

**HIGHLINE WATER DISTRICT
King County, Washington**

RESOLUTION 19-7-3C

**RESOLUTION AUTHORIZING RIGHT OF ENTRY AGREEMENT BETWEEN
HIGHLINE WATER DISTRICT AND CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY ("SOUND TRANSIT") FOR ACCESS RIGHTS ON THE MANSION HILL
TANK SITE PROPERTY**

WHEREAS, the District owns and operates a reservoir site on certain real property with property address of 21420 31st Ave. S., SeaTac, Washington, Tax Parcel Numbers 092204-9340 and 092204-9235, ("Property") known as the Mansion Hill Tank ("Site 1"); and

WHEREAS, Sound Transit and its agents desires Access Rights onto Site 1 for the purpose of completing Geotechnical activities. The Geotechnical activities are one test pit excavation of 6 to 10 feet; and

WHEREAS, the District is willing to grant Sound Transit such right of entry to the Property.

NOW, THEREFORE, BE IT RESOLVED:

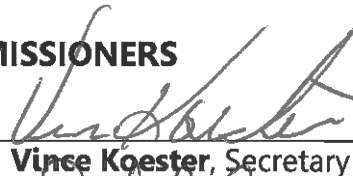
1. The Board of Commissioners approves the Right of Entry Agreement between Highline and Sound Transit.
2. The General Manager or Designee is authorized to execute the Right of Entry Agreement (referenced as Attachment-1 and incorporated herein) for access rights on the Mansion Hill Tank Site property.
3. The General Manager and/or the District's legal counsel are authorized to make minor changes to the Amendment if required.

ADOPTED BY THE BOARD OF COMMISSIONERS of Highline Water District King County, Washington, at an open public meeting held on this **3rd** day of **July 2019**.

BOARD OF COMMISSIONERS




Kathleen Quong-Vermeire, President



Vince Koester, Secretary



Todd Fultz, Commissioner



Daniel Johnson, Commissioner

George Landon, Commissioner

RIGHT OF ENTRY AGREEMENT

This Agreement ("Agreement") is made by and between Highline Water District, a Washington municipal corporation, successor in interest to King County Water District No. 75 ("District"), and the Central Puget Sound Regional Transit Authority, a regional transit authority of the State of Washington ("Sound Transit") (individually a "Party" and collectively the "Parties") for the purposes set forth below.

WHEREAS, the District owns and operates a reservoir site on certain real property with a property address of 21420 31st Ave. S., SeaTac, Washington, Tax Parcel Numbers 092204-9340 and 092204-9235, ("Property") known as the Mansion Hill Tank ("Site 1"), and

WHEREAS, Sound Transit and its agents desires Access Rights onto Site 1 for the purpose of completing Geotechnical activities. The Geotechnical activities are one test pit excavation of 6 to 10 feet and the work is fully described in the "Field Work – Property Access Plan (PAP)" attached as Exhibit A; and

WHEREAS, District is willing to grant Sound Transit such right of entry to the Property:

NOW, THEREFORE, in consideration of the terms and conditions herein stated, the Parties agree as follows:

1. District hereby grants Sound Transit and its agents the Access Rights and the right to enter upon the Property to exercise the Access Rights.

2. This Agreement and the Access Rights shall terminate twelve (12) months from the Effective Date of this Agreement, unless the District approves the extension of this Agreement by written amendment hereto. This Agreement may be terminated by either Party at any time without cause; provided each Party, upon deciding to terminate this Agreement, shall give the other Party written notice of such intent at least five (5) days prior to the effective date of termination.

3. Sound Transit shall repair any damage to and restore the Property to its condition prior to any disturbance that Sound Transit and its agents are responsible for during the exercise of its rights herein. Sound Transit's obligation to repair and restore the Property to its condition prior to any disturbance shall survive the termination or expiration of this Agreement. Sound Transit shall comply with all applicable governmental laws, ordinances, rules, and/or regulations in exercising the privileges granted herein.

4. This right of entry is subject to all valid rights existing in the Property as of the Effective Date of this Agreement. District reserves the right to grant others the privilege to use the Property and the Parties specifically agree that this Agreement is not exclusive.

5. To the greatest extent authorized by law, Sound Transit shall indemnify, defend and hold District and its elected and appointed officials, employees, and agents harmless from and against any damages, claims, loss, costs, legal action, liability, judgments, attorneys' fees and costs or expenses on account of personal injury to any persons or damage to or destruction of property, resulting from Sound Transit or its agents exercise of the Access Rights. It is further agreed that indemnification provided herein constitutes Sound Transit's waiver of immunity under industrial insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties.

6. Sound Transit shall provide insurance coverage related to the use of the Property in amounts and with coverage satisfactory to the District. Sound Transit shall obtain and keep in force during the term of the Agreement, Commercial General Liability insurance policies with insurance companies which have an A.M. Best's rating of A-: VIII or better and who are approved by the Insurance Commissioner of the State of Washington pursuant to Title 48 RCW.

Prior to the execution of this Agreement, Sound Transit shall file with the District a certificate of insurance with endorsements attached as are necessary to comply with these specifications. Failure of Sound Transit to fully comply with the requirements regarding insurance will be considered a material breach of Agreement and shall be cause for immediate termination of the Agreement and of any and all District obligations, regarding same.

The insurance shall provide coverage for Sound Transit and shall specifically name the District and its elected and appointed officials, officers, employees, and agents as insureds under such coverage by endorsement to such insurance policies Sound Transit shall provide the District with such endorsement at the time of the execution of this Agreement. The coverage so provided shall protect against claims from bodily injuries, including accidental death, as well as claims for property damage which may arise from any act or omission of Sound Transit, Sound Transit's employees, agents or by anyone directly or indirectly employed by either of them.

The insurance shall be maintained in full force and effect at Sound Transit's expense throughout the term of this Agreement.

The District shall be given at least thirty (30) days written notice of cancellation, nonrenewal, or material reduction of coverage.

The coverages provided by Sound Transit's insurance policies shall be primary to any insurance maintained by the District, except for losses attributable to the sole negligence of the District. Any insurance that might cover this Agreement which is maintained by the District shall be in excess of Sound Transit's insurance and shall not contribute with Sound Transit's insurances.

The General Aggregate provision of Sound Transit's insurance policies shall be amended to show that the General Aggregate Limit of the policies applies separately to this Agreement.

Sound Transit's insurance policies shall not contain deductibles or self-insured retentions in excess of \$50,000.00.

Commercial General Liability

- \$2,000,000 each occurrence Bodily Injury and Property Damage liability
- \$2,000,000 annual aggregate
- Employees and volunteers as Additional Insureds
- Premises and operations

• Broad form property damage including underground, explosion and collapse hazards (XCU)

- Products completed operations
- Blanket Agreement
- Subcontractors
- Personal injury with employee exclusion deleted
- Employers liability (Stop gap)

Automobile Liability

- \$2,000,000 per accident bodily injury and property damage liability, including
- Any owned automobile
- Hired automobiles
- Non-owned automobile

Providing of coverages in the stated amounts shall not be construed to relieve Sound Transit from liability in excess of such limits.

Sound Transit shall maintain Workers Compensation insurance as required by state or federal statute for all of Sound Transit's employees to be engaged in work on the Property under this Agreement and, in case any such work is sublet, Sound Transit shall require the contractor similarly to provide workers compensation insurance and/or longshore and harbor workers insurance (or Jones Act coverage) for all of the contractor's employees to be engaged in such work. Sound Transit's Department of Labor & Industries account number shall be noted on the certificate of insurance. In the event any class of employees engaged in the work under this Agreement is not covered under Workers Compensation insurance or Longshore and Harbor Workers insurance (or Jones Act coverage) as required by state and federal statute, Sound Transit shall maintain and cause each contractor to maintain, Employers Liability insurance for limits of at least \$1,000,000 for each employee for disease or accident, and shall furnish the District with satisfactory evidence of such.

Sound Transit shall be solely and completely responsible for safety and safety conditions on the Property which is the subject of this Agreement, including the safety of all persons and property during performance of the work. Any observation by District employees in the review of Sound Transit's performance of this Agreement is not intended to include review of the adequacy of Sound Transit's work methods, equipment, bracing, scaffolding, or trenching, or safety measures on the Property. Sound Transit shall provide safe access for the District and its employees and agents to adequately observe Sound Transit's performance.

Sound Transit shall be solely and completely responsible to perform all work and furnish all materials in strict compliance with all applicable state, city, county and federal laws, regulations, ordinances, orders and codes. Sound Transit's attention is directed to the requirements of the Washington Industrial Safety and Health Act (WISHA), Chapter 49.17 RCW.

The coverage of Sound Transit's policy shall be sufficiently broad enough to insure the provisions of the indemnity and hold harmless provision set forth in Section 5 of this Agreement.

Nothing contained in these insurance requirements shall be construed as limiting the extent of Sound Transit's responsibility for payment of damages resulting from Sound Transit's acts or omissions under this Agreement.

7. Any notice to be given or any documents to be delivered by any party to any other herein, shall be delivered in person or mailed by certified post and addressed to the District and Sound Transit at the following address:

SOUND TRANSIT: Patrick Sullivan Real Property Agent
Sound Transit
Real Estate Division, M/S 04N-4
401 S Jackson ST
Seattle, WA 98104

Email address: patrick.sullivan@soundtransit.org

DISTRICT: Jeremy DelMar, Engineering and Operations Manager
Highline Water District
23828 - 30th Avenue South.
Kent, WA 98032

Email Address: jdelmar@highlinewater.org

With a courtesy copy (except notices related to access under Section 8 below and reports under Section 12 below) to:

John W. Milne
Inslee, Best, Doezie & Ryder, P.S.
P.O. Box C-90016
Bellevue, WA 98009-9016

Any Party may, by written notice to the other, designate a different address.

8. District shall not charge Sound Transit any monetary consideration for the Access Rights.

9. The Parties recognize that the security of the Site must be maintained at all times to protect the public health and welfare. District shall provide Sound Transit with one (1) remote access device to access the Site at the locked gate to the Site. When accessing the Site, Sound Transit shall secure and keep the Site locked and secure at all times. Sound Transit shall only access the Site Monday through Friday between the hours of 7:00 a.m. and 4:00 p.m. upon at least twenty four (24) hours prior written notice to the District, such notice which may be provided by electronic mail.

10. This Agreement constitutes the entire understanding between the Parties regarding the Access Rights. Any prior understandings, whether oral or written, are superseded. This

Agreement is governed by the laws of the State of Washington. Venue of any disputes between the Parties arising out of this Agreement shall be in King County Superior Court – Kent Division.

11. Each Party acknowledges that the individual executing this Agreement on behalf of the respective party has the authority to bind and commit the Party to the terms and conditions of this Agreement.

12. This Agreement shall be effective ("Effective Date") on the date by which both Parties have executed this Agreement.

13. Sound Transit shall provide the District with copies of all finalized data, studies, surveys and reports relating to the information obtained from the Property when available to Sound Transit.

14. In the event legal action is filed by either Party relating to the enforcement or performance of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees as determined by the trial and appellate courts.

Agreed by Sound
Transit:

By: Patrick Sullivan
Its: Real Property Project Manager

Dated: _____

Agreed by District:

By: Matt Everett
Its: General Manager

Dated: _____

Exhibit A

FWLE Property Access Plan _____


Field Work – Property Access Plan (PAP)

The purpose of this property access plan is to present a summary of proposed field work, in support of obtaining right of entry (ROE) from the current property owner to complete this work.

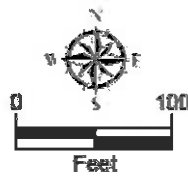
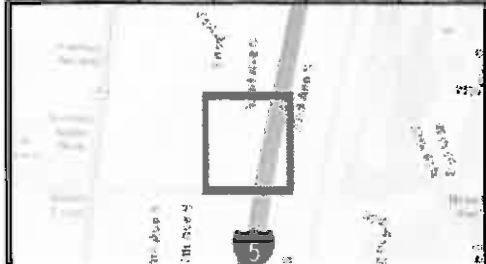
NO SITE VISITS OR FIELD WORK WILL BE COMPLETED WITHOUT A SIGNED RIGHT OF ENTRY

Project Name	Federal Way Link Extension	Property Type	Commercial
Property Owner	Highline Water District	Notes as required:	
Property Number	FL145		
Parcel Number	0822040235		
Prepared by	Gerard Euechei – Shannon & Wilson/Kiewit design-build team (208) 685-8845	Field Work POC	Joe Liu/Shannon & Wilson (208) 686-7485 Hisham Saieed/line/Shannon & Wilson (208) 685-8837

Activity	Schedule
Test Pit Excavation – one test pit 6 to 18 feet – (TP1-004)	One day – Schedule pending ROE, typically can be scheduled within 2 to 3 weeks of receiving ROE

PROJECT DESCRIPTION INCLUDING NEED FOR ACCESS
The Field Work – Property Access Plan (PAP) outlines proposed geotechnical drilling and excavation activities for the Sound Transit Federal Way Link Extension project. This field work is proposed as part of the design-build procurement, on behalf of the Kiewit design-build team.
WORK AREA AND DESCRIPTION OF WORK
A work zone 15 feet wide by 30 feet long centered near the exploration location (see attached Figure 1) will be required for excavation activities. A flatbed service truck and a crew pickup truck may also be on site during drilling and excavation, although that equipment can be shifted as needed to stay out of the way. The proposed exploration location may be shifted slightly as necessary to avoid underground utilities.
Utility Locate (One Call)
Prior to excavation, the test pit location will be marked, and the One-Call service will be notified for utility locates (see photo for illustration of a typical utility locate). Representatives of each utility will then visit the site to mark underground utilities, per state law. A private utility locator company will also check for utilities depending on the potential presence of existing utilities.


	<p>Geotechnical Excavation (Test Pit), Backhoe (example)</p>	
<p><u>Geotechnical Excavation (Test Pit), Rubber Tire or Track Backhoe</u></p> <p>One test pit, TP1-004, will be excavated at the approximate location shown in Figure 1. The test pit will be excavated using a track-mounted or rubber-tired backhoe (see photo of a rubber-tired backhoe) operated by an experienced operator. The test pit depth will range from 6 to 10 feet, depending on the soil conditions encountered. A Shannon & Wilson representative will log the pit, photograph the exposed soils, and obtain representative samples from the backhoe bucket.</p> <p>Additional vehicles on site may include a support truck, a vacuor truck, and a passenger vehicle for technical staff. The excavation will be properly backfilled using the excavation spoils. The site will be restored as near as possible to the pre-excavation condition at the completion of the test pit.</p> <p><u>Temporary Erosion and Sediment Control (TESC)</u></p> <p>TESC will be incorporated at the site, as required. Care will be used by site personnel to prevent tracking soil outside of the work zone. Soil will be immediately swept if it is tracked out onto landscaping or pavement areas. The site will be restored as near as possible to the pre-excavation condition at the completion of the excavation.</p>		
<p><u>COMMUNICATION PLAN AND INSURANCE</u></p>		
<p>Before visiting the site, Shannon & Wilson will contact the designated site contact and inform them when Shannon & Wilson personnel or contractors will be conducting geotechnical field work. Shannon & Wilson will communicate the type of work being performed, the general location of the work, and the amount of time the work is expected to take. Shannon & Wilson will give at least 72 hours advance notice prior to any drilling or excavation work.</p> <p>Shannon & Wilson has several subcontracted backhoe operators who can complete this field work using similar excavation equipment. Once ROE is obtained, we will schedule the test pit excavation as quickly as possible based on backhoe operator availability and will provide all necessary insurance certificates at that time, in accordance with the terms of the ROE.</p>		



Federal Way Link Extension Sound Transit	
PROPOSED EXPLORATION LOCATION	
June 2019	SEA-101637-001
SHANNON & WILSON, INC.	FIG. 4

Agenda Item No.: 5.3
Agenda Date: 07/03/19
Reviewed By: JSD

Subject: Resolution authorizing Right of Entry Agreement between Highline Water District and Sound Transit for access rights on the Mansion Hill Tank Site property

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

ATTACHMENTS:

1. Resolution 19-7-3C w/Attachment 1

COMMENTS:

The District owns and operates a reservoir site on certain real property with property address of 21420 31st Ave. S., SeaTac, Washington, Tax Parcel Numbers 092204- 9340 and 092204-9235, ("Property") known as the Mansion Hill Tank ("Site 1").

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