

**HIGHLINE WATER DISTRICT
King County, Washington**

RESOLUTION 19-5-15G

RESOLUTION AUTHORIZING BUSINESS FIXTURE RELOCATION AGREEMENT, PHASE 2, BETWEEN HIGHLINE WATER DISTRICT (“UTILITY”) AND CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (“SOUND TRANSIT”) RELATING TO MANSION HILL WATER TANKS

WHEREAS, Sound Transit is authorized to plan, design, and construct the Federal Way Link Extension Project (“FWLE Project”), a 7.6-mile extension of the regional light rail system. Sound Transit plans to start construction of the FWLE Project in 2019 with a start of light rail service targeted for 2024; and

WHEREAS, Sound Transit sent to the District a Notice of Eligibility for moving and relocation expenses under the Uniform Relocation Act, dated June 23, 2017; and

WHEREAS, the District is agreeable to the property acquisition and the demolition of certain Business Fixtures to accommodate the FWLE Project. Utility is therefore entitled to reimbursement for actual reasonable and necessary costs to design, procure, and construct replacement business fixtures to accommodate the FWLE Project; and

WHEREAS, the District and Sound Transit entered into the Business Fixture Relocation Agreement (Phase 1 Agreement) on October 30, 2018, which provided for funding for the design and construction of a new 4.5 MG steel ground reservoir, and the demolition of the 5 MG reservoir and .25 MG elevated tank located on property that Sound Transit is acquiring from the District. The replacement of the functional utility of the .25 MG tank had not been determined at the time of the Phase 1 Agreement; and

WHEREAS, the District and Sound Transit agree the reasonable and necessary action to replace the functioning of the 0.25 MG tank is with a pump station on site.

NOW, THEREFORE, BE IT RESOLVED:

1. The Board of Commissioners authorizes the General Manager or designee to execute the Business Fixture Relocation Agreement, Phase 2, with Sound Transit (Attachment-1, incorporated herein by this reference).
2. The General Manager and/or the District’s Legal Counsel are authorized to make minor changes to the Business Fixture Relocation Agreement, Phase 2, if required.

**HIGHLINE WATER DISTRICT
King County, Washington**

RESOLUTION 19-5-15G

ADOPTED BY THE BOARD OF COMMISSIONERS of Highline Water District, King County, Washington, at an open public meeting held this **15th** day **May 2018**.


BOARD OF COMMISSIONERS



Kathleen Quong-Vermeire, President



Vince Koester, Secretary



Todd Fultz, Commissioner



Daniel Johnson, Commissioner



George Landon, Commissioner

Business Fixture Relocation Agreement (Mansion Hill Water Tanks)

PHASE 2

(FWLE)

This Business Fixture Relocation Agreement (Phase 2)(“Phase 2 Agreement”) is made and entered into by and between Highline Water District, a water-sewer special purpose district organized under chapter 57.04 RCW (“Utility”), and the Central Puget Sound Regional Transit Authority, a Washington regional transit authority (“Sound Transit”). Utility and Sound Transit are sometimes referred to in the singular as “Party” or in the plural as “Parties.”

RECITALS

- A. Sound Transit is authorized to plan, design, and construct the Federal Way Link Extension Project (“FWLE Project”), a 7.6-mile extension of the regional light rail system. Sound Transit plans to start construction of the FWLE Project in 2019 with a start of light rail service targeted for 2024.
- B. Certain of Utility’s land and business fixtures at the Utility’s Mansion Hill Reservoir Site are located within the projected route of the FWLE Project and conflict with construction or future operation of the FWLE Project.
- C. In Sound Transit Resolution No. 2017-16 the Sound Transit Board authorized efforts to seek to acquire a portion of the eastern side of Utility’s Mansion Hill Reservoir Site.
- D. Sound Transit sent to the Utility a Notice of Eligibility for moving and relocation expenses under the Uniform Relocation Act, dated June 23, 2017.
- E. Utility is agreeable to the property acquisition and the demolition of certain Business Fixtures to accommodate the FWLE Project. Utility is therefore entitled to reimbursement for actual reasonable and necessary costs to design, procure, and construct replacement business fixtures to accommodate the FWLE Project.
- F. Utility and Sound Transit entered into the Business Fixture Relocation Agreement (Phase 1 Agreement) on October 30, 2018, which provided for funding for the design and construction of a new 4.5 MG steel ground reservoir, and the demolition of the 5 MG reservoir and .25 MG elevated tank located on property that Sound Transit is acquiring from the Utility. The replacement of the functional utility of the .25 MG tank had not been determined at the time of the Phase 1 Agreement.
- G. The sale of real property rights at the Utility’s Mansion Hill Reservoir Site from Utility to Sound Transit will be dealt with in compliance with the Uniform Relocation Act, 42 USC 4601, et seq., and implementing regulations found in 49 CRF part 24, and is not the subject of this Agreement regarding reimbursement for the relocation of business fixtures.

In consideration of the following terms and conditions, the Parties agree as follows:

AGREEMENT

1. Scope of Work

1.1. Location. The .25 MG elevated tank is located at the Utility’s Mansion Reservoir Site in the city of SeaTac, adjacent to Washington State Department of Transportation I-5 right-of-

way. The location of the business fixtures and location of business fixtures once reconstructed are more particularly detailed, depicted, and diagrammed in the attached **Exhibit A**.

1.2. Relocation Work. In the Phase 1 Agreement the Parties agreed upon the demolition, relocation, and construction of the 4.5MG water reservoir, to accommodate the FWLE Project in conjunction with sale of real property interests to Sound Transit of the portion of the Utility's real property where the relevant business fixtures are currently located. The Parties reserved for this Phase 2 Agreement, the relocation, or replacement of functional utility, of the .25 MG elevated tank. At the time of the Phase 1 Agreement, the Parties believed that the construction of a triplex booster pumping station would replicate the water pressure provided by the .25MG tank for the Utility's water system; however, the Parties explored other alternatives. The Parties agree that the replacement of the functional utility of the .25 MG elevated tank with a pump station is reasonable and necessary. Reasonable and necessary costs for engineering and design, and the construction of the pump station, a functional replacement of the .25 MG elevated tank ("Relocation Work"), is attached as **Exhibit B**.

1.3. Schedule; Time is of the Essence. If the Relocation Work is not completed by the date specified in the **Exhibit C** attached and incorporated by this reference, the FWLE Project may be delayed and impacted. Utility will use best efforts to complete the Relocation Work in the schedule specified. If the Relocation Work is to be performed during FWLE Project construction, Utility will complete the Relocation Work in conjunction and cooperation with Sound Transit's construction contractor.

2. Cost and Reimbursement

2.1. Cost Estimate. Utility has estimated the cost for the Relocation Work ("Cost Estimate"), which is included in **Exhibit B**. The Cost Estimates are estimates only.

2.2. Reimbursable Cost Requirements. Sound Transit will reimburse Utility for actual, reasonable, and necessary costs for Relocation Work in accordance with the Uniform Relocation Act, 42 USC 4601 et seq., and the implementing regulations found in 49 CFR part 24.

2.3. Betterments. Sound Transit will not reimburse Utility for Betterments. "Betterments" are additions or improvements to the existing business fixtures and are not necessary to functionally restore the operational capabilities of the relocated business fixtures or provide like-kind replacements. Additions or improvements are not Betterments if such additions or improvements are:

- a. replacement devices or materials that are of equivalent standards although not identical or more expensive;
- b. replacement of devices or materials no longer regularly manufactured with next highest grade or size;
- c. required under governmental regulatory statutes or appropriate regulatory commission code; or
- d. required by current design practices regularly followed by the Utility in its own work, and there is a direct benefit to the Project. As used in this context, "direct benefit to the Project" means a cost savings to the Project, where the net present value of the cost savings that will directly inure to the benefit of Sound Transit over the useful life

of the addition or improvement exceeds the net present value of the cost to Sound Transit of such addition or improvement.

"Betterments" are identified in **Exhibit B** as being at the sole cost of Utility.

3. Invoicing. Utility may invoice Sound Transit once per month, and include with its invoice, documentation of actual Relocation Costs that are actual, reasonable, and necessary in accordance with the Uniform Relocation Act, and in particular 49 CFR part 24, subpart D.

3.1. Actual Cost. The invoices will include the following: (1) progress report or work statements, (2) invoices for support services and materials, (3) certification by Utility that the services have been satisfactorily rendered, (4) copies of original bills, invoices, expense accounts, and miscellaneous supporting data retained by Utility including, but not limited to work records, rates, material and equipment costs, and (5) proof of payment as applicable for claims for reimbursement.

3.2. Invoicing. Invoices and supporting documentation must be sent to the following addresses:

If to Sound Transit:

AccountsReceivable@SoundTransit.org

and

Accounts Receivable
Sound Transit
401 S. Jackson
Seattle, WA 98104-2826

3.3. Payments. Payment must be sent to the following addresses:

Utility:

Accounts Receivable
Highline Water District
23828 – 30th Ave. S.
Kent, WA 98032

4. Records Retention. Utility will maintain all project records in support of all costs incurred and expended for a period of at least three years after final payment is made under this Phase 2 Agreement. Utility will open its records for inspection to Sound Transit during normal business hours. Copies of these records will be furnished to Sound Transit upon request. If an audit is requested or required by a Sound Transit or the federal government, the Utility will cooperate with requesting party and provide access to the Utility's records and copies of such records.

5. Designated Representatives. Each Party's Designated Representative is identified below. The Designated Representatives are responsible for coordinating the work and communications related to this Phase 2 Agreement. Either Party may change their Designated Representative, by written notice to the other Party's Designated Representative:

Sound Transit:

Patrick Sullivan
Real Property Project Manager
401 S. Jackson Street
Seattle WA 98104
(206) 903-7653
patrick.sullivan@soundtransit.org

Utility:
Jeremy Delmar, PE
Engineering Manager
23828 – 30th Ave. S.
Kent, WA 98032
idelmar@highlinewater.org

6. Dispute Resolution.

6.1. Notice of Dispute. Designated Representatives will use their best efforts to resolve disputes and issues arising out of or related to this Phase 2 Agreement. The Parties will notify each other in writing of any problem or dispute the Party believes needs formal resolution under this section. This written notice must include a summary of (a) the issue to be resolved, (b) the differences between the Parties on the issue; and (c) the steps taken by Designated Representative to resolve the issue.

6.2. Dispute Process. Designated Representatives of the Parties will meet or confer by telephone within three business days of receiving the written notice or as soon as practicable, and attempt to resolve the dispute. In the event the Designated Representatives cannot resolve the dispute, Sound Transit's Executive Director of DECM or his/her designee and Utility's General Manager or his/her designee will meet within seven business days of receiving notice from a Designated Representative and engage in good faith negotiations to resolve the dispute.

6.3. Exhaustion. A Party has no right to seek relief under this Phase 2 Agreement in a court of law until each of these procedural steps is exhausted.

7. General Provisions.

7.1. No Waiver. Failure of a Party to enforce a term under this Phase 2 Agreement will not constitute a waiver of that term or any other term, unless otherwise provided in a writing executed by the Party charged.

7.2. No Agency. No joint venture or partnership is formed as a result of this Phase 2 Agreement. No employees, agents, or contractors of one Party may be deemed, or represent themselves to be, employees of the other Party.

7.3. No Third Party Rights. This Phase 2 Agreement is solely for the benefit of the Parties and gives no right to any other party. Nothing in this Phase 2 Agreement, whether express or implied, is intended to confer any rights or remedies under this Phase 2 Agreement on persons other than the Parties.

7.4. Compliance with Laws. The Parties will comply and, to the best of its ability, ensure, that its employees, agents, and contractors comply with all federal, state, and local laws,

regulations, and ordinances applicable to the work and services to be performed under this Phase 2 Agreement.

7.5. Governing Law and Venue. This Phase 2 Agreement is governed by, and construed and enforced in accordance with, the laws of the State of Washington. Any legal action resulting from this Phase 2 Agreement must be brought in the Superior Court of King County.

7.6. Force Majeure. In the event that either Party is prevented or delayed in the performance of any of its obligations under this Phase 2 Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance will be excused during the Force Majeure Event. Force Majeure Events include, without limitation, war; civil disturbance; storm, flood, and earthquake; sabotage; strikes or similar labor disputes involving personnel of a Party, its contractors or a third party; or failure or delay in the performance by the other Party, or a third party who is not an employee, agent, or contractor of the Party claiming a force Majeure Event in connection with the Relocation Work or this Phase 2 Agreement. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event will promptly perform the affected obligation in an orderly and expedited manner under this Phase 2 Agreement or procure a substitute for such obligation. The Parties will use all commercially reasonable efforts to eliminate or minimize any delay cause by a Force Majeure Event.

7.7. Entire Agreement. This Phase 2 Agreement, including the attached exhibits, comprise the complete and integrated agreement of the Parties. This Phase 2 Agreement cannot be amended or changed except by written instrument signed by both Parties.

7.8. Authority. The persons signing below represent that they are authorized to execute this Phase 2 Agreement on behalf of their respective Party.

7.9. Effective Date. This Phase 2 Agreement is effective as of the date of the last signature below ("Effective Date").

7.10. Recitals. The Recitals above are incorporated into this Phase 2 Agreement by this reference.

<p>Sound Transit</p> <p>_____</p> <p>Joseph Gray Real Property Director Date:</p> <p>_____</p>	<p>Highline Water District</p> <p>_____</p> <p>By Its Date:</p> <p>_____</p>
<p>Approved as to Form</p> <p>_____</p> <p>Sound Transit Legal Counsel</p>	

EXHIBIT LIST:

- Exhibit A: Location of Land and Business Fixtures
- Exhibit B: Scope of Relocation Work and Cost Estimate
- Exhibit C: Estimated Project Schedule

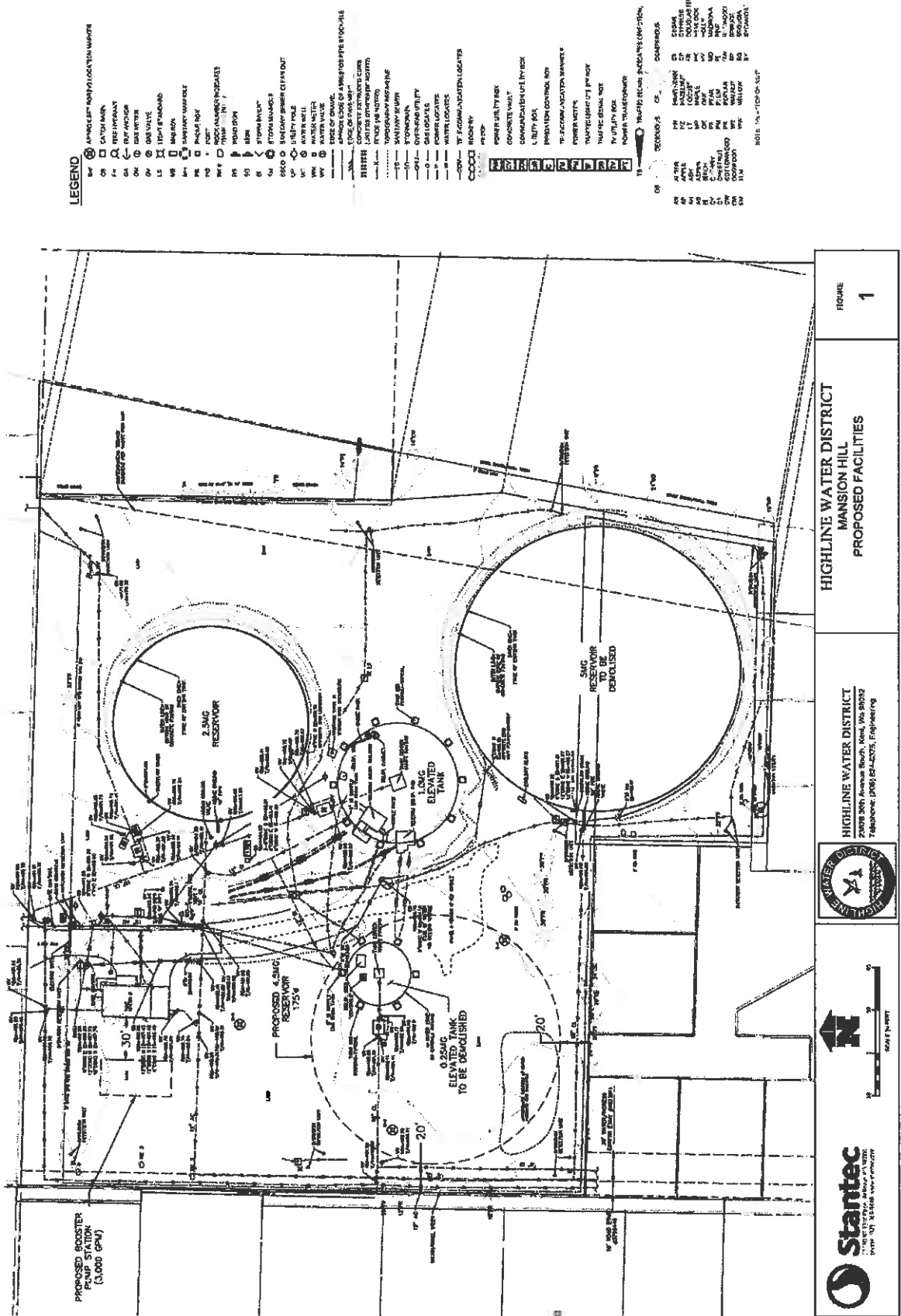
Exhibit A

Location of Land and Business Fixtures

The 5.0 million gallon (MG) steel ground reservoir ("Water Reservoir") is located on the eastern side of the Highline Water District property referred to as the Mansion Hill Tank site. The Water Reservoir will be replaced with a new, 4.5 MG steel ground reservoir ("New Reservoir") to the western side of the Mansion Hill Tank site. A second, 0.25 MG Elevated Water Tank ("Elevated Tank") must be removed to accommodate the New Reservoir. The Elevated Tank will be replaced with a booster pump station ("Pump Station") located on at the northwest corner of the property.

In addition, business fixtures include all appurtenances to support and facilitate the new Pump Station, including but not limited to building structure, piping, fittings, valves, electrical and other miscellaneous materials and equipment.

[Exhibit A Figure]



**Exhibit B
Relocation Work
Cost Estimate**

Stantec Consulting Services Inc.
11130 NE 33rd Pl, Suite 200
Bellevue, WA 98004

Prepared by: LRP
Date: 9/19/2016
Checked by: JFG
Date: 11/15/2016
Preliminary

TITLE: Opinion of Probable Construction Cost
OWNER: Highline Water District
PROJECT: Mansion Hill Reservoir Relocation Project
JOB NO: 2002005061

Line Item	Spec	Description	Approx. Quantity	Unit	Unit Cost	Total Cost
Estimate #3 - Proposed Pump Station (3,000 gpm to 4,000 gpm)						
1	NA	Minor Changes	1	EST	\$ 5,000.00	\$ 5,000.00
2	NA	Mobilization	1	LS	\$ 54,000.00	\$ 54,000.00
3	NA	Temporary Storm Water Detention Facility	1	LS	\$ 5,000.00	\$ 5,000.00
4	NA	TESC Filter Fabric Fencing	400	LF	\$ 10.00	\$ 4,000.00
5	NA	Temp. Storm Water Detention/Treatment	1	LS	\$ 10,000.00	\$ 10,000.00
6	NA	Site Grading	1	LS	\$ 5,000.00	\$ 5,000.00
7	NA	Site DI Piping/Fittings	1	LS	\$ 60,000.00	\$ 60,000.00
8	NA	Connections to Existing System	2	EA	\$ 5,000.00	\$ 10,000.00
9	NA	Pump Station Building	1	LS	\$ 250,000.00	\$ 250,000.00
10	NA	Pump Station Plumbing	1	LS	\$ 10,000.00	\$ 10,000.00
11	NA	Pumps/Motors	1	LS	\$ 150,000.00	\$ 150,000.00
12	NA	SCADA System	1	LS	\$ 50,000.00	\$ 50,000.00
13	NA	Interior Piping/Fittings/Valves	1	LS	\$ 175,000.00	\$ 175,000.00
14	NA	Mechanical work	1	LS	\$ 18,000.00	\$ 18,000.00
15	NA	Electrical work	1	LS	\$ 110,000.00	\$ 110,000.00
16	NA	instrument and control system	1	LS	\$ 50,000.00	\$ 50,000.00
17	NA	Emergency Generator	1	LS	\$ 100,000.00	\$ 100,000.00
18	NA	Testing and startup services	1	LS	\$ 10,000.00	\$ 10,000.00
19	NA	Foundation Gravel	40	TON	\$ 50.00	\$ 2,000.00
20	NA	Bank Run Gravel	1,100	TON	\$ 30.00	\$ 33,000.00
21	NA	Asphalt Concrete Driveway	40	TON	\$ 250.00	\$ 10,000.00
22	NA	6" Crushed Surfacing	100	TON	\$ 50.00	\$ 5,000.00
23	NA	Surface Restoration	1	LS	\$ 15,000.00	\$ 15,000.00
Subtotal						\$ 1,141,000
Washington States Sales Tax @ 10% of subtotal						\$ 114,100
Subtotal						\$ 1,255,100
Inflation Factor (4% per year) 8% of subtotal						\$ 100,400
Subtotal						\$ 1,355,500
Contingency @ 20% of subtotal						\$ 271,100
Total Opinion of Probable Construction Cost						\$ 1,526,200
Design Fee						\$ 250,000
Bid Assistant/Construction Management/Inspection						\$ 292,000
TOTAL						\$ 2,068,200

Note: Construction estimated to occur in 2019 for 8 months

EXHIBIT C
Estimated Schedule

Pump Station Work

1. Engineering – July 2019 through July 2020
2. Contract Advertisement and Award – August 2020 through October 2020
3. Construction - November 2020 through September 2021
4. Project Closeout – September 2021 through December 2021

The Pump Station is not anticipated to impact the schedule of the FWLE Project.

Agenda Item No.: 5.5
Agenda Date: 05/15/19
Reviewed By: 

Subject: Authorize Business Fixture Relocation Agreement (Phase 2)
 between HWD and Sound Transit

 Project 16-3 Mansion Hill Reservoir Relocation

CATEGORY	
<i>Executive</i>	<input type="checkbox"/>
<i>Administrative</i>	<input type="checkbox"/>
<i>Engineering/Operations</i>	<input checked="" type="checkbox"/>

FINANCIAL						
<i>Expenditures?</i>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
<i>Budgeted?</i>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
<i>Estimated Amount:</i> \$ _____						
<small>Excludes sales tax</small>						

ATTACHMENTS:

1. Resolution 19-5-15G
w/Attachment 1 Business Fixture Relocation Agreement (Phase 2) and Exhibit(s) A, B, and C

COMMENTS:

The District is agreeable to the property acquisition and the demolition of certain Business Fixtures to accommodate the FWLE Project. The District is therefore entitled to reimbursement for actual reasonable and necessary costs for the design, procure, and construct replacement business fixtures to accommodate the FWLE Project.

Staff recommends approval of this resolution.