

AGREEMENT

Priority Habitat Tree Mitigation for Sound Transit's Lynnwood Link Extension within the City of Mountlake Terrace, Washington

GA 0084-19

This Agreement is made and entered into by and between the Central Puget Sound Regional Transit Authority ("SOUND TRANSIT") and the City of Mountlake Terrace ("CITY"). The CITY and SOUND TRANSIT are referred hereinafter as the "PARTIES."

WHEREAS, SOUND TRANSIT has proposed to construct, operate, and maintain the Lynnwood Link Extension project ("PROJECT"), which will extend SOUND TRANSIT's light rail transit system from the Northgate Station, in the City of Seattle, north for 8.5 miles to the Lynnwood Transit Center in the City of Lynnwood; and

WHEREAS, the PROJECT will result in unavoidable impacts to priority habitat with the CITY, as defined in the CITY's Critical Areas Ordinance (Chapter 16.15); and

WHEREAS, SOUND TRANSIT would be required by the CITY's Critical Areas Ordinance to mitigate the removal of healthy trees in priority habitat by planting replacement trees; and

WHEREAS, the CITY has identified a means for SOUND TRANSIT to pay a fee to the CITY in lieu of planting replacement trees directly, which in so doing would fully and irrevocably transfer SOUND TRANSIT's mitigation obligations associated with those unavoidable impacts to priority habitat to the CITY, as described in a concurrence letter between the PARTIES dated March 19, 2018;

NOW, THEREFORE, in consideration of the terms, conditions, and performances contained herein,

IT IS MUTUALLY AGREED AS FOLLOWS:

I. Payment

SOUND TRANSIT hereby agrees to pay a Mitigation Fee to the CITY in accordance with the amount calculated in the attached concurrence letter (Attachment "A") of two hundred fifty six thousand, seven hundred ninety three dollars (\$256,793).

- A. Within fifteen (15) days after the execution of this Agreement, the CITY will provide an invoice to SOUND TRANSIT for the Mitigation Fee. The CITY will send its invoice to SOUND TRANSIT (AccountsPayable@SoundTransit.org , or to the attention of: Accounts Payable, 401 S. Jackson Street, Seattle WA 98104, with a copy to Karin Ertl at the same address).
- B. SOUND TRANSIT shall have sixty (60) days from the Mitigation Fee invoice date to make full payment to the CITY unless extended in writing at the CITY's sole discretion. Upon payment of the Mitigation Fee, the CITY acknowledges and agrees that SOUND TRANSIT has satisfied all mitigation obligations for the PROJECT for unavoidable impacts to healthy trees within priority habitat area pursuant to the CITY's Critical Areas Ordinance (Chapter 16.15), and that these obligations shall become the CITY's responsibility. If the CITY does not receive full payment of the Mitigation Fee within sixty (60) days of the invoice date or written extension granted by the CITY, this Agreement shall become null and void and the remaining terms herein shall be unenforceable by either Party.
- C. Within fifteen (15) days of receiving the payment of the Mitigation Fee from SOUND TRANSIT, the CITY shall provide SOUND TRANSIT with a signed and dated receipt acknowledging payment for the identified impacts and required mitigation included in Attachment A. This receipt is also intended to, and shall, confirm and provide the official record of transaction between the CITY and SOUND TRANSIT. This receipt does not constitute a permit or permission to proceed with any proposed action. SOUND TRANSIT is responsible for obtaining all necessary permits to construct the PROJECT.

- D. Consistent with general tree replanting requirements for the PROJECT, the CITY will complete the planting of replacement trees as determined in Attachment A prior to PROJECT revenue service in 2024.

II. Legal Relations

- A. The CITY will protect, defend, indemnify, and hold harmless SOUND TRANSIT, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, both to persons and property, arising out of, or in any way resulting from, the CITY's own negligent acts or omissions, or the negligent acts or omissions of the CITY's officials, officers, or employees, in carrying out the CITY's obligations under the terms of this Agreement.
- B. SOUND TRANSIT will protect, defend, indemnify, and hold harmless the CITY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, both to persons and property, arising out of, or in any way resulting from SOUND TRANSIT's own negligent acts or omissions, or the negligent acts or omissions of SOUND TRANSIT's officials, officers, or employees, in carrying out SOUND TRANSIT's obligations under the terms of this Agreement. Where such claims, suits, or actions result from concurrent negligence of the Parties, or involve those actions covered by RCW 4.24.115, the indemnity provisions provided in this Agreement are valid and enforceable only to the extent of the Party's own negligence. Each Party agrees that its obligations under this Section 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, 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.

This indemnification provision survives the termination of this Agreement.

- C. In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, such action or proceedings must be brought in a court of competent jurisdiction situated in King County, Washington. Further, each Party is liable for its own litigation costs and attorney's fees.

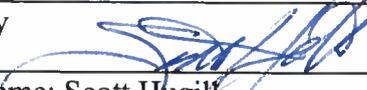
III. Term of Agreement and Modification

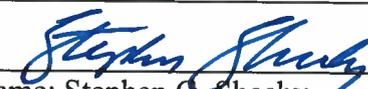
- A. This Agreement shall become effective as of the Party's signature date last written below and shall remain in effect until the CITY issues the Statement of Sale to SOUND TRANSIT. Upon its payment of the Mitigation Fee to the CITY, SOUND TRANSIT shall have no further mitigation and/or monetary obligation.
- B. No modification of this Agreement is valid unless evidenced in writing and signed by both Parties. No verbal agreement may supersede, replace or amend this Agreement.
- C. This Agreement may be executed in multiple counterparts, all of which taken together shall constitute one and the same Agreement.

IV. Binding Agreement

This Agreement shall be binding on the officers, directors, shareholders, members, partners, employees, agents, personal representatives, heirs, successors, and assigns of the Parties.

The Parties have executed the Agreement as of the Party's date signed last below.

CITY OF MOUNTLAKE TERRACE	SOUND TRANSIT
By 	By 
Name: Scott Hugill	for Name: Ron Lewis
Title: City Manager	Title: Executive Director, Design Engineering Construction Management
Date: 6/5/19	Date: 6/13/19

APPROVED AS TO FORM	APPROVED AS TO FORM
	
Name: Greg Schrag	Name: Stephen G. Sheehy
Title: City Attorney	Title: Senior Legal Counsel
Date: 6-5-2019	Date: 6-10-19



February 13, 2019

Ms. Christy Osborn
Community and Economic Development Director
City of Mountlake Terrace
5303 228th St. SW
Mountlake Terrace, WA 98043

Subject: Lynnwood Link Letter of Concurrence – Priority Habitat Area Tree Mitigation

Dear Ms. Osborn:

As mitigation for impacts to priority habitat as a result of the Lynnwood Link Extension Project (“Project”), the City of Mountlake Terrace (“City”) agreed to replacement plantings at a 3:1 ratio (Concurrence Letter dated March 19, 2018). In lieu of planting replacement trees directly, Sound Transit proposes to pay a fee of \$256,793.00 directly to the City. This fee amount shall be used by the City to meet all aspects of the mitigation obligations for impacts to priority habitat pursuant to the City’s Critical Areas Ordinance (Chapter 16.15). Payment of this fee fully and irrevocably transfers Sound Transit’s mitigation obligations associated with the unavoidable impacts to trees within the priority habitat area.

Sound Transit requests your written concurrence with the fee amount to be paid to the City, the basis for determining that fee, and the proposal to replant trees along 236th Street for the City at no cost in exchange for counting those trees towards priority habitat contingency. These are further described below.

Basis for Determining Fee

The Project will impact designated priority habitat in the vicinity of the future Mountlake Terrace station as a result of the light rail guideway, improvements at the Mountlake Terrace Transit Center, and temporary parking east of the transit center. This priority habitat area contains a forested ecosystem, but is not critical habitat for any known state or federally listed species.

Based on IP90% design plans, Sound Transit estimates that the Project will impact approximately 218 priority habitat trees as follows:

Priority Habitat Areas Impacted	# Trees
Private properties north of the Transit Center	20
WSDOT parcel that encompasses the Transit Center	113
Private property/public property east of the Transit Center	85
Total	218
Replacement Trees Needed @ 3:1 Mitigation Ratio	654

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Peter M. Rogoff

A breakdown of the probable costs associated with providing the replacement trees needed is shown in Attachment 1. Sound Transit agrees to pay the City \$256,793. The City agrees to ensure completion of all of the tasks detailed in the cost estimate.

Tree Planting Along 236th Street

As part of the City's improvements along 236th Street, the City is required by WSDOT to replace the 59 trees removed as part of their project. Sound Transit agrees to plant 59 replacement trees as part of its Project Development Approval with WSDOT. Forty Three of 59 trees are the responsibility of the City, however, Sound Transit will plant the 43 replacement trees along 236th at no cost to the City with the understanding that these 43 trees will count towards a contingency in the event that additional priority habitat trees are removed beyond the 218 trees anticipated. Using the 3:1 mitigation ratio previously agreed to, this would mean that a maximum of 14 additional trees could be removed in the priority habitat area during construction if needed. The City agrees that Sound Transit may remove a maximum of 14 additional trees if necessary, and that no additional mitigation or payment of fees will be required.

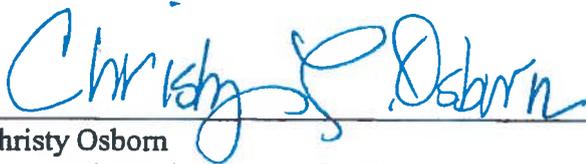
We would appreciate your earliest review and concurrence with the above. Please do not hesitate to call me at (206) 398-5360.

Sincerely,



Karin Ertl
North Corridor Environmental Manager

Concurrence:



2.13.19

Christy Osborn
Community and Economic Development Director
City of Mountlake Terrace

cc: Gwen McCullough, Project Manager, ST
Erik Findley, L300 Design Package Lead, ST
Yvonne Olson, Principal Architect, ST
Fred Wilhelm, Deputy Project Director, ST

ESTIMATE OF PROBABLE COSTS - Conceptual Design
Priority Habitat Tree Mitigation 8/6/2018

Line	Item	Unit	Quantity	Unit Cost	Cost	Notes	Source
Tree Mitigation							
1	Site selection	LS	1	\$ 5,000	\$ 5,000	Assumes 15 sites are visited to select 7 tree planting sites.	Validated through several sources.
2	Planting Plan, Details, Specifications, Cost Estimate	EA	5	\$ 2,500	\$ 12,500	Assumes 7 sites, no survey, GIS site location map with aerial imagery, staging area plan for ROW work permits, plan sheet to show planting area and construction support of field location of some planting areas or individual tree locations.	Validated through several sources.
3	Trees (5 Gal.)	EA	327	\$ 25	\$ 8,175	Material and delivery cost. Assume 50% of trees are deciduous. 1/2 of total trees are 5-gallon size because 5 gallon tree sizes are most appropriate for areas where existing vegetation competition is low and where trampling by park users is low.	Sound Native Plants
4	Trees (4' conifers or 3/4" deciduous)	EA	164	\$ 70	\$ 11,480	Material and delivery cost. Assume 25% of trees are deciduous and no street trees. 1/4 of total trees are 4' tall size because they are most appropriate for areas where existing vegetation competition is moderate, predominantly low shrubs, and trampling by park users is unlikely.	Puget Plants
5	Trees (8' conifers or 1.5" deciduous)	EA	164	\$ 130	\$ 21,320	Material and delivery cost. Assume 25% of trees are deciduous and no street trees. 1/4 of total trees are 8' tall or 1.5" caliper because they are most appropriate for areas where existing noxious weed vegetation competition is high or planting location is close to park users where trampling likelihood is high.	Puget Plants
6	Compost soil amendment; 3" deep over planting hole	CY	20	\$ 50	\$ 1,000	Material and delivery cost, small quantity increases unit cost.	Cedar Grove Compost
7	Arborist Mulch Ring; 4' diameter, 3" deep	CY	20	\$ 50	\$ 1,000	Material and delivery cost. Assumes 3" depth over 3' wide backfilled areas. Small quantity increases unit cost.	Cedar Grove Compost
8	Tree Installation (Labor)	EA	655	\$ 50	\$ 32,750	Includes labor for all elements associated with tree installation. Disparate planting locations increases cost.	Industry standard (2x the plant material)
9	Temporary Irrigation	SF	36,304	\$ 1.50	\$ 54,456	All new trees require temporary irrigation. Assumes all new tree plantings are 8 feet triangular spacing resulting in a total tree planting area of 39,352 sf based on 55.426 sf per tree. Assumes existing POC can be used but this POC maybe a temporary fire hydrant meter; battery operated controller, valves and temporary lines are buried to minimize vandalism. Disparate planting locations increases cost.	estimate from 2017 municipal irrigation projects and 1 acre size WSDOT bid tabs
10	Herbivory Protection	EA	164	\$ 12	\$ 1,968	6' tall x 2' diameter (6.3 LF) polypropylene deer netting (1.75" x 2" mesh) with 1 wooden stake and ties. Only applied to deciduous trees for rabbit and deer protection.	deer busters.com
11	Plant establishment/maintenance (1st Year)	ACRE	1.88	\$ 12,000	\$ 22,595	Includes weed & pest control. Disparate planting locations increases cost.	Industry standard
12	Biannual Monitoring & Annual Report (1st Year)	EA	1.00	\$ 4,615	\$ 4,615	Disparate planting locations increases cost.	per MTMC 16.15.130.
13	Plant establishment/maintenance (Years 2-5)	ACRE	1.88	\$ 8,000	\$ 15,063	Includes weed & pest control Disparate planting locations increases cost.	Industry standard
14	Biannual Monitoring & Annual Report (Years 2-5)	EA	4.00	\$ 2,769	\$ 11,076	Disparate planting locations increases cost.	per MTMC 16.15.130.
15	City Oversight (10% sum of items 1-14)	LS	1.00	\$ 20,300	\$ 20,300	City Staff project management and oversight.	City of Mountlake Terrace
16	Cost escalation contingency (15%)	LS	1.00	\$ 33,495	\$ 33,495	To cover cost increases over the next 10 years for this tree mitigation to be installed and maintained for 5 years.	WSDOT Plans Preparation Manual M 22-31.04 page 8-3
				Total	\$ 256,793		

Notes

1 In providing estimate of probable costs, it is understood that the Consultant has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that costs are made on the basis of the Consultant's professional judgment and experience. The Consultant makes no warranty, expressed or implied that the bids or the negotiated cost of the Work will not vary from the Consultant's estimate of probable construction cost.

List of Potential Tree Species for Planting

Botanical Name		
Pseudotsuga menziesii		
Pinus contorta		
Thuja plicata		
Calocedrus decurrens		
Picea sitchensis		
Fraxinus latifolia		
Salix lasioandra		