Transit System Plan for Central Puget Sound ("ST2") on July 24, 2008. ST2 includes, within the Link Light Rail Program, capital and ongoing operating contributions to "a new streetcar connector line between downtown Seattle, First Hill, and the future Capitol Hill light rail station" ("the Project"). As stated in the adopted ST2 plan, "(t)he new connector will also provide convenient access to the Sounder commuter rail system and regional bus services." The Sound Transit Board of Directors called an election to approve local taxes to implement ST2, which measure was approved by the electorate on November 4, 2008.

B. On January 26, 2006, the Sound Transit Board authorized staff to precede with the second phase of the First Hill Work Program - technical work on potential First Hill transit connector (streetcar and bus) improvements in the Broadway and Madison corridors. This effort included conceptual engineering (five percent design completion), preparation of cost estimates, and consideration of environmental issues. The purpose of the study was to further evaluate the feasibility of improved regional transit access to the First Hill area. The Motion also confirmed that no further work would be advanced on the previous First Hill light rail station or alternative light rail station sites. Sound Transit staff, in cooperation with City of Seattle and King County Metro staff, and with the support of the ST2 engineering design team, completed the First Hill Work Program on April 17, 2007.

C. The City is responsible for administering state and local transportation and land use laws and development regulations that will apply to the construction and operation of the Project. The City is also responsible for managing streets and municipal utilities within its jurisdiction and for providing municipal services, such as public safety.

D. The City has experience in the design, construction and operation of modern streetcar connectors, having recently completed design and construction of the South Lake Union Line of the Seattle Streetcar and having entered into an intergovernmental agreement with King County for Seattle Streetcar Operations & Maintenance.

E. The City has extensive experience with the General Contractor/Construction Manager ("GC/CM") alternative public works contracting procedures authorized by RCW 39.10,

including use of the GC/CM procedure for construction of the South Lake Union Line of the Seattle Streetcar.

F. The City Council has adopted Resolution 31091 "stating the City Council's support for developing a streetcar network in the City of Seattle and identifying the most promising streetcar routes for the City to pursue," including the Project.

G. Both Sound Transit and the City ("the Parties") have determined that it is in the public interest for the City to construct and operate the Project.

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

AGREEMENT

1. Project Scope

The Project consists of the design and construction (directly or by others under the City's direction) of the Project as set forth in the "Minimum Scope of Work" which is attached hereto as Exhibit A, and is made part of this Agreement by this reference. The Project includes management and implementation of all actions required to design, construct, equip and operate the Project. The Project may also include design and construction of the streetcar connector north of the Capitol Hill Station at John Street or beyond the International District/Chinatown Station at 5th Avenue S, subject to the approval and concurrence of Sound Transit's Board and the funding limitations provided in Section 3.

2. Project Management and Construction

2.1. The Project. The City will take all steps necessary to design and construct the improvements for the Project as identified in Exhibit A, including without limitation environmental review and mitigation, hazardous waste removal or mitigation, coordination of all required approvals and permits, acquisition of right-of-way, purchase of streetcar vehicles, community involvement and construction management.

2.2. Outreach Plan. The City will draft a community outreach plan for project planning, design and construction, including Neighborhood Updates, for Sound Transit's review and concurrence. Prior to Sound Transit's review, the City Council will have an opportunity to review and comment on the community outreach plan. The outreach plan will address how the City will establish effective communication with property owners, residents and businesses in the Project area in order to keep them fully informed about the planning, design, construction and operation of the Project. The outreach plan will describe how the City will communicate the scope and schedule of the Project to affected property owners, residents and businesses and how regular communication with the community will be conducted on a regular basis throughout the construction phase. Other methods of communication such as a 24-hour construction hotline and/or multi- media public information program will be considered and addressed in the outreach plan if appropriate for the Project. The outreach plan will also address how the City will mitigate

impacts to residents and businesses and minimize disruption during construction, as disclosed in the environmental review process. The outreach plan will describe how information will be exchanged with non-English speaking property owners, residents or businesses, including methods for responding to complaints. A public safety education campaign to be implemented prior to testing of the system will also be included in the outreach plan. The City and Sound Transit will coordinate the outreach plans for Sound Transit's University Link project and this Project, and the City will ensure their consistency.

2.3. Construction. The City will employ or contract with all persons or entities necessary to complete construction of the Project and will be responsible for design, environmental compliance, community outreach, permitting, management, control, operation, construction, maintenance, acquisition of real property interests, and procurement of streetcar vehicles necessary to operate the Project. Sound Transit may place an engineer and/or other inspection personnel on the work site during the term of this Agreement to monitor progress of the Project and/or to monitor adherence to the required provisions of this Agreement. The City will make the site accessible to Sound Transit inspection personnel. The cost of this work by Sound Transit is an Eligible Cost and is therefore deductible against Sound Transit's maximum funding obligation, but in an amount not to exceed $10,000 per month.

2.4. Environmental and Design Review. The City will coordinate environmental review with Sound Transit and provide Sound Transit with the opportunity for design review and coordination through construction.

2.4.1. The City will be the nominal lead agency for State Environmental Policy Act (SEPA) compliance on this Project. City SEPA rules will govern the SEPA process, including SEPA appeal procedures. The City is responsible for conducting the SEPA process and preparing and distributing all environmental documents. Sound Transit will act as a co-lead agency and have 30 calendar days to review a preliminary draft of the SEPA document and shall approve the final SEPA document in writing prior to its publication. Sound Transit and the City will coordinate with each other to ensure that the SEPA documentation provides the appropriate substantive and procedural compliance pursuant to SEPA to inform the Sound Transit Board's decision on funding the Project. The City will have lead responsibility for addressing any requirements under the National Environmental Policy Act (NEPA), should they apply.

2.4.2. The City will select the Project route, after review and approval of the route by City Council by resolution.

2.4.3. The City will provide Sound Transit with the opportunity to provide design review, approval and coordination during construction to ensure that the Project meets the Minimum Scope of Work as provided in Exhibit A; does not interfere with Sound Transit's construction of the Link Capitol Hill Station and University Link line; supports the goal of providing easy transfers between the Project and Link Light Rail, Sounder Commuter Rail and regional Express bus services; and to identify design issues impacting operations. Sound Transit will review and provide written comments on design documents, including cost estimates and traffic analysis, at 30-, 60- and 90- percent completion, within 21 calendar days of receipt by Sound Transit, or as otherwise agreed upon by the Primary Contacts. The City shall address and

respond to every written comment submitted by Sound Transit. The City will provide a schedule of deliverables to Sound Transit in advance so that Sound Transit can plan its review time prior to its receipt of the deliverables.

2.5. Maximum Allowable Construction Cost. In the event that accepting the lowest responsive responsible bid(s) for the Project obtained by the City through a public works procurement, or the Maximum Allowable Construction Cost ("MACC") for the Project negotiated by the City through the GC/CM process, would commit the City to pay more than the funds available to the City for this Project, the bids or the MACC will be rejected, unless approved and funded by the City Council. In the event bids are rejected or the MACC is not executed, the Parties will decide whether to reissue the same or an amended proposal under the terms of this Agreement, or to terminate this Agreement in accordance with Section 6 of this Agreement. The City will be responsible for securing any supplemental sources of funds that may be necessary prior to proceeding with construction. Sound Transit will support the City in seeking additional funding for the Project to the extent that Sound Transit's support does not conflict with its seeking funding for other Sound Transit projects.

2.6. City Certification. Before the City puts the Project out to bid, or before the City authorizes a GC/CM to proceed with the bidding or award of bid packages, the Director of the City's Department of Transportation shall certify in writing to Sound Transit's Chief Executive Officer that the bid documents for the Project meet both the capital and operating requirements of the Project scope established in Section 1.

2.7. Cost Overruns. The City shall pay any cost overruns that may occur during construction that would increase the cost beyond Sound Transit's maximum funding obligation.

3. Sound Transit's Financial Participation-Capital Expenditures

3.1. Maximum Funding Contribution to the Project. The ST2 Plan establishes a maximum capital contribution from Sound Transit for the Project. Sound Transit will reimburse the City for Eligible Costs as defined in section 3.2, in accordance with the schedules and maximum funding contribution set forth in the First Hill Project Capital Payments Schedule, which is attached as Exhibit B. However, until the City completes the environmental review of the Project and the Sound Transit Board makes a final decision to fund the Project, the City may only incur the following costs: (1) environmental documentation, (2) conceptual engineering, and (3) other costs, pre-approved by Sound Transit, that do not have an adverse environmental impact, do not limit the choice of reasonable alternatives, and are otherwise consistent with SEPA. Further, Sound Transit is not responsible for reimbursing these pre-final decision costs in an amount greater than Five Million, Four Hundred and Forty Thousand Dollars ($5,440,000.00), unless and until the City has selected a route and the Sound Transit Board makes a final decision as to whether to fund the rest of the Project.

3.2. Eligible Costs. Eligible Costs are all costs of the Project consistent with the Project scope as defined in Section 1, including without limitation the cost of Project management and implementation of all actions required to design, construct, equip and prepare for operational

start-up of the Project, including Sound Transit's direct costs. Legal costs incurred by the City in any action against Sound Transit are specifically excluded from the category of Eligible Costs.

3.3. Invoicing and Reimbursement. The City will invoice Sound Transit for Project work done at least 30 days before the "Reimbursable Due Dates" listed in Exhibit B. A properly documented invoice includes documentation that the Project work that the City seeks reimbursement for has been performed. Upon Sound Transit's preliminary determination that the City has submitted a properly documented invoice for Eligible Costs incurred by the City, Sound Transit will reimburse the City on the quarterly Reimbursement Due Date in an amount not to exceed the funding reimbursement provided in Exhibit B for that particular Reimbursement Due Date, plus any funds from previous quarters that have not been previously requested by the City. However, if the City submits its invoices after 30 days before the Reimbursement Due Date, Sound Transit will reimburse the City within 30 days of its receipt of the properly documented invoice. Upon final acceptance and closeout of the Project construction, the Parties will reconcile final Eligible Costs, and Sound Transit will pay the balance of all unreimbursed Eligible Costs, less Sound Transit's direct costs for Project management and implementation of all actions required to design, construct, equip and prepare for operational start-up of the Project and actual cost of funds to make payments, according to the maximum amount reflected on the Exhibit B payment schedule.

4. Operations and Maintenance

4.1 City Responsibility.

4.1.1 The City is responsible for operating a high quality service that is dependable, comfortable, convenient, clean, safe and secure, and maintaining the Project in a manner that complies with all required equipment warranty conditions and keeps all equipment and infrastructure in good repair. Sound Transit is not obligated to fund the operations and maintenance of a project that does not meet the minimum Project scope established in Section 1.

4.1.2 If the City determines that the cost to operate all of the planned service described in Section 1 will exceed total resources available to the City , the City shall give fifteen months' notice to Sound Transit and submit a proposed plan with alternatives to align costs and revenues. The City's proposed plan should include a detailed analysis demonstrating that the City has implemented all best management practices and reasonable operating efficiencies. The City's proposed plan should include a thorough analysis of alternatives that include cost-cutting measures that minimize service reduction. Within three months of this notice, Sound Transit may approve the City's proposed plan, or an alternative plan agreed upon by the parties, or may elect to operate the Project directly beginning 15 months from the City's notice. If Sound Transit exercises this right to operate the Project directly, the City will transfer, at no-cost to Sound Transit, ownership of the Project to Sound Transit. The City will also enter into a no- cost agreement for the use of the Project right-of-way with Sound Transit that shall remain in effect for so long as the streetcar facilities remain in use for streetcar transportation purposes. Upon transfer of ownership, and execution of appropriate right-of-way use agreements, this agreement will terminate.

4.1.3 Fare Enforcement. The City is responsible for conducting fare enforcement for the Project.

4.2 Third Party Operator. The City may contract with a third party operator to operate and maintain the Project for up to five years plus the required start-up testing period. At Sound Transit's request, the City will include Sound Transit as a voting member on the contractor selection panel.

4.3 Start of Operations. If the City cannot obtain a third party operator, the City and Sound Transit may enter into negotiations for operation and maintenance of the Project by Sound Transit.

4.4 Sound Transit's Reservation of Right to Operate. Sound Transit reserves the right to operate the Project directly after five years of operation, or pursuant to the provisions of Section 4.1. If Sound Transit exercises this right to operate the Project directly, the City will transfer, at no-cost to Sound Transit, ownership of the Project to Sound Transit. The City will also enter into a no- cost agreement for the use of the Project right-of-way with Sound Transit. Upon transfer of ownership, and execution of appropriate right-of-way use agreements, this agreement will terminate. In conjunction with this reservation of right by Sound Transit, the City will provide to Sound Transit an annual report that includes at a minimum documentation of compliance with warranty conditions and its maintenance responsibilities under section 4.1.

4.5 O&M Funding and Payments. Sound Transit will contribute funding equivalent to a 2014 present value of $39,433,880 for eligible O&M expenses, according to the following payment schedule which assumes a 4.5% discount rate:

Year	Payment ($YOE)
2014	3,089,925
2015	5,000,000
2016	5,000,000
2017	5,000,000
2018	5,000,000
2019	5,000,000
2020	5,000,000
2021	5,000,000
2022	5,000,000
2023	5,000,000

Unless otherwise agreed by the Designated Representatives, the 2014 payment will be made on or before October 30, 2014, or within thirty days of execution of the amended Agreement, whichever is later. Subsequent payments will be made on or before June 30 of each calendar year during the term of the Agreement.

4.6 Capital Replacement and Repair Fund. The City will set aside from the funds it receives from Sound Transit an annual capital replacement and repair expense of up to Six-Hundred Thousand Dollars ($600,000) per year in 2012 dollars, escalated at 3.5% annually; and any tax associated with this reimbursement. Any payments from Sound Transit used to fund capital replacement and repair expenses will be deposited into a City fund restricted to payment of major maintenance, repair, replacement and regulatory compliance expenses for the Project. The City will provide an annual, written report to Sound Transit on capital replacement and repair fund activity including deposits, expenditures and uses of the funds.

4.7 Fare Box Revenue. The City will determine the fares to be charged to passengers consistent with regional fare policy and the City or any Third Party Operator will collect and retain fare box revenue.

4.8 Costs in Excess of Sound Transit Funding Obligation. The City is responsible for major maintenance, replacement, and all remaining O&M expenses beyond the amount Sound Transit contributes as provided in Section 4.5 and 4.6.

4.9 Other Revenues. Other revenues, including but not limited to revenues from agreements for advertising or sponsorship of vehicles and stations, shall be retained by the City and be available for any purpose related to the operation, maintenance or development of the Seattle Streetcar Network. Sound Transit shall have right of first refusal to enter into agreements with the City for sponsorship of vehicles and/or stations, at a price equal to fifty percent of the advertising or sponsorship rates currently in effect at the time of the agreements.

4.10 Acknowledgement of Funding. The City will ensure acknowledgement of Sound Transit funds for the Project is noted in any Project advertisements and postings. The graphic identity of the vehicles, facilities and collateral and web-based materials will incorporate both the City's Seattle Streetcar and the Sound Transit logo and identity.

4.11 Ownership and Use of Facilities. The City will own the Project facilities and vehicles. The City may deploy vehicles acquired for the Project on any connecting portions of the City's existing and proposed streetcar network, upon Sound Transit's written concurrence that the proposed deployment does not negatively affect the quality or level of service of the Project service area. The City will not abandon or transfer any of the facilities or right-of-way required for the operation of the Project without giving Sound Transit right of first refusal to enter into a no-cost agreement with the City for the transfer of ownership, right-of-way use, and operation of the Project as designed to Sound Transit. The City will also enter into a no-cost agreement with Sound Transit for the use of the right-of-way that shall remain in effect for so long as the streetcar facilities remain in use for streetcar transportation purposes.

4.12 Customer Service and Information. The City will provide customer service for the Project. The customer service quality will be at least equivalent to the customer service provided for Sound Transit's Link Light Rail.

4.13 Federal Funding and Federal Transit Administration (FTA) Requirements.

4.13.1 Section 13(c). As a condition of Sound Transit's receipt of federal grant funds to acquire capital assets in connection with Central Link, Sound Transit and various unions representing transit employees in the Sound Transit service area have entered into an "Agreement Pursuant to Section 13 (c) of the Federal Transit Act", dated February 29, 1996 and as amended March 30, 1999 (hereinafter referred to as Sound Transit's 13(c) Agreement). With respect to City employees (or the City's contracted operator's employees, including King County's employees), the City agrees to comply with the terms of Sound Transit's 13(c) Agreement and ensures that its operator complies with the provisions of Sound Transit's 13(c) Agreement.

4.13.2 National Transit Database (NTD) Reporting. The City or any Third Party Operator of the First Hill Streetcar service shall provide Sound Transit with annual reports of service and operations data which comply with FTA and NTD requirements. 4.13. 3 Federal Funding Requirements Apply for Preventive Maintenance. The City or any Third Party Operator shall comply with any applicable FTA and Office of Management and Budget (OMB) regulations to ensure that operations and maintenance expenses remain eligible federal costs.

5. Dispute Resolution

5.1. Sound Transit and the City shall confer to resolve disputes that arise under this Agreement as requested by either party.

5.2. The individuals identified in the attached Exhibit C are the Designated Representatives of the Parties for the purpose of resolving disputes that arise under this Agreement. The parties may unilaterally amend this exhibit to change their respective representative by sending a copy of the amended exhibit to the other party. The amendment becomes effective upon delivery.

5.3. In the event the Designated Representatives are unable to resolve the dispute within 10 business days, the Executive Director of Planning, Environment and Project Development of Sound Transit and the Director of the City's Department of Transportation, or their designees, shall confer and resolve the dispute.

5.4. Sound Transit and the City 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.

6. Termination of the Agreement

6.1 Termination if Project Deemed Too Expensive. In the event that accepting the lowest responsive responsible bid(s) for the Project obtained by the City through a public works procurement, or the Maximum Allowable Construction Cost ("MACC") for the Project negotiated by the City through the GC/CM process, would commit either party to pay more than the funds available to that party for this Project, the bids or the MACC will be rejected. In the event bids are rejected or the MACC is not executed, either Party may terminate this Agreement after eighteen months from the date that a bid has been rejected, although a City termination requires City Council approval by resolution or ordinance.

6.2 Termination for Default. If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 30 days. If the failure or violation is not corrected, this Agreement may be terminated five working days from written notice of the aggrieved party's intent to terminate.

6.2.1 Sound Transit Default. In the event of termination due to Sound Transit default, Sound Transit will compensate the City for all contract closeout costs, the portion of work which has been satisfactorily rendered to the date of termination, and executed long-lead procurement contracts that cannot be cancelled.

6.2.2 City Default. In the event of termination due to City default prior to operation, the City will reimburse Sound Transit for its funding under this Agreement. If the termination occurs after the start of operations, then, at Sound Transit's request, the City will transfer, at no cost to Sound Transit, ownership of the Project to Sound Transit, including the capital replacement and repair fund under section 4.6. The City will also enter into a no-cost agreement with Sound Transit for the use of the Project right-of-way.

6.3 Termination for Convenience. During design or construction of the Project, either party may terminate this Agreement convenience. This termination will not extinguish or release either party from liability, claims or obligations to third parties existing as of the time of termination including contractor claims and costs incurred by the party in the implementation of the Project. Any costs incurred prior to proper notification of termination will be borne by the parties in accordance with the terms of this Agreement. The party terminating for convenience is obligated to pay for all construction closeout costs. The parties agree to work together cooperatively to develop a coordinated plan for termination including the determination of reasonable contract closeout costs.

6.4 **Procedures upon Termination.** Sound Transit and the City agree to apply the following procedures after either party terminates this Agreement:

6.4.1 The parties shall seek a joint determination on the status of each cost component of the work at the initiation of termination.

6.4.2 The parties shall seek consensus on the action to be taken on each component.

6.4.3 The parties may agree to arrange for the assignment and assumption of obligations of third party contracts for the performance of work under this Agreement.

6.4.4 The parties shall agree upon a cost estimate for terminating any third party contracts that have been executed under the Agreement.

6.5 Survival of this Section. The terms and responsibilities of the Parties under this Section 6 will survive termination of this Agreement

7. Audit

The Parties, the State Auditor, and any of their representatives shall have full access to and the right to examine, during normal business hours, all of each Party's records with respect to all matters covered by this Agreement. Such representatives shall be permitted to audit, examine and make excerpts or transcripts from such records, and to make audits of agreements, invoices, materials, payrolls, and other matters covered by or related to this Agreement. If an audit is requested by Sound Transit or required by any applicable federal agency requirements, the City agrees to cooperate fully with Sound Transit's auditor or an independent auditor chosen, retained, and paid by Sound Transit to audit costs incurred in design, construction, operation and maintenance of the Project. In the event the audit determines that Sound Transit has paid City in excess of the amounts approved by Sound Transit for the Project, the excess amount will be repaid to Sound Transit. In the event the audit determines that City has incurred costs for the Work that exceeds payment made by Sound Transit, Sound Transit shall pay City the amount owed, up to its maximum funding obligations under this Agreement.

8. Retention of Records.

Copies of the records shall be furnished to each Party upon request and shall be maintained in accordance with a work order accounting procedures prescribed by the State Auditor's Office. All documents, books, papers, accounting records, and other materials pertaining to this Agreement shall be retained by each Party for six (6) years, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case each Party agrees to maintain same until all such litigation, appeals, claims or exceptions are finally resolved.

9. General Provisions.

9.1 No Agency or Employee Relationship. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of any other party. In performing work and services pursuant to this Agreement, Sound Transit, its employees, consultants, agents, and representatives shall be acting as agents of the Sound Transit and shall not be deemed or construed to be employees or agents of City in any manner whatsoever. Sound Transit shall not hold itself out as, nor claim to be, an officer or employee of City and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of City. Sound Transit shall be solely responsible for any claims for wages or compensation by Sound Transit's employees, consultants, agents, and representatives, including sub-consultants, or any agency, and shall defend, indemnify and hold City harmless therefrom. In performing work and services pursuant to this Agreement, City, its, employees, consultants, agents, and representatives shall be acting as agents of the City and shall not be deemed or construed to be employees or agents of the Sound Transit in any manner whatsoever. City shall not hold itself out as, nor claim to be, an officer or employee of the Sound Transit and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of Sound Transit. City shall be solely responsible for any claims for wages or compensation by

City's employees, consultants, agents, and representatives, including sub- consultants, or any agency, and shall defend, indemnify, and hold Sound Transit harmless therefrom.

9.2 Indemnity.

9.2.1 Generally. 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 the first party's negligent or grossly negligent acts or omissions or its intentional misconduct or that of its officers, officials, employees or agents. No party will be required to indemnify, defend, or save harmless the other party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other party. Where such claims, suits, or actions result from concurrent negligence of the parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the party's own negligence. Each 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.

9.2.2 13(c) Liability. The City shall defend, indemnify, and hold harmless Sound Transit its officials and employees against any and all claims, demands, suits, actions, damages or liability (collectively "13(c) Claims") for labor protections provided to transit employees within Sound Transit's service area under 49 U.S.C. section5333(b) that are based upon a Sound Transit 13(c) agreement or arise out of, are connected to, or are materially related to the commencement, operation, modification, or termination of the Project service. The City's obligation shall apply whether the claim is brought under a Sound Transit 13(c) agreement or a City or King County 13(c) agreement, or all, and whether it is brought against Sound Transit or against the City or County, or against any all. Notwithstanding any other requirements of this provision, the City's obligation shall not extend to any claim or liability based upon any act or omission of Sound Transit or anyone acting on behalf of Sound Transit.

9.2.3 Insurance. Each Party, a duly constituted governmental entity under the constitution of the State of Washington, agrees and understands that each Party shall, at its expense, obtain and maintain during the entire term of this Agreement an appropriate program of self-insurance for its third-party personal injury and property damage claims. Each Party agrees to provide the other Party with a letter attesting to its self-insurance program as adequate proof of coverage.

9.2.4 Taxes. Taxes, including taxes relating to Sound Transit's reimbursement of the City's cost, are a reimbursable cost under this Agreement. The City shall indemnify Sound Transit for any taxes, including business and occupation taxes, sales taxes, utility tax,

miscellaneous tax, due to the taxing authority by the City or Sound Transit with regard to payments made under this Agreement.

9.2.5 Survival. The indemnification responsibilities provided in this section will survive the termination of this Agreement.

9.3 Claims.

9.3.1 Each party shall have the right to settle, or cause to be settled for it, all claims for loss and damage for which such party is liable under this Agreement and to defend or cause to be defended all suits for the recovery of any loss and damage.

9.3.2 In the event a suit is commenced against either party, or a claim is asserted for loss or damage for which the other party may be solely or jointly liable under this Section, the party sued, or against whom the claim is asserted, promptly shall notify the other party in writing of the pendency of the suit or claim, and thereupon such other party shall assume or join in the defense of such suit or claim.

9.3.3 In the event that both of the parties may be liable for any loss or damage and the loss or damage is voluntarily settled by one of the parties, a release from liability shall be taken for and in the name of both parties. Prior to settling any such claim or suit for an amount in excess of fifty thousand dollars ($50,000), the settling party shall obtain the written consent of the other party, which consent shall not be unreasonably withheld. It is not the intent of the Parties that such consent be deemed an admission of joint liability for the claim or suit for the damage or loss.

9.3.4 It is not the intent of the parties for either party to be conclusively bound by any judgment against the other party.

10. Miscellaneous

10.1 Entire Agreement. This Agreement and the attached exhibits constitute the entire agreement and understanding between City and Sound Transit relating to the Project. There are no restrictions, promises, representations, warranties, covenants or undertakings, oral or otherwise, except those expressly set forth or referenced in this Agreement.

10.2 Amendments. Waivers, modifications, additions, or amendments to this Agreement must be in writing and signed by the authorized representatives of each party. Except for amending Exhibit C, the City may not waive, modify, add to, or amend this Agreement without City Council approval by resolution.

10.3 Severability. In the event that any term, covenant, condition, or provision of this Agreement, or the application of the Agreement to any person or circumstance, is found to be invalid or unenforceable in any respect, the remainder of this Agreement, and the application of such term or provision to other persons or circumstances nevertheless will be binding with the same effect as if the invalid or unenforceable provision were originally deleted. The parties agree

to bargain in good faith to reform this Agreement or replace any invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision.

10.4 Primary Contacts. The primary contacts for each party in the day- to-day dealings of this Agreement are listed in Exhibit C. The parties may unilaterally amend this exhibit to change their respective primary contact by sending a copy of the amended exhibit to the other party. The amendment becomes effective upon delivery.

10.5 Notices. Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and either shall be: (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 primary contact as listed in Exhibit C. However, notice under section 6, Termination, must be delivered in person or by certified mail, return receipt requested.

10.6 Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder are in addition to and not a limitation of or waiver regarding any duties, obligations, rights, and remedies otherwise available by law. Waiver by either party of any default will not affect or impair any right arising from any subsequent default. The failure of either party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy provided for in this Agreement shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

10.7 Choice of Forum. In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the parties agree that any such action or proceedings will be brought in a court of competent jurisdiction in King County, Washington.

10.8 Transfer/Assignment. Neither party may 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. This Agreement is binding upon, and inures to the benefit of, the parties and their respective permitted successors and assigns.

10.9 Benefits. This Agreement is intended for the sole benefit of the parties to this Agreement. Nothing in this Agreement is intended to give any person or entity, other than the parties any legal or equitable right, remedy, or claim under this Agreement.

10.10 Preparation. The parties and their legal counsel have cooperated in the drafting of this Agreement. Accordingly, the parties intend that this Agreement is the joint work product of the parties. The parties do not intend for any provision of this Agreement to be construed against a party on the basis of authorship.

10.11 Counterparts. This Agreement may be simultaneously executed in duplicate counterparts, each of which will be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

10.12 Authority. The persons signing this Agreement warrant that they have the respective power and authority to sign this Agreement on behalf of their city or regional transit authority, respectively.

10.13 City Council Approval. There are sections in this agreement where the City Council is required to approve the City's position before it is entitled to act under this Agreement. This agreement is not amended by language requirements or conditions of City Council resolutions or ordinances that are not also included in amendments to this agreement agreed to by Sound Transit.

11. Term of Agreement.

The term of this Agreement is from the last date written below and, unless it is otherwise terminated in accordance with the provisions of this Agreement, until December 31, 2023. This agreement will automatically extend for an additional five-year term unless either party provides notice to the other party of its intention to allow the agreement to terminate no later than August 31, 2021. If the City provides notice of its intent to allow the Agreement to expire, then, at Sound Transit's request, the City will transfer, at no cost to Sound Transit, ownership of the Project, including the depreciation fund provided under section 4.6, to Sound Transit. The City will also enter into a no-cost agreement with Sound Transit for the use of the Project right-of-way. The agreement will continue to automatically extend for additional five-year periods unless either party provides notice of its intent to allow the Agreement to expire no later than 16 months before the expiration date.

The authorized representatives of Sound Transit and City are signing this Agreement and the effective date shall be the last date written below.

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY Signed:
_____ Title: _____ Dated:
_____

Approved to form Legal Counsel: _____

Dated:_____ CITY OF SEATTLE Signed:
_____ Title: _____ Dated:
_____

Approved to form Assistant City Attorney: _____

Dated:_____

Exhibit A to Attachment A - Minimum Scope of Work for First Hill Streetcar Connector Project

Exhibit A

Minimum Scope of Work for First Hill Streetcar Connector Project

The purpose of the First Hill Streetcar Connector Project (the Project) is to replace the connection to the regional Link light rail system lost when the First Hill light rail station was deleted from the regional system. The streetcar connector will directly connect First Hill employment centers to the regional Link light rail system at the International District/Chinatown Station at 5th Avenue S and the Capitol Hill Station at Broadway between E. Denny Way and John Street. If operations begin prior to July 1, 2016, the Project may feature an interim terminus in the vicinity of Pike and Pine streets.

The Project fleet (inclusive of at least one spare vehicle) and facilities will accommodate the service plan:

Service Plan 1. Service Plan: Span of Service Monday-Saturday 5AM to 1AM Sundays/Holidays 7 AM to 7 PM

2. Service Plan: Peak/Off Peak Headways Peak Periods: Trains Arrive Every 10 Minutes Off Peak: Trains Arrive Every 15 Minutes

3. Service Plan: Peak Service Periods Peak Periods: 6AM-9AM M-F, 4PM-7PM M-F

The service plan may be adjusted with the written concurrence of Sound Transit's Operations Director.

The Project will provide local and inter-neighborhood transit service using modern low-floor light rail vehicles, similar to the streetcar vehicles operating in Portland, Seattle and Tacoma. The streetcars operate in single trainsets. The streetcars will generally operate in a mixed flow of traffic on urban arterial streets, typically with transit signal priority at intersections, and occasionally operating in restricted (transit-only) lanes or exclusive right-of-way. The Project will be double-tracked, although termini or exclusive-lane segments may feature a short segment of single track if this will not impede service objectives.

The Project will meet or exceed all accessibility requirements and includes a variety of passenger amenities on board, at passenger platforms and on the internet, including transit shelters, real-time arrival information, automated passenger information, and ticketing. Use of the ORCA regional smart card will be accommodated either on-board, wayside, or with both of these methods of fare payment.

Passenger platforms will typically be spaced at distances of 1,250 to 2,000 feet and will be sited to best balance proximity of service to major activity areas with speed and reliability objectives.

The Project will include all construction, right-of-way and equipment necessary to meet the service objectives, including but not limited to:

* embedded track and special track;

* traction power system and overhead contact system;

* train control system and train signaling;

* passenger platforms and amenities including miscellaneous electrical service to amenities;

* a light maintenance and vehicle storage facility and vehicle maintenance equipment;

* roadway and drainage modifications (only immediately adjacent to Project);

* traffic signal modifications;

* street lighting modifications (only immediately adjacent to Project);

* utility relocation, protection and bridging necessitated by the Project;

* relocation of overhead trolley bus wires where necessary;

* mitigation measures; and

* an Art Program.

The Art Program will be administered by the City and is budgeted at $750,000 in 2011 dollars to represent approximately 1% of estimated construction expenditure.

The Project will be designed to allow for connections to other segments of the City's planned streetcar network and may include extensions beyond the minimum scope of work, subject to the approval of the Sound Transit board.

Exhibit B to Attachment A - First Hill Project Capital Payments Schedule

Exhibit B		
First Hill Project Capital Payments Schedule		
Payment Due Date	**Maximum Reimbursement(Year of Expenditure Dollars)**	**Cumulative Maximum(Year of Expenditure Dollars)**
November 1, 2009	$ 2,500,000	$2,500,000
March 1, 2010	$ 700,000	$3,200,000
June 1, 2010	$ 700,000	$3,900,000
September 1, 2010	$840,000	$4,740,000

December 1, 2010	$840,000	$5,580,000
March 1, 2011	$ 9,400,000	$14,980,000
June 1, 2011	$ 3,908,000	$18,888,000
September 1, 2011	$5,400,000	$24,288,000
December 1, 2011	$9,494,000	$33,782,000
March 1, 2012	$11,430,000	$45,212,000
June 1, 2012	$13,016,000	$58,228,000
September 1, 2012	$13,366,000	$ 71,594,000
December 1, 2012	$13,366,000	$84,960,000
March 1, 2013	$10,216,000	$95,176,000
June 1, 2013	$10,730,000	$105,906,000
September 1, 2013	$15,420,000	$121,326,000
December 1, 2013	$4,454,000	$125,780,000
March 1, 2014	$7,000,000	$132,780,000

Exhibit C to Attachment A - Primary Contacts

City of Seattle: Ethan Melone

Rail Transit Manager

Department of Transportation

P.O. Box 34996

Seattle, WA 98124-4996

Sound Transit: Valerie J. Batey

Senior Planner

Planning, Environment and Project Development Department

Sound Transit

401 South Jackson Street

Seattle, WA 98104

ATTACHMENT B

SPECIAL FARE TYPES

A. Special Event Service

1. Special event services are for public transportation needs that temporarily exceed the capacity of regularly scheduled services.
2. The Director of Transportation is authorized to establish special event fare structures, rates or third-party payments for the purpose of providing special event service, with the goal of recouping the marginal cost to provide such service to the extent practicable.

B. Peace Officer Fares

1. The City of Seattle will recognize the law enforcement uniform or presentation of the badge of a peace officer of a general authority Washington law enforcement agency or federal law enforcement agency as payment of fare.

C. Discounts and Free Fares

1. The Director of Transportation is authorized to provide discounted or free fares for the following purposes:
    a. Seattle Department of Transportation promotional and marketing campaigns.
    b. Educational outreach and transit training activities.
    c. Customer relations and complaint resolution.
    d. Participation in human services and low income fare media distribution programs administered by local transit agencies within Seattle Streetcar's service area.
        i. Eligibility criteria for low income fares are uniformly established by Seattle Department of Transportation and one or more local transit agencies operating within Seattle Streetcar's service area, and
        ii. Certification of eligibility and issuance of proof of eligibility is performed by the local transit agency or agencies providing low income fare service.
    e. Acceptance of paratransit fare media issued by local transit agencies within Seattle Streetcar's service area to customers qualifying for paratransit service under Section 504 of the Rehabilitation Act or the Americans with Disabilities Act.
    f. Demonstration of transit services and facility tours hosted by the Seattle Department of Transportation or local transit agencies.
    g. Public emergencies.
    h. Natural disasters.
2. The Director of Transportation will report annually to the City Council the value and purpose of fare discounts and waivers authorized under this section.

D. Employer/Institutional Programs

1. The Director of Transportation is authorized to enter into "bulk pass sales" agreements with businesses, organizations and institutions for distribution of passes and other fare products to their employees, students or clients, under the following conditions:
    a. It is in the best interest of the City of Seattle, and
    b. Passes are priced according to actual or estimated use at a level no lower than the fare revenue that would be expected from the pass users as a group if the bulk purchase/distribution program were not in place, or
    c. For purposes of market development and customer retention, a discount of no more than 20 percent may be granted on a temporary basis provided that the bulk purchaser of the pass offers a subsidy of at least 50 percent of the per pass purchase price to the individual pass recipients.
2. The Director of Transportation will report annually to the City Council the value and purpose of such discounts.

Form revised: February 26, 2014

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Department of Transportation	Ethan Melone/684-8066	Christie Parker/684-5211

Legislation Title:

AN ORDINANCE relating to the Seattle Streetcar System; authorizing execution of an amendment to the funding and cooperative agreement for the First Hill Streetcar; establishing fare policy objectives for the Seattle Streetcar and authorizing the Director of Transportation to set streetcar fares and establish policies and procedures for fare inspection; and ratifying and confirming certain prior acts.

Summary of the Legislation:

This legislation authorizes an amendment to the Funding and Cooperative Agreement between the Central Puget Sound Regional Transit Authority (Sound Transit) and the City of Seattle for the Implementation of the First Hill Streetcar Connector Project ("First Hill Streetcar Agreement"), which was authorized by Ordinance 123118. This legislation also addresses fare policy and fare enforcement for the Seattle Streetcar.

Background:

The ST2 System Expansion Plan adopted by the Sound Transit Board and approved by the voters in November 2008 states that ST2 "...includes a new streetcar connector line between Downtown Seattle, First Hill and the future Capitol Hill light rail station." The ST2 Plan provides for Sound Transit to make a capped capital contribution of $120 million in 2007 dollars, and to fund annual operations and maintenance costs of up to $5.2 million in 2007 dollars. The City and Sound Transit completed a letter of intent in February 2009, providing for Sound Transit funding and City of Seattle implementation of the project. Ordinance 123118 authorized an agreement ("First Hill Streetcar Agreement") that formalized the terms of the letter of intent, including identification of roles and responsibilities, eligible costs, and a payment schedule for Sound Transit funding and City of Seattle design, construction and operation (via interlocal agreement) of the First Hill Streetcar. The agreement's full title is "Funding and Cooperative Agreement between the Central Puget Sound Regional Transit Authority and the City of Seattle for the Implementation of the First Hill Streetcar Connector Project."

The First Hill Streetcar Agreement was executed in 2009, prior to the start of detailed project planning. The project is now nearing substantial completion and will begin operations shortly thereafter. The agreement provisions related to streetcar operations, while well intended, did not foresee some of the challenges now faced in administering the agreement, nor the opportunities

that the City is pursuing to expand the Center City streetcar system. Sound Transit and the City each recognize that the agreement could be improved by making various refinements.

This legislation authorizes an amendment to the First Hill Streetcar Agreement which will:

- Clarify the Sound Transit funding stream,
- Transfer fare setting responsibility and fare revenues to the City,
- Remove the requirement that fares be checked on a minimum of 10% of all First Hill Streetcar passengers, and
- Clarify the City's operations and maintenance responsibilities.

This legislation also addresses fare policy and fare enforcement. The legislation:

- Establishes City policy objectives for Seattle Streetcar fares. Fares are to be consistent with Link Light Rail base fares, to the extent practicable, and are to provide consistency between streetcar and light rail service within Seattle. The base adult fare on Link Light Rail is currently $2.00 and is expected to increase to $2.25 in March 2015. Adult fares for travel on the South Lake Union Streetcar are currently $2.50. This policy objective is in line with the Amended and Restated Interlocal Agreement between King County and City of Seattle Regarding the Seattle Streetcar System, authorized by Ordinance 124478, which provides that fares collected using ORCA regional fare collection equipment will match either the County's Metro Transit fares or Sound Transit's Link fares.

- Authorizes the Director of Transportation to set fares for the Seattle Streetcar system consistent with the policy guidance provided.

- Authorizes the Director of Transportation to implement various special fare types.

- Authorizes the Director of Transportation to develop and implement fare inspection procedures. Limited fare inspection is currently provided by King County on the South Lake Union line, however this fare inspection service will be discontinued in 2015 and will not be provided for the First Hill line. New fare enforcement procedures should be considered to replace the discontinued inspection services and address the needs of Seattle's growing streetcar network. Per both the proposed agreement with Sound Transit and the City's agreement with King County, the City is responsible for fare enforcement.

Attachment A summarizes the estimated First Hill Streetcar operating revenues and expenditures through 2023, given the proposed legislation. ***Attachment B*** provides estimated projections for the South Lake Union line.

Please check one of the following:

____ **This legislation does not have any financial implications.**

_X_ This legislation has financial implications.

Appropriations:

Appropriations Notes:
This legislation does not directly appropriate funds.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2014 Revenue	2015 Revenue
Streetcar Operations 10810	Seattle Streetcar	Sound Transit Partnership	$3,089,925	$5,000,000
Streetcar Operations 10810	Seattle Streetcar	Fare Revenue	$0	$1,114,000
TOTAL			**$3,089,925**	**$6,114,000**

Revenue/Reimbursement Notes:
Please see "other implications" below.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position Notes:
Not applicable.

Do positions sunset in the future?
Not applicable.

Spending/Cash Flow:

Spending/Cash Flow Notes:
Not applicable.

Other Implications:

a) Does the legislation have indirect financial implications, or long-term implications?

Yes, this legislation authorizes an amendment to an existing agreement with Sound Transit (First Hill Streetcar Agreement) which will clarify the funding stream for annual contributions from Sound Transit to the City for operations and maintenance of the First

Hill Streetcar through 2023. Sound Transit will contribute $3,089,925 in 2014, and $5 million annually from 2015 to 2023. The amendment also transfers fare setting responsibility and fare revenue from Sound Transit to the City.

The legislation establishes fare policy objectives which would effectively lower Seattle Streetcar adult fares from $2.50 to $2.00 in the near term and raise them to about $2.25 in March 2015.

A summary of operating revenues and expenditures through 2023 is provided in ***Attachment A*** to the Fiscal Note for the First Hill Streetcar. ***Attachment B*** to the Fiscal Note provides a summary of operating revenues and expenses for the South Lake Union line.

The legislation also authorizes the Director of Transportation to develop and implement procedures for fare inspection, including but not limited to entering into contracts for fare inspection services. Fare inspection costs are included in the operating cost projections for each line.

b) What is the financial cost of not implementing the legislation?

The legislation is needed to simplify the operation finance provisions of the existing First Hill Streetcar Agreement which will provide funding for the operations and maintenance of the First Hill Streetcar line. The agreement authorizes an amendment to the First Hill Streetcar Agreement that will eliminate some Sound Transit administration costs which would otherwise be charged to the City, and will increase the overall resources available for First Hill Streetcar operations. Also, the existing First Hill Streetcar Agreement lacks clarity about the funding stream Sound Transit is to provide the City for ongoing operations and maintenance. This lack of clarity increases the risk for disputes between the City and Sound Transit regarding the funding stream.

The legislation also addresses fare policy on Seattle Streetcar. The Amended and Restated Interlocal Agreement between King County and City of Seattle Regarding the Seattle Streetcar System, authorized by Ordinance 124478, provides that fares collected using ORCA regional fare collection equipment will match either the County's Metro Transit fares or Sound Transit's Link fares. If Seattle Streetcar's current adult fare of $2.50 increases to match Metro's planned fare increase to $2.75 in February 2015, it may result in a negative impact to ridership and fare revenue on the streetcar system.

c) Does this legislation affect any departments besides the originating department?

No

d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?

No alternatives that could achieve the same or similar objectives were identified.

e) Is a public hearing required for this legislation?

No

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No

g) Does this legislation affect a piece of property?

No

h) Other Issues:

List attachments to the fiscal note below:

Attachment A, First Hill Streetcar Operating Revenues and Expenditures
Attachment B, South Lake Union Streetcar Operating Revenues and Expenses
Attachment C, Redline version of the Amended and Restated Funding and Cooperative Agreement between the Central Puget Sound Regional Transit Authority and the City of Seattle for the Implementation of the First Hill Streetcar Connector Project.

Attachment A - First Hill Streetcar Operating Revenues & Expenditures

($2 Fare Option with March 2015 Increase to $2.25)

Year	Annual ST Payment	Fare Revenue	Sponsorship Revenue	Total Revenue	Projected Operating Cost	Net	Cumulative Net
2014	3,089,925	0	0	3,089,925	1,500,000	1,589,925	1,589,925
2015	5,000,000	1,114,000	200,000	6,314,000	6,100,000	214,000	1,803,925
2016	5,000,000	1,143,000	210,000	6,353,000	6,300,000	53,000	1,856,925
2017	5,000,000	1,289,000	370,000	6,659,000	6,500,000	159,000	2,015,925
2018	5,000,000	1,321,000	380,000	6,701,000	6,700,000	1,000	2,016,925
2019	5,000,000	1,326,000	390,000	6,716,000	6,900,000	(184,000)	1,832,925
2020	5,000,000	1,331,000	500,000	6,831,000	7,100,000	(269,000)	1,563,925
2021	5,000,000	1,536,000	520,000	7,056,000	7,300,000	(244,000)	1,319,925
2022	5,000,000	1,541,000	540,000	7,081,000	7,600,000	(519,000)	800,925
2023	5,000,000	1,546,000	560,000	7,106,000	7,800,000	(694,000)	106,925
Payment Stream NPV:	$39,433,880	$9,688,730	$2,862,130	$51,984,740	$51,366,790	$617,950	

Assumptions:

Discount Rate: 4.5%

2014 Operating Cost and Fare/Sponsorship Revenues assume Metro hires and trains staff, purchases start-up equipment, and provides promotional service beginning mid-December, with no fares charged.

To conservatively project fare revenues, this analysis assumes zero elasticity of demand in response to $2.25 fare.

Attachment B - South Lake Union Streetcar Operating Revenues & Expenditures
($2 Fare Option with March 2015 Increase to $2.25)

Year	Annual Metro Contribution	Fare Revenue	FTA Funding	Other Revenue	Total Revenue	Projected Operating Cost	Net	Cumulative Net
2015	1,350,000	812,733	315,000	472,638	2,950,371	2,925,000	25,371	25,371
2016	1,400,000	841,114	345,000	462,997	3,049,111	3,011,000	38,111	63,481
2017	1,450,000	945,945	375,000	408,562	3,179,506	3,097,240	82,266	145,748
2018	1,500,000	971,014	550,000	422,838	3,443,853	3,193,730	250,123	395,871
2019	1,550,000	997,279	600,000	437,334	3,584,613	3,290,479	294,134	690,005
Payment Stream NPV:	$6,346,160	$3,991,420	$1,888,650	$1,939,800	$14,166,030	$13,588,990	$577,040	

Assumptions:
Discount Rate: 4.5%

"Other Revenue" includes revenue from sponsorship program, donations, and leases.
To conservatively project fare revenues, this analysis assumes zero elasticity of demand in response to $2.25 fare.

AMENDED AND RESTATED FUNDING AND COOPERATIVE AGREEMENT BETWEEN THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY AND THE CITY OF SEATTLE FOR THE IMPLEMENTATION OF THE FIRST HILL STREETCAR CONNECTOR PROJECT

This funding and cooperative agreement ("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 Seattle, a Washington municipal corporation ("City").

RECITALS

A. The Sound Transit Board of Directors adopted Sound Transit 2, A Mass Transit Guide, the Regional Transit System Plan for Central Puget Sound ("ST2") on July 24, 2008. ST2 includes, within the Link Light Rail Program, capital and ongoing operating contributions to "a new streetcar connector line between downtown Seattle, First Hill, and the future Capitol Hill light rail station" ("the Project"). As stated in the adopted ST2 plan, "(t)he new connector will also provide convenient access to the Sounder commuter rail system and regional bus services." The Sound Transit Board of Directors called an election to approve local taxes to implement ST2, which measure was approved by the electorate on November 4, 2008.

B. On January 26, 2006, the Sound Transit Board authorized staff to precede with the second phase of the First Hill Work Program - technical work on potential First Hill transit connector (streetcar and bus) improvements in the Broadway and Madison corridors. This effort included conceptual engineering (five percent design completion), preparation of cost estimates, and consideration of environmental issues. The purpose of the study was to further evaluate the feasibility of improved regional transit access to the First Hill area. The Motion also confirmed that no further work would be advanced on the previous First Hill light rail station or alternative light rail station sites. Sound Transit staff, in cooperation with City of Seattle and King County Metro staff, and with the support of the ST2 engineering design team, completed the First Hill Work Program on April 17, 2007.

C. The City is responsible for administering state and local transportation and land use laws and development regulations that will apply to the construction and operation of the Project. The City is also responsible for managing streets and municipal utilities within its jurisdiction and for providing municipal services, such as public safety.

D. The City has experience in the design, construction and operation of modern streetcar connectors, having recently completed design and construction of the South Lake Union Line of the Seattle Streetcar and having entered into an intergovernmental agreement with King County for Seattle Streetcar Operations & Maintenance.

E. The City has extensive experience with the General Contractor/Construction Manager ("GC/CM") alternative public works contracting procedures authorized by RCW 39.10, including use of the GC/CM procedure for construction of the South Lake Union Line of the Seattle Streetcar.

F. The City Council has adopted Resolution 31091 "stating the City Council's support for developing a streetcar network in the City of Seattle and identifying the most promising streetcar routes for the City to pursue," including the Project.

G. Both Sound Transit and the City ("the Parties") have determined that it is in the public interest for the City to construct and operate the Project.

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

AGREEMENT

1. Project Scope

The Project consists of the design and construction (directly or by others under the City's direction) of the Project as set forth in the "Minimum Scope of Work" which is attached hereto as Exhibit A, and is made part of this Agreement by this reference. The Project includes management and implementation of all actions required to design, construct, equip and operate the Project. The Project may also include design and construction of the streetcar connector north of the Capitol Hill Station at John Street or beyond the International District/Chinatown Station at 5th Avenue S, subject to the approval and concurrence of Sound Transit's Board and the funding limitations provided in Section 3.

2. Project Management and Construction

2.1. The Project. The City will take all steps necessary to design and construct the improvements for the Project as identified in Exhibit A, including without limitation environmental review and mitigation, hazardous waste removal or mitigation, coordination of all required approvals and permits, acquisition of right-of-way, purchase of streetcar vehicles, community involvement and construction management.

2.2. Outreach Plan. The City will draft a community outreach plan for project planning, design and construction, including Neighborhood Updates, for Sound Transit's review and concurrence. Prior to Sound Transit's review, the City Council will have an opportunity to review and comment on the community outreach plan. The outreach plan will address how the City will establish effective communication with property owners, residents and businesses in the Project area in order to keep them fully informed about the planning, design, construction and operation of the Project. The outreach plan will describe how the City will communicate the scope and schedule of the Project to affected property owners, residents and businesses and how regular communication with the community will be conducted on a regular basis throughout the construction phase. Other methods of communication such as a 24-hour construction hotline and/or multi- media public information program will be considered and addressed in the outreach plan if appropriate for the Project. The outreach plan will also address how the City will mitigate impacts to residents and businesses and minimize disruption during construction, as disclosed in the environmental review process. The outreach plan will describe how information will be exchanged with non-English speaking property owners, residents or businesses, including

methods for responding to complaints. A public safety education campaign to be implemented prior to testing of the system will also be included in the outreach plan. The City and Sound Transit will coordinate the outreach plans for Sound Transit's University Link project and this Project, and the City will ensure their consistency.

2.3. Construction. The City will employ or contract with all persons or entities necessary to complete construction of the Project and will be responsible for design, environmental compliance, community outreach, permitting, management, control, operation, construction, maintenance, acquisition of real property interests, and procurement of streetcar vehicles necessary to operate the Project. Sound Transit may place an engineer and/or other inspection personnel on the work site during the term of this Agreement to monitor progress of the Project and/or to monitor adherence to the required provisions of this Agreement. The City will make the site accessible to Sound Transit inspection personnel. The cost of this work by Sound Transit is an Eligible Cost and is therefore deductible against Sound Transit's maximum funding obligation, but in an amount not to exceed $10,000 per month.

2.4. Environmental and Design Review. The City will coordinate environmental review with Sound Transit and provide Sound Transit with the opportunity for design review and coordination through construction.

2.4.1. The City will be the nominal lead agency for State Environmental Policy Act (SEPA) compliance on this Project. City SEPA rules will govern the SEPA process, including SEPA appeal procedures. The City is responsible for conducting the SEPA process and preparing and distributing all environmental documents. Sound Transit will act as a co-lead agency and have 30 calendar days to review a preliminary draft of the SEPA document and shall approve the final SEPA document in writing prior to its publication. Sound Transit and the City will coordinate with each other to ensure that the SEPA documentation provides the appropriate substantive and procedural compliance pursuant to SEPA to inform the Sound Transit Board's decision on funding the Project. The City will have lead responsibility for addressing any requirements under the National Environmental Policy Act (NEPA), should they apply.

2.4.2. The City will select the Project route, after review and approval of the route by City Council by resolution.

2.4.3. The City will provide Sound Transit with the opportunity to provide design review, approval and coordination during construction to ensure that the Project meets the Minimum Scope of Work as provided in Exhibit A; does not interfere with Sound Transit's construction of the Link Capitol Hill Station and University Link line; supports the goal of providing easy transfers between the Project and Link Light Rail, Sounder Commuter Rail and regional Express bus services; and to identify design issues impacting operations. Sound Transit will review and provide written comments on design documents, including cost estimates and traffic analysis, at 30-, 60- and 90- percent completion, within 21 calendar days of receipt by Sound Transit, or as otherwise agreed upon by the Primary Contacts. The City shall address and respond to every written comment submitted by Sound Transit. The City will provide a schedule of deliverables to Sound Transit in advance so that Sound Transit can plan its review time prior to its receipt of the deliverables.

2.5. Maximum Allowable Construction Cost. In the event that accepting the lowest responsive responsible bid(s) for the Project obtained by the City through a public works procurement, or the Maximum Allowable Construction Cost ("MACC") for the Project negotiated by the City through the GC/CM process, would commit the City to pay more than the funds available to the City for this Project, the bids or the MACC will be rejected, unless approved and funded by the City Council. In the event bids are rejected or the MACC is not executed, the Parties will decide whether to reissue the same or an amended proposal under the terms of this Agreement, or to terminate this Agreement in accordance with Section 6 of this Agreement. The City will be responsible for securing any supplemental sources of funds that may be necessary prior to proceeding with construction. Sound Transit will support the City in seeking additional funding for the Project to the extent that Sound Transit's support does not conflict with its seeking funding for other Sound Transit projects.

2.6. City Certification. Before the City puts the Project out to bid, or before the City authorizes a GC/CM to proceed with the bidding or award of bid packages, the Director of the City's Department of Transportation shall certify in writing to Sound Transit's Chief Executive Officer that the bid documents for the Project meet both the capital and operating requirements of the Project scope established in Section 1.

2.7. Cost Overruns. The City shall pay any cost overruns that may occur during construction that would increase the cost beyond Sound Transit's maximum funding obligation.

3. Sound Transit's Financial Participation-Capital Expenditures

3.1. Maximum Funding Contribution to the Project. The ST2 Plan establishes a maximum capital contribution from Sound Transit for the Project. Sound Transit will reimburse the City for Eligible Costs as defined in section 3.2, in accordance with the schedules and maximum funding contribution set forth in the First Hill Project Capital Payments Schedule, which is attached as Exhibit B. However, until the City completes the environmental review of the Project and the Sound Transit Board makes a final decision to fund the Project, the City may only incur the following costs: (1) environmental documentation, (2) conceptual engineering, and (3) other costs, pre-approved by Sound Transit, that do not have an adverse environmental impact, do not limit the choice of reasonable alternatives, and are otherwise consistent with SEPA. Further, Sound Transit is not responsible for reimbursing these pre-final decision costs in an amount greater than Five Million, Four Hundred and Forty Thousand Dollars ($5,440,000.00), unless and until the City has selected a route and the Sound Transit Board makes a final decision as to whether to fund the rest of the Project.

3.2. Eligible Costs. Eligible Costs are all costs of the Project consistent with the Project scope as defined in Section 1, including without limitation the cost of Project management and implementation of all actions required to design, construct, equip and prepare for operational start-up of the Project, including Sound Transit's direct costs. Legal costs incurred by the City in any action against Sound Transit are specifically excluded from the category of Eligible Costs.

3.3. Invoicing and Reimbursement. The City will invoice Sound Transit for Project work done at least 30 days before the "Reimbursable Due Dates" listed in Exhibit B. A properly

documented invoice includes documentation that the Project work that the City seeks reimbursement for has been performed. Upon Sound Transit's preliminary determination that the City has submitted a properly documented invoice for Eligible Costs incurred by the City, Sound Transit will reimburse the City on the quarterly Reimbursement Due Date in an amount not to exceed the funding reimbursement provided in Exhibit B for that particular Reimbursement Due Date, plus any funds from previous quarters that have not been previously requested by the City. However, if the City submits its invoices after 30 days before the Reimbursement Due Date, Sound Transit will reimburse the City within 30 days of its receipt of the properly documented invoice. Upon final acceptance and closeout of the Project construction, the Parties will reconcile final Eligible Costs, and Sound Transit will pay the balance of all unreimbursed Eligible Costs, less Sound Transit's direct costs for Project management and implementation of all actions required to design, construct, equip and prepare for operational start-up of the Project and actual cost of funds to make payments, according to the maximum amount reflected on the Exhibit B payment schedule.

4. Operations and Maintenance

4.1 City Responsibility.

4.1.1 The City is responsible for operating a high quality service that is dependable, comfortable, convenient, clean, safe and secure, and maintaining the Project in a manner that complies with all required equipment warranty conditions and keeps all equipment and infrastructure in good repair. Sound Transit is not obligated to fund the operations and maintenance of a project that does not meet the minimum Project scope established in Section 1.

4.1.2 If the City determines that the cost to operate all of the planned service described in Section 1 will exceed total resources available to the City ~~from the Sound Transit contribution described in section 4.5, the advertising and sponsorship revenues described in section 4.9, and any grant funding~~ that may be obtained from other Federal, State or local ~~sources~~, the City shall give fifteen months' notice to Sound Transit and submit a proposed plan with alternatives to align costs and revenues. The City's proposed plan should include a detailed analysis demonstrating that the City has implemented all best management practices and reasonable operating efficiencies. The City's proposed plan should include a thorough analysis of alternatives that include cost-cutting measures that minimize service reduction. Within three months of this notice, Sound Transit may approve the City's proposed plan, or an alternative plan agreed upon by the parties, or may elect to operate the Project directly beginning 15 months from the City's notice. If Sound Transit exercises this right to operate the Project directly, the City will transfer, at no-cost to Sound Transit, ownership of the Project to Sound Transit. The City will also enter into a no- cost agreement for the ~~permanent~~ use of the Project right-of-way with Sound Transit that shall remain in effect for so long as the streetcar facilities remain in use for streetcar transportation purposes. Upon transfer of ownership, and execution of appropriate right-of-way use agreements, this agreement will terminate.

4.1.3 Fare Enforcement. The City is ~~also~~ responsible for conducting fare enforcement for the Project. ~~in accordance with Sound Transit's policy requiring that on-~~ board

~~verification of fare payment occur for a minimum of ten percent (10%) of riders each day. Fare enforcement is an eligible operations and maintenance expense under this Agreement~~

4.2 Third Party Operator. The City may contract with a third party operator to operate and maintain the Project for up to five years plus the required start-up testing period. At Sound Transit's request, the City will include Sound Transit as a voting member on the contractor selection panel.

4.3 Start of Operations. If the City cannot obtain a third party operator, the City and Sound Transit may enter into negotiations for operation and maintenance of the Project by Sound Transit.

4.4 Sound Transit's Reservation of Right to Operate. Sound Transit reserves the right to operate the Project directly after five years of operation, or pursuant to the provisions of Section 4.1. If Sound Transit exercises this right to operate the Project directly, the City will transfer, at no-cost to Sound Transit, ownership of the Project to Sound Transit. The City will also enter into a no- cost agreement for the use of the Project right-of-way with Sound Transit. Upon transfer of ownership, and execution of appropriate right-of-way use agreements, this agreement will terminate. In conjunction with this reservation of right by Sound Transit, the City will provide to Sound Transit an annual report that includes at a minimum documentation of compliance with warranty conditions and its maintenance responsibilities under section 4.1.

4.5 O&M Funding and Payments. ~~In accordance with the ST2 operations and maintenance cost estimate,~~ Sound Transit will contribute ~~certain annual capped~~funding equivalent to a 2014 present value of $39,433,880 for eligible O&M expenses, according to the following payment schedule which assumes a 4.5% discount rate:

Year	Payment ($YOE)
-	-
-	-
2014	3,089,925
2015	5,000,000
2016	5,000,000
2017	5,000,000
2018	5,000,000
2019	5,000,000
2020	5,000,000
2021	5,000,000
2022	5,000,000
2023	5,000,000

Unless otherwise agreed by the Designated Representatives, the 2014 payment will be made on or before October 30, 2014, or within thirty days of execution of the amended Agreement, whichever is later. Subsequent payments will be made on or before ~~March 31~~June 30 of each calendar year during the term of the Agreement. ~~amounts to fund O&M costs, that will vary depending on whether operations start before or after July 1, 2016, but will not exceed the~~

~~present value of the payment stream projected in the ST2 operations and maintenance cost estimate, which is based on a maximum annual payment of $5.2 million (in 2007 dollars) beginning July 1 2016 and continuing through 2023. If operations begin prior to July 1, 2016, the annual payments will be lowered so that total payments will not exceed this present value. Examples of the maximum annual payments associated with possible passenger service dates for operations are illustrated in Exhibit C. The City will invoice Sound Transit quarterly for estimated costs not to exceed one-quarter of the maximum annual payment authorized, less Sound Transit's Eligible O&M expenses. Actual, Eligible O&M Expenses will be reconciled against payments annually. In the event the annual reconciliation determines that Sound Transit has paid City in excess of the actual eligible costs for the prior year, the excess amount will be deducted from the payments scheduled for the following year.~~

4.6 ~~Depreciation~~Capital Replacement and Repair Fund. ~~Eligible O&M Expenses for Reimbursement. Eligible O&M Expenses include payments to a third party operator for operations and maintenance or pre-revenue service testing; direct expenses of the City or Sound Transit, which may include administration and the cost of any operation and maintenance responsibilities retained by the City or Sound Transit; insurance expenses;~~The City will set aside from the funds it receives from Sound Transit an annual ~~depreciation~~ capital replacement and repair expense of up to Six- Hundred Thousand Dollars ($600,000) per year in 2012 dollars, ~~adjusted according to the indices established by Sound Transit~~escalated at 3.5% annually; and any tax associated with this reimbursement. ~~The payment for depreciation~~Any payments from Sound Transit used to fund ~~depreciation~~capital replacement and repair expenses ~~expense~~ will be deposited into a City fund restricted to payment of major maintenance, repair, replacement and regulatory compliance expenses for the Project. The City will provide an annual, written report to Sound Transit on ~~depreciation~~ capital replacement and repair fund activity including deposits, expenditures and uses of the funds.

4.7 Fare Box Revenue. ~~Sound Transit~~The City will determine the fares to be charged to passengers consistent with regional fare policy and the City or any Third Party Operator will collect and retain fare box revenue.

4.8 Costs in Excess of Sound Transit Funding Obligation. The City is responsible for major maintenance, replacement, and all remaining O&M expenses beyond the amount Sound Transit contributes as provided in Section 4.5 and 4.6.

4.9 Other Revenues. Other revenues, including but not limited to revenues from agreements for advertising or sponsorship of vehicles and stations, shall be retained by the City and be available for any purpose related to the operation, maintenance or development of the Seattle Streetcar Network. Sound Transit shall have right of first refusal to enter into agreements with the City for sponsorship of vehicles and/or stations, at a price equal to fifty percent of the advertising or sponsorship rates currently in effect at the time of the agreements.

4.10 Acknowledgement of Funding. The City will ensure acknowledgement of Sound Transit funds for the Project is noted in any Project advertisements and postings. The graphic identity of the vehicles, facilities and collateral and web-based materials will incorporate both the City's Seattle Streetcar and the Sound Transit logo and identity.

4.11 Ownership and Use of Facilities. The City will own the Project facilities and vehicles. The City may deploy vehicles acquired for the Project on any connecting portions of the City's existing and proposed streetcar network, upon Sound Transit's written concurrence that the proposed deployment does not negatively affect the quality or level of service of the Project service area. The City will not abandon or transfer any of the facilities or right-of-way required for the operation of the Project without giving Sound Transit right of first refusal to enter into a no-cost agreement with the City for the transfer of ownership, right-of-way use, and operation of the Project as designed to Sound Transit. The City will also enter into a no-cost agreement with Sound Transit for the ~~permanent~~ use of the right-of-way that shall remain in effect for so long as the streetcar facilities remain in use for streetcar transportation purposes.

4.12 Customer Service and Information. The City will provide customer service for the Project. The customer service quality will be at least equivalent to the customer service provided for Sound Transit's Link Light Rail.

4.13 Federal Funding and Federal Transit Administration (FTA) Requirements.

4.13.1 Section 13(c). As a condition of Sound Transit's receipt of federal grant funds to acquire capital assets in connection with Central Link, Sound Transit and various unions representing transit employees in the Sound Transit service area have entered into an "Agreement Pursuant to Section 13 (c) of the Federal Transit Act", dated February 29, 1996 and as amended March 30, 1999 (hereinafter referred to as Sound Transit's 13(c) Agreement). With respect to City employees (or the City's contracted operator's employees, including King County's employees), the City agrees to comply with the terms of Sound Transit's 13(c) Agreement and ensures that its operator complies with the provisions of Sound Transit's 13(c) Agreement. ~~4.13.2 Federal Funding Earned by the Project. Any federal FTA formula apportionment derived from the transit service generated by the Project for operations funded by Sound Transit shall be apportioned to Sound Transit as part of the annual regional FTA apportionment process through the Seattle-Tacoma-Everett transit caucus and the Puget Sound Regional Council (PSRC) or remitted to Sound Transit by the City if apportioned to the City or a Third Party Operator.~~

4.13.32 National Transit Database (NTD) Reporting. The City or any Third Party Operator of the First Hill Streetcar service shall provide Sound Transit with annual reports of service and operations data which comply with FTA and NTD requirements. 4.13. 43 Federal Funding Requirements Apply for Preventive Maintenance. ~~Sound Transit intends to apply federal funding for eligible preventative maintenance expenses of the Project.~~ ~~Therefore,~~ T the City or any Third Party Operator shall comply with any applicable FTA and Office of Management and Budget (OMB) regulations to ensure that operations and maintenance expenses remain eligible federal costs.

5. Dispute Resolution

5.1. Sound Transit and the City shall confer to resolve disputes that arise under this Agreement as requested by either party.

5.2. The individuals identified in the attached Exhibit ~~D~~ C are the Designated Representatives of the Parties for the purpose of resolving disputes that arise under this Agreement. The parties may unilaterally amend this exhibit to change their respective representative by sending a copy of the amended exhibit to the other party. The amendment becomes effective upon delivery.

5.3. In the event the Designated Representatives are unable to resolve the dispute within 10 business days, the Executive Director of Planning, Environment and Project Development of Sound Transit and the Director of the City's Department of Transportation, or their designees, shall confer and resolve the dispute.

5.4. Sound Transit and the City 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.

6. Termination of the Agreement

6.1 Termination if Project Deemed Too Expensive. In the event that accepting the lowest responsive responsible bid(s) for the Project obtained by the City through a public works procurement, or the Maximum Allowable Construction Cost ("MACC") for the Project negotiated by the City through the GC/CM process, would commit either party to pay more than the funds available to that party for this Project, the bids or the MACC will be rejected. In the event bids are rejected or the MACC is not executed, either Party may terminate this Agreement after eighteen months from the date that a bid has been rejected, although a City termination requires City Council approval by resolution or ordinance.

6.2 Termination for Default. If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 30 days. If the failure or violation is not corrected, this Agreement may be terminated five working days from written notice of the aggrieved party's intent to terminate.

6.2.1 Sound Transit Default. In the event of termination due to Sound Transit default, Sound Transit will compensate the City for all contract closeout costs, the portion of work which has been satisfactorily rendered to the date of termination, and executed long-lead procurement contracts that cannot be cancelled.

6.2.2 City Default. In the event of termination due to City default prior to operation, the City will reimburse Sound Transit for its funding under this Agreement. If the termination occurs after the start of operations, then, at Sound Transit's request, the City will transfer, at no cost to Sound Transit, ownership of the Project to Sound Transit, including the ~~depreciation~~ capital replacement and repair fund under section 4.6. The City will also enter into a no-cost agreement with Sound Transit for the use of the Project right-of-way.

6.3 Termination for Convenience. During design or construction of the Project, either party may terminate this Agreement convenience. This termination will not extinguish or release

either party from liability, claims or obligations to third parties existing as of the time of termination including contractor claims and costs incurred by the party in the implementation of the Project. Any costs incurred prior to proper notification of termination will be borne by the parties in accordance with the terms of this Agreement. The party terminating for convenience is obligated to pay for all construction closeout costs. The parties agree to work together cooperatively to develop a coordinated plan for termination including the determination of reasonable contract closeout costs.

6.4 **Procedures upon Termination**. Sound Transit and the City agree to apply the following procedures after either party terminates this Agreement:

6.4.1 The parties shall seek a joint determination on the status of each cost component of the work at the initiation of termination.

6.4.2 The parties shall seek consensus on the action to be taken on each component.

6.4.3 The parties may agree to arrange for the assignment and assumption of obligations of third party contracts for the performance of work under this Agreement.

6.4.4 The parties shall agree upon a cost estimate for terminating any third party contracts that have been executed under the Agreement.

6.5 Survival of this Section. The terms and responsibilities of the Parties under this Section 6 will survive termination of this Agreement

7. Audit

The Parties, the State Auditor, and any of their representatives shall have full access to and the right to examine, during normal business hours, all of each Party's records with respect to all matters covered by this Agreement. Such representatives shall be permitted to audit, examine and make excerpts or transcripts from such records, and to make audits of agreements, invoices, materials, payrolls, and other matters covered by or related to this Agreement. If an audit is requested by Sound Transit or required by any applicable federal agency requirements, tThe City agrees to cooperate fully with Sound Transit's auditor or an independent auditor chosen, retained, and paid by Sound Transit to audit costs incurred in design, construction, operation and maintenance of the Project. In the event the audit determines that Sound Transit has paid City in excess of the amounts approved by Sound Transit for the Project, the excess amount will be repaid to Sound Transit. In the event the audit determines that City has incurred costs for the Work that exceeds payment made by Sound Transit, Sound Transit shall pay City the amount owed, up to its maximum funding obligations under this Agreement.

8. Retention of Records.

Copies of the records shall be furnished to each Party upon request and shall be maintained in accordance with a work order accounting procedures prescribed by the State Auditor's Office.

All documents, books, papers, accounting records, and other materials pertaining to this Agreement shall be retained by each Party for six (6) years, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case each Party agrees to maintain same until all such litigation, appeals, claims or exceptions are finally resolved.

~~8~~ 9. General Provisions.

~~8~~ 9.1 No Agency or Employee Relationship. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of any other party. In performing work and services pursuant to this Agreement, Sound Transit, its employees, consultants, agents, and representatives shall be acting as agents of the Sound Transit and shall not be deemed or construed to be employees or agents of City in any manner whatsoever. Sound Transit shall not hold itself out as, nor claim to be, an officer or employee of City and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of City. Sound Transit shall be solely responsible for any claims for wages or compensation by Sound Transit's employees, consultants, agents, and representatives, including sub-consultants, or any agency, and shall defend, indemnify and hold City harmless therefrom. In performing work and services pursuant to this Agreement, City, its, employees, consultants, agents, and representatives shall be acting as agents of the City and shall not be deemed or construed to be employees or agents of the Sound Transit in any manner whatsoever. City shall not hold itself out as, nor claim to be, an officer or employee of the Sound Transit and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of Sound Transit. City shall be solely responsible for any claims for wages or compensation by City's employees, consultants, agents, and representatives, including sub- consultants, or any agency, and shall defend, indemnify, and hold Sound Transit harmless therefrom.

~~8~~ 9.2 Indemnity.

~~8~~ 9.2.1 Generally. 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 the first party's negligent or grossly negligent acts or omissions or its intentional misconduct or that of its officers, officials, employees or agents. No party will be required to indemnify, defend, or save harmless the other party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other party. Where such claims, suits, or actions result from concurrent negligence of the parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the party's own negligence. Each 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.

89.2.2 13(c) Liability. The City shall defend, indemnify, and hold harmless Sound Transit its officials and employees against any and all claims, demands, suits, actions, damages or liability (collectively "13(c) Claims") for labor protections provided to transit employees within Sound Transit's service area under 49 U.S.C. section5333(b) that are based upon a Sound Transit 13(c) agreement or arise out of, are connected to, or are materially related to the commencement, operation, modification, or termination of the Project service. The City's obligation shall apply whether the claim is brought under a Sound Transit 13(c) agreement or a City or King County 13(c) agreement, or all, and whether it is brought against Sound Transit or against the City or County, or against any all. Notwithstanding any other requirements of this provision, the City's obligation shall not extend to any claim or liability based upon any act or omission of Sound Transit or anyone acting on behalf of Sound Transit.

9.2.3 Insurance. Each Party, a duly constituted governmental entity under the constitution of the State of Washington, agrees and understands that each Party shall, at its expense, obtain and maintain during the entire term of this Agreement an appropriate program of self-insurance for its third-party personal injury and property damage claims. Each Party agrees to provide the other Party with a letter attesting to its self-insurance program as adequate proof of coverage. ~~Each Party, a duly constituted governmental entity under the constitution of the State of Washington, acknowledges, agrees and understands that each Party shall, at its expense, obtain and maintain during the entire term of this Agreement an appropriate program of self-insurance, commercial insurance, or any combination thereof, for all of its liability exposures. When self-insurance is utilized, each Party agrees to provide the other Party with a letter attesting to its self-insurance program as adequate proof of coverage. When commercial insurance is utilized, each Party agrees to provide the other Party with a Certificate(s) of Insurance showing compliance with the appropriate insurance requirements and naming the other Party as an additional insured.~~

89.2.3 ~~4~~ Taxes. Taxes, including taxes relating to Sound Transit's reimbursement of the City's cost, are a reimbursable cost under this Agreement. The City shall indemnify Sound Transit for any taxes, including business and occupation taxes, sales taxes, utility tax, miscellaneous tax, due to the taxing authority by the City or Sound Transit with regard to payments made under this Agreement.

89.2.4 ~~5~~ Survival. The indemnification responsibilities provided in this section will survive the termination of this Agreement.

89.3 Claims.

89.3.1 Each party shall have the right to settle, or cause to be settled for it, all claims for loss and damage for which such party is liable under this Agreement and to defend or cause to be defended all suits for the recovery of any loss and damage.

89.3.2 In the event a suit is commenced against either party, or a claim is asserted for loss or damage for which the other party may be solely or jointly liable under this Section,

the party sued, or against whom the claim is asserted, promptly shall notify the other party in writing of the pendency of the suit or claim, and thereupon such other party shall assume or join in the defense of such suit or claim.

8.3.3 In the event that both of the parties may be liable for any loss or damage and the loss or damage is voluntarily settled by one of the parties, a release from liability shall be taken for and in the name of both parties. Prior to settling any such claim or suit for an amount in excess of fifty thousand dollars ($50,000), the settling party shall obtain the written consent of the other party, which consent shall not be unreasonably withheld. It is not the intent of the Parties that such consent be deemed an admission of joint liability for the claim or suit for the damage or loss.

8.3.4 It is not the intent of the parties for either party to be conclusively bound by any judgment against the other party.

9. Miscellaneous

9.1 Entire Agreement. This Agreement and the attached exhibits constitute the entire agreement and understanding between City and Sound Transit relating to the Project. There are no restrictions, promises, representations, warranties, covenants or undertakings, oral or otherwise, except those expressly set forth or referenced in this Agreement.

9.2 Amendments. Waivers, modifications, additions, or amendments to this Agreement must be in writing and signed by the authorized representatives of each party. Except for amending Exhibit D, the City may not waive, modify, add to, or amend this Agreement without City Council approval by resolution.

9.3 Severability. In the event that any term, covenant, condition, or provision of this Agreement, or the application of the Agreement to any person or circumstance, is found to be invalid or unenforceable in any respect, the remainder of this Agreement, and the application of such term or provision to other persons or circumstances nevertheless will be binding with the same effect as if the invalid or unenforceable provision were originally deleted. The parties agree to bargain in good faith to reform this Agreement or replace any invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision.

9.4 Primary Contacts. The primary contacts for each party in the day- to-day dealings of this Agreement are listed in Exhibit D. The parties may unilaterally amend this exhibit to change their respective primary contact by sending a copy of the amended exhibit to the other party. The amendment becomes effective upon delivery.

9.5 Notices. Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and either shall be: (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 primary contact as listed in Exhibit ~~D~~C. However, notice under section 6, Termination, must be delivered in person or by certified mail, return receipt requested.

9**10**.6 **Rights and Remedies**. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder are in addition to and not a limitation of or waiver regarding any duties, obligations, rights, and remedies otherwise available by law. Waiver by either party of any default will not affect or impair any right arising from any subsequent default. The failure of either party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy provided for in this Agreement shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

9**10**.7 **Choice of Forum**. In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the parties agree that any such action or proceedings will be brought in a court of competent jurisdiction in King County, Washington.

9**10**.8 **Transfer/Assignment**. Neither party may 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. This Agreement is binding upon, and inures to the benefit of, the parties and their respective permitted successors and assigns.

109.9 **Benefits**. This Agreement is intended for the sole benefit of the parties to this Agreement. Nothing in this Agreement is intended to give any person or entity, other than the parties any legal or equitable right, remedy, or claim under this Agreement.

9**10**.10 **Preparation**. The parties and their legal counsel have cooperated in the drafting of this Agreement. Accordingly, the parties intend that this Agreement is the joint work product of the parties. The parties do not intend for any provision of this Agreement to be construed against a party on the basis of authorship.

9**10**.11 **Counterparts**. This Agreement may be simultaneously executed in duplicate counterparts, each of which will be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

9**10**.12 **Authority**. The persons signing this Agreement warrant that they have the respective power and authority to sign this Agreement on behalf of their city or regional transit authority, respectively.

9**10**.13 **City Council Approval**. There are sections in this agreement where the City Council is required to approve the City's position before it is entitled to act under this Agreement. This agreement is not amended by language requirements or conditions of City Council resolutions or ordinances that are not also included in amendments to this agreement agreed to by Sound Transit.

11~~0~~. Term of Agreement.

The term of this Agreement is from the last date written below and, unless it is otherwise terminated in accordance with the provisions of this Agreement, until December 31, 2023. This agreement will automatically extend for an additional five-year term unless either party provides notice to the other party of its intention to allow the agreement to terminate no later than August 31, 2021. If the City provides notice of its intent to allow the Agreement to expire, then, at Sound Transit's request, the City will transfer, at no cost to Sound Transit, ownership of the Project, including the depreciation fund provided under section 4.6, to Sound Transit. The City will also enter into a no-cost agreement with Sound Transit for the use of the Project right-of-way. The agreement will continue to automatically extend for additional five-year periods unless either party provides notice of its intent to allow the Agreement to expire no later than 16 months before the expiration date.

The authorized representatives of Sound Transit and City are signing this Agreement and the effective date shall be the last date written below.

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY Signed: _____ Title: _____ Dated: _____

Approved to form Legal Counsel: _____

Dated: _____ CITY OF SEATTLE Signed: _____ Title: _____ Dated: _____

Approved to form Assistant City Attorney: _____

Dated: _____

Exhibit A to Attachment C~~A~~ - Minimum Scope of Work for First Hill Streetcar Connector Project

Exhibit A

Minimum Scope of Work for First Hill Streetcar Connector Project

The purpose of the First Hill Streetcar Connector Project (the Project) is to replace the connection to the regional Link light rail system lost when the First Hill light rail station was deleted from the regional system. The streetcar connector will directly connect First Hill employment centers to the regional Link light rail system at the International District/Chinatown Station at 5th Avenue S and the Capitol Hill Station at Broadway between E. Denny Way and

John Street. If operations begin prior to July 1, 2016, the Project may feature an interim terminus in the vicinity of Pike and Pine streets.

The Project fleet (inclusive of at least one spare vehicle) and facilities will accommodate the service plan:

Service Plan 1. Service Plan: Span of Service Monday-Saturday 5AM to 1AM Sundays/Holidays 7 AM to 7 PM

2. Service Plan: Peak/Off Peak Headways Peak Periods: Trains Arrive Every 10 Minutes Off Peak: Trains Arrive Every 15 Minutes

3. Service Plan: Peak Service Periods Peak Periods: 6AM-9AM M-F, 4PM-7PM M-F

The service plan may be adjusted with the written concurrence of Sound Transit's Operations Director.

The Project will provide local and inter-neighborhood transit service using modern low-floor light rail vehicles, similar to the streetcar vehicles operating in Portland, Seattle and Tacoma. The streetcars operate in single trainsets. The streetcars will generally operate in a mixed flow of traffic on urban arterial streets, typically with transit signal priority at intersections, and occasionally operating in restricted (transit-only) lanes or exclusive right-of-way. The Project will be double-tracked, although termini or exclusive-lane segments may feature a short segment of single track if this will not impede service objectives.

The Project will meet or exceed all accessibility requirements and includes a variety of passenger amenities on board, at passenger platforms and on the internet, including transit shelters, real-time arrival information, automated passenger information, and ticketing. Use of the ORCA regional smart card will be accommodated either on-board, wayside, or with both of these methods of fare payment.

Passenger platforms will typically be spaced at distances of 1,250 to 2,000 feet and will be sited to best balance proximity of service to major activity areas with speed and reliability objectives.

The Project will include all construction, right-of-way and equipment necessary to meet the service objectives, including but not limited to:

* embedded track and special track;

* traction power system and overhead contact system;

* train control system and train signaling;

* passenger platforms and amenities including miscellaneous electrical service to amenities;

* a light maintenance and vehicle storage facility and vehicle maintenance equipment;

* roadway and drainage modifications (only immediately adjacent to Project);

* traffic signal modifications;

* street lighting modifications (only immediately adjacent to Project);

* utility relocation, protection and bridging necessitated by the Project;

* relocation of overhead trolley bus wires where necessary;

* mitigation measures; and

* an Art Program.

The Art Program will be administered by the City and is budgeted at $750,000 in 2011 dollars to represent approximately 1% of estimated construction expenditure.

The Project will be designed to allow for connections to other segments of the City's planned streetcar network and may include extensions beyond the minimum scope of work, subject to the approval of the Sound Transit board.

Exhibit B to Attachment CA - First Hill Project Capital Payments Schedule

Exhibit B		
First Hill Project Capital Payments Schedule		
Payment Due Date	**Maximum Reimbursement(Year of Expenditure Dollars)**	**Cumulative Maximum(Year of Expenditure Dollars)**
November 1, 2009	$ 2,500,000	$2,500,000
March 1, 2010	$ 700,000	$3,200,000
June 1, 2010	$ 700,000	$3,900,000
September 1, 2010	$840,000	$4,740,000
December 1, 2010	$840,000	$5,580,000
March 1, 2011	$ 9,400,000	$14,980,000
June 1, 2011	$ 3,908,000	$18,888,000
September 1, 2011	$5,400,000	$24,288,000
December 1, 2011	$9,494,000	$33,782,000
March 1, 2012	$11,430,000	$45,212,000
June 1, 2012	$13,016,000	$58,228,000
September 1, 2012	$13,366,000	$ 71,594,000
December 1, 2012	$13,366,000	$84,960,000
March 1, 2013	$10,216,000	$95,176,000
June 1, 2013	$10,730,000	$105,906,000
September 1, 2013	$15,420,000	$121,326,000

December 1, 2013	$4,454,000	$125,780,000
March 1, 2014	$7,000,000	$132,780,000

~~Exhibit C to Attachment A - First Hill Project O & M Sample Payments Schedule~~

Exhibit ~~D~~ C to Attachment ~~C~~A - Primary Contacts

City of Seattle: Ethan Melone

Rail Transit Manager

Department of Transportation

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Seattle, WA 98124-4996

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City of Seattle
Edward B. Murray
Mayor

September 9, 2014

Honorable Tim Burgess
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council Bill authorizing an amendment to the funding and cooperative agreement with Sound Transit regarding the First Hill Streetcar line. The amendment clarifies the Sound Transit funding stream for operations and maintenance of the First Hill Streetcar line, transfers fare setting responsibility and fare revenues to the City, removes the requirement that fares be checked on a minimum of 10% of all First Hill Streetcar passengers, and clarifies the City's operations and maintenance responsibilities.

The original agreement with Sound Transit (authorized by Ordinance 123118) was executed in 2009, prior to the start of detailed First Hill Streetcar project planning. The project is now nearing substantial completion and will begin operations shortly thereafter. The agreement provisions related to streetcar operations, while well intended, did not foresee some of the challenges now faced in administering the agreement, nor the opportunities that the City is pursuing to expand the Center City streetcar system. Sound Transit and the City each recognize that the agreement could be improved by making the various refinements included in the proposed amendment.

The Council Bill also addresses Seattle Streetcar fares, establishing a policy objective that Fares are to be consistent with Link Light Rail base fares, to the extent practicable, and are to provide consistency between streetcar and light rail service within Seattle. The legislation authorizes the Director of Transportation to set fares consistent with the policy guidance and to implement various special fare types. Both the South Lake Union and First Hill lines extend the reach of regional Link services, and coordinating streetcar and Link fare policies should increase the ease of use for rail transit customers. If Seattle Streetcar fares were set at Link Light Rail base fare levels, this would effectively reduce current South Lake Union adult fares from $2.50 to $2.00, and would increase them to $2.25 in March 2015 when Link fares are anticipated to escalate.

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www.seattle.gov/mayor

Finally, the Council Bill addresses fare enforcement. It authorizes the Director of Transportation to develop and implement procedures for fare inspection and verification. Limited fare inspection is currently provided by Metro on the South Lake Union line, however this service will be discontinued in 2015 and will not be provided for the First Hill line. New fare enforcement procedures should be considered to replace the discontinued inspection services and address the needs of Seattle's growing streetcar network.

The South Lake Union and First Hill Streetcar lines will serve over 6,000 daily riders, provide access to jobs, and support economic development objectives of neighborhoods on the streetcar line. Thank you for your consideration of this legislation. Should you have question, please contact Ethan Melone of SDOT at 684-8066.

Sincerely,

Edward B. Murray
Mayor of Seattle

cc: Honorable Members of the Seattle City Council