

**HIGHLINE WATER DISTRICT
King County, Washington**

RESOLUTION 15-5-20B

**RESOLUTION AUTHORIZING DEVELOPER EXTENSION AGREEMENT
SOUTH CORRIDOR – SOUTH LINK S447
28XX S 200TH ST; 200XX 28TH AVE S, SEATAC, WA**

Be It Resolved by the Board of Commissioners of Highline Water District:

1. The District has received the application, plans and specifications for an extension to the Water District's system, subject to compliance with the District's standards and procedures for developer extensions.
2. The extension hereinafter described is an addition and betterment to the water system of the District and is hereby authorized.

Name of Extension: SOUTH CORRIDOR – SOUTH LINK S447
Name of Developer: SOUND TRANSIT

ADOPTED BY THE BOARD OF COMMISSIONERS of Highline Water District, King County, Washington, at an open public meeting held this **20th** day of **May 2015**.

BOARD OF COMMISSIONERS



George Landon, President



Vince Koester, Secretary

Gerald R. Guite, Commissioner



Daniel Johnson, Commissioner



Kathleen Quong Vermeire, Commissioner

HIGHLINE WATER DISTRICT DEVELOPER EXTENSION CONTRACT

THIS CONTRACT ("Contract" or "Agreement") is made and entered into as of this ____ day of _____, 20____, between Highline Water District, a Washington municipal corporation of King County, Washington ("District") and Central Puget Sound Regional Transit Authority, a Washington municipal corporation ("Sound Transit" or "Developer") (individually a "Party" and collectively the "Parties").

RECITALS

A. The Developer is constructing the S. 200th Link Extension project ("Project") in the vicinity of Angle Lake Station located in SeaTac, Washington, and desires to arrange for the relocation of certain utilities in the Project area to fulfill the requirements of the Project.

B. The District owns certain water facilities located within City of SeaTac ("SeaTac") right-of-way (collectively "Facilities") which the Developer desires to relocate to accommodate the Project. The nature and location of the Facilities are more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference.

C. The Developer desires to relocate the Facilities and the Developer and the District desire to establish the terms and conditions under which the modification or removal and relocation of the Facilities shall be performed by the Developer's contractor (such modification or relocation of the Facilities referred to herein as the "Developer Extension" or "Extension") consistent with the scheduling for the construction work for the Project and to insure the continuous operation of the District's water system and the provision of water service to the District's customers receiving water service from the Facilities.

NOW THEREFORE, in consideration of the mutual benefits provided herein, the Parties agree as follows:

1. The Developer shall construct the Developer Extension in accordance with all District requirements. Any variations from the District's standards and specifications must be corrected prior to the District's acceptance of the Developer Extension.
2. All permits required at any time to undertake the relocation of the Facilities and installation of the Developer Extension or any portion thereof, whether or not obtained by the District, shall be at the Developer's sole expense, and copies of all such permits obtained by the Developer shall be delivered to the District prior to the commencement of the installation of the Developer Extension.

FEES

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3. In consideration of services provided by the District in conjunction with this Agreement the Developer agrees to pay and reimburse to the District all fees, costs and expenses incurred by the District related to this Agreement (collectively "Fees"). District costs shall be based on the actual time and expenses expended by the District or its consultant. The District shall charge Developer for all services performed by the District which shall include, but not be limited to, the following:
 - 3.1. Contract Administration;
 - 3.2. Engineering;
 - 3.3. Inspections by District Personnel;
 - 3.4. Revisions of the Contract plans and specifications and work occasioned by an act of the Developer relating thereto;
 - 3.5. Additional Inspections (County, State, District, Other);
 - 3.6. Re-inspection of deficient work;
 - 3.7. Any permit or franchise acquired by District for the Developer Extension;
 - 3.8. Acts by the Developer that necessitate the District's Manager, staff or District consultants such as engineering and legal to spend time on the Developer Extension;
 - 3.9. Water sampling, testing and water loss;
 - 3.10. District materials used by the Developer;
 - 3.11. Miscellaneous expenses and/or costs incurred by the District for the Developer related to the project;
 - 3.12. Time & Materials ("T&M") cost of performing flow testing of the distribution system.

The District shall invoice the Developer for any Fees incurred on a monthly basis. The Developer shall pay the invoice to the District within thirty (30) days of the date of the invoice. Any unpaid amounts when due shall incur twelve (12) per cent per annum interest until paid in full. All amounts due the District shall be paid by the Developer prior to the District's final acceptance of the Extension. The Developer shall pay the fees and costs charged by the District which may apply to this Contract as set forth in Chapter 6.04 of the District Code, provided the District shall have the right to update and amend such fees and charges as necessary and appropriate and any such updated fees and charges shall apply to this Agreement.

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PLANS

4. Prior to submitting plans of the Extension to the District for review and approval, the plans shall have a current fire marshal's stamp and signature.
5. All plans and profiles, including major and minor redesigns and changes, as-built plans, easements and all estimated and final direct total project costs shall be certified by a professional engineer (or surveyor for easements) in good standing and licensed to practice in the State of Washington.
6. The Developer shall, concurrent with delivering the easements, bill of sale and warranties, deliver to the District a complete and accurate set of as-built plans on 24" x 36" mylar, as well as an AutoCad® (District compatible) computer disk of the as-built plans. The plans shall be in conformance with all District standards and specifications.

INSURANCE AND BONDING

7. The Developer shall require its Contractor(s) to secure and maintain, during the term of this Contract, the following insurance:
 - 7.1 General liability insurance for bodily injury and property damage liability, including without limitation, coverage for explosion, blasting, collapse and destruction of underground utilities (X.C.U.) and coverage for premises, operations, independent contractors, products, contingent liability, including products and completed operations and blanket contractual liability with limits of at least \$2,000,000 per occurrence and a per project aggregate of \$5,000,000. This insurance shall cover the Developer, the District, the Contractor and all subcontractors for claims or damages of any nature whatsoever, including, but not limited to bodily injury, including wrongful death, as well as other claims for property damage which may arise from operations under this contract, whether such operations be by themselves or by any subcontractor.
 - 7.2 Comprehensive automobile liability, covering bodily injury and property damage, with a combined single limit of at least \$2,000,000.
 - 7.3 Insurance for claims under worker's compensation (industrial insurance), disability benefit and other similar employee benefit acts in the State statutory amount and stop gap liability insurance (employer's contingent liability) with coverage of at least \$1,000,000 each accident/occurrence.

The Contractor shall have the District specifically added as an additional insured in said policies, all at no cost to the District, and provide the District with a certificate of insurance confirming the insurance as required herein and an endorsement

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confirming that the District is an additional insured on such insurance coverage. The Contractor's insurance shall be designated primary coverage for both indemnity and defense, the District's insurance shall be excess.

8. The Developer shall not permit the Contractor to cause any policy to be canceled or allow any policy to lapse, and all policies shall include a clause to the effect that neither the policy nor certificate of insurance shall be subject to cancellation or reduction from the required limits of liability of amounts of insurance or any other material change until notice has been mailed to the District stating when, not less than 30 days thereafter, such cancellation reduction or change shall be effective.
9. All certificates of insurance and endorsements authenticated by the proper officers of the insurer shall state in particular those insured, the extent of the insurance and the location, character and extent of the work to be performed by the Contractor or subcontractor and said certificates of insurance and endorsements shall be delivered to the District.

CONSTRUCTION

10. Construction shall be performed on behalf of the Developer by a knowledgeable and competent contractor in water system construction (herein referred to as "Contractor") who must be registered in the State of Washington under the Contractor's Registration Act (Chapter 18.27 of the Revised Code of Washington (RCW)), and insured as set forth herein. If the Developer is acting as its own contractor, the Developer must be similarly knowledgeable, competent, registered and insured.
11. Construction shall be performed in compliance with the District's "Standard Specifications" and the current APWA/WSDOT specifications which are both incorporated herein by this reference. The District shall provide a digital copy of the Special Provisions to the Developer. It shall be the obligation of the Developer to obtain its own copy of the specifications.
12. Construction shall be performed in compliance with resolutions, ordinances, rules and requirements of the District and appropriate municipal, county, state and federal agencies. The Developer shall abandon in place or remove any Facilities that are modified or relocated as required by SeaTac pursuant to all SeaTac ordinances and regulations at its sole cost and expense.
13. The Developer and the Contractor shall not allow any water to flow through mains or facilities constructed by the Developer unless authorized by the District for temporary use. Permanent water availability to the Developer Extension through the existing lines of the District shall not be made until all provisions and requirements of this contract have been fully complied with and the District has provided written notice of acceptance to the Developer.

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14. The Developer shall construct all roads and/or easements to the design sub-grade elevation prior to the start of water system installation. The District shall be advised in writing of any changes in project design that would affect the water system during construction. If the Developer changes the sub-grade elevation of water system installation areas before or after any road completion, the Developer shall be responsible for all costs incurred for the reinstallation of the water system as a result of such change in sub-grade elevation.

ADMINISTRATIVE COMPLIANCE

15. The Developer Extension shall be complete and accepted within eighteen (18) months of the date the District Board of Commissioners adopts its resolution accepting Developer's application to enter into this Agreement. If the Developer Extension is not completed by the Developer and accepted by the District within the required time period, the Developer's rights under this Agreement shall cease and no water services shall be connected to the Extension. The District may consent to the time extension of this Agreement or the District may require the Developer to submit an application for a new Agreement; in either event, the Developer may be required to pay additional administrative fees and additional legal, engineering, and inspection costs as determined by the District. The District will make its determination of whether a time extension is warranted, in the District's sole discretion, based on the status of the Project's completion.
16. In the event repairs, restorations or corrections to the Extension become necessary during the two (2) year maintenance/warranty period, the Developer, upon notification from the District, shall make all repairs, restorations and corrections, at the Developer's sole expense within five (5) working days of receipt of such notice. The District may extend the five (5) day period if, in its sole discretion, conditions warrant such a time extension.
17. The District may require immediate (within 24 hours) action by the Developer, or, if the situation requires, the District may respond itself to an emergency situation. The Developer shall reimburse the District within 30 (thirty) days of the date of an invoice from the District for its expenditures in making any and all corrections to the Developer Extension and for restoration of other properties or public rights-of-way.
18. All easement documents for the Developer Extension as required by the District shall be delivered to the District after construction and prior to acceptance by the District of the Developer Extension. Easements shall be at least twenty (20) feet in width and centered on the water lateral except as expressly allowed by the District. No other lines, mains, services, buildings, or appurtenances shall encroach within the easement, except as expressly allowed by the District. Encroachments shall be removed at no cost to the District. The District's form shall be used for recording of easements.

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19. As a condition of the District's acceptance of a Developer Extension the Developer shall execute a Bill of Sale in a form approved by the District that provides for transfer of title of the waterlines and appurtenances of the Developer Extension from the Developer to the District. The Bill of Sale shall include the following warranties:
- 19.1 That Developer is the lawful owner of said property, and that it is free from all encumbrances.
 - 19.2 That all bills for labor and materials in connection therewith have been fully paid and lien releases are provided to the District if required.
 - 19.3 That Developer has the right to transfer the same and that it shall warrant and defend the same against lawful claims and demands of all persons following the date of acceptance of the Bill of Sale by the District.
 - 19.4 That Developer conveys and transfers the waterlines and appurtenances in the Developer Extension to the District for the consideration of incorporating them into the District's water distribution system.
 - 19.5 That for a period of two (2) years from the date of acceptance, the Developer Extension remains in good working order and condition acceptable to the District, and that the Developer shall repair or replace at its own expense any work or materials that may prove to be defective during the two (2) year period.
20. No part of the Extension or related appurtenances may be constructed without attending a pre-construction meeting to be held at the District's office. The meeting shall be attended by the Developer, Project Contractor and a designated District representative unless otherwise directed by the District. The District's assigned inspector must receive job start notification no fewer than seventy-two (72) hours in advance of the beginning of construction of the Extension.

MISCELLANEOUS

21. Throughout this Contract, unless the Contract requires otherwise, words denoting the singular may be construed as denoting the plural and vice versa, and words of one gender may be construed as denoting such other gender as is appropriate.
22. The laws of the State of Washington shall govern the interpretation and enforcement of this Contract. Any litigation relating to the performance of non-performance of this Contract shall be filed in King County Superior Court.
23. The Developer's rights and obligations arising out of this Contract are not assignable or transferable without the District's express written consent as

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conditioned by the District, such consent to be given in the District's sole discretion.

24. In the event this Contract is referred to or placed in the hands of an attorney for enforcement of any portion of this contract, or if an arbitration or lawsuit is instituted with respect to this contract, the prevailing party shall be entitled to be paid its reasonable attorneys fees and costs by the other party, including attorney's fees and costs incurred in any appeal.
25. The Developer shall indemnify and defend the District and its elected and appointed officials, employees and agents harmless from and against all claims, losses, demands, payments, suits, actions, costs, damages and judgments of every nature and kind (collectively "Damages") brought or recovered against the District by reason of the act or omission of the Developer or its Contractor(s) and agents in the performance of the Developer Extension and for any cost or expense incurred by the District in connection therewith, including, but not limited thereto, attorney fees, expert witness fees and the cost of the services of engineering and other personnel whose time is reasonably devoted to the preparation and attendance at depositions, hearings, settlement conferences, trials and appeals. The Developer shall not be required to indemnify, defend, or save harmless the District if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the District. 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 Developer's own negligence. The Developer agrees that its obligations under this indemnification section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their employees or agents. For this purpose, the Developer by mutual negotiation, hereby waives, with respect to the District only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. This indemnification shall survive the expiration or earlier termination of this Agreement. In the event of any claims, demands, actions and lawsuits, the Developer upon prompt notice from the District shall assume all costs of defense thereof, including legal fees incurred by the District, and of all resulting judgments that may be obtained against the District.

In the event that any Party deems it necessary to institute legal action or proceedings to enforce any right of obligation under this Agreement, the Parties hereto agree that any such action or proceedings shall be brought in King County Superior Court, King County, Washington. Provided, however, the Parties may agree to alternative dispute resolution process, including mediation and/or binding arbitration.

The insurance required by the Contractor(s) shall be sufficiently broad to cover any Damages incurred by the District which are the subject of this provision.

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- 26. Prior to the acceptance of the Extension, the Developer shall deliver to the District a written release(s) in a form acceptable to the District, of all liens that might arise out of the performance of the work or such other evidence as may be acceptable to the District that there are no liens against the Extension. If any lien arises or remains unsatisfied after the acceptance of the Extension, the Developer shall reimburse the District for any costs and expenses, including attorneys' fees and costs incurred on account of the lien(s).
- 27. This Contract is made entirely for the benefit of the District and the Developer and successors and assigns in interest and no third person or party shall have any rights hereunder whether by agency, as a third party or otherwise.
- 28. The originals of the Extension plans and design ("Plans") shall be delivered to the District in the form required by the District upon completion of the Plans and shall become the property of the District. Neither the Developer nor the Developer's engineer shall have any rights of ownership, copyright, trademark or patent in the Plans.

IN WITNESS WHEREOF the Parties have entered into this Contract the date first above written.

HIGHLINE WATER DISTRICT


SOUND TRANSIT

By: _____
General Manager

P.O. Box 3867
Kent, WA 98032
Phone: 206-824-0375
Fax: 206-824-0806

By: Nick Haupt
Its Project Director, DECM

SOUND TRANSIT
401 S. JACKSON STREET
SEATTLE, WA
98104

Agenda Item No.: 5.2
Agenda Date: 5/20/15
Reviewed By: 

Subject: Developer Extension – Authorize Developer Extension Agreement
South Corridor – South Link S447

ATTACHMENTS:

1. Resolution
2. Contract
3. Map

BACKGROUND:

Name of DE: South Corridor – South Link S447
Name of Developer: Sound Transit
Plat or Subdivision:
Scope of Work: To relocate existing water appurtenances along S 200th St and 28th Ave S to accommodate new sidewalks and road improvements

GENERAL LOCATION OF DE: 28xx S 200th St; 200xx 28th Ave S

Bill of Sale Dated:

Signed by:

Requesting Latecomers No

Payback Agreement?: Yes No N/A

Deposit Paid?: Yes No N/A

Amt. of Deposit: \$6,000

Explanation: South 200th Street and 28th Ave South frontage improvements