



MEMO TO: Finance, Administration, and Communications Committee of the Whole

FROM: Jane Christenson, Deputy City Administrator

DATE: November 27, 2018

SUBJECT: **Approval of Sound Transit Reimbursement Agreements for City Real Property Services for Sound Transit 2 (E360) and 3 (DRLE) Projects**

I. PURPOSE ☐ For Info Only ☐ Potential Agenda Item ☒ Scheduled for Council Action

II. RECOMMENDATION

Approve the Sound Transit agreements for reimbursement of professional services associated with real property transaction for the Sound Transit 2 (E360) and 3 (Downtown Redmond Link Extension or DRLE) projects.

III. DEPARTMENT CONTACTS

Jane Christenson, Deputy City Administrator; 556-2107 or jchristenson@redmond.gov

IV. DESCRIPTION/BACKGROUND

Earlier this year, the City Council approved a real property consultant agreement with LaBonde Land for professional services related to the Sound Transit 2 (E360) and 2 (DRLE) projects. These added services were needed to augment the City's capacity to complete this significant body of real property transaction work. Sound Transit has committed to reimburse the City for these costs, as well as the requisite legal review to execute these transactions. The attached agreement is the vehicle for this reimbursement.

Since this approval, the City Council has reviewed the scope of this Sound Transit work (Agreement Attachment A), and authorized administrative approval to execute certain transactions to expedite this process as a prerequisite to and in alignment with Sound Transit's construction schedule (Agreement Attachment B).

V. PREVIOUS DISCUSSIONS HELD

April 3, 2018	City Council Approval of Real Property Consultant Contract
June 26, 2018	Council FAC Committee Consideration to Authorize Mayor to Execute Certain Sound Transit Real Transit Property Transactions
August 28, 2018	Council FAC Committee Consideration to Authorize Mayor to Execute Certain Sound Transit Real Transit Property Transactions
October 2, 2018	Authorization for the Mayor to Execute/Approve Sound Transit Real Property Transactions Within Certain Parameters

V. TIME CONSTRAINTS

City staff have been working with LaBonde since late March/April, incurring costs in anticipation of Sound Transit reimbursement for the E360 and DRLE work. Approval of the reimbursement agreement will allow for the City to be repaid for the costs it has already covered in 2018, as well as the significant body of real property transaction work to come in 2019 and beyond.

Sound Transit submitted a draft agreement for DRLE services for the City's review – with minor changes, this agreement will also serve as the template for the E360 reimbursement agreement. Pending the FAC Committee's direction, staff plans to bring approval of both agreements forward for Council action on December 4, 2018, the last business meeting of the year.

VI. LIST OF ATTACHMENTS

Attachment A: Agreement

ATTACHMENT A
AGREEMENT FOR REIMBURSEMENT OF PROFESSIONAL SERVICES
ASSOCIATED WITH REAL PROPERTY TRANSACTIONS
FOR DOWNTOWN REDMOND LINK EXTENSION

This Reimbursement Agreement (this “Agreement”) is entered into by and between the CITY OF REDMOND, a Washington municipal corporation (“City”) and the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority of the State of Washington (“Sound Transit”). Each party is sometimes referred to individually in this Agreement as a “Party” and together as the “Parties.”

RECITALS:

- A. The City is a non-charter municipal code city incorporated under the laws of the State of Washington, with authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens and other lawful purposes.
- B. Sound Transit is a regional transit authority created pursuant to Chs. 81.104 and 81.112 RCW with all powers necessary to implement a high capacity transit system within its boundaries in King, Pierce, and Snohomish Counties.
- C. Sound Transit is implementing the Downtown Redmond Link Extension, an approximately 3.4 mile light rail extension from Redmond Technology Station (currently called Overlake Transit Center) to downtown Redmond with stations in southeast Redmond and downtown Redmond (the “Project”).
- D. On September 27, 2018 the Sound Transit Board of Directors adopted Resolution No. R2018-32 selecting the route, profiles, and station locations for the Project.
- E. Sound Transit requires certain property interests from the City, including easements, street vacations, and fee acquisitions, in order to construct and operate the Project.
- F. Sound Transit and the City now desire to enter into this Agreement to facilitate Sound Transit’s acquisition of certain City-owned real property interests required for the Project, including the schedule for completing the real property transactions and reimbursement to the City up to the amount stated herein for professional services associated with the real property transactions for the Project.

AGREEMENT:

Now, therefore, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to establish roles and responsibilities with regard to Sound Transit's acquisition of certain real property interests needed for the Project and a process for Sound Transit to reimburse the City for its use of real estate-related professional services.
2. Property Acquisition and Schedule.
 - a. Sound Transit has identified certain real property interests owned by the City required for the Project. The real property interests are described on Exhibit A, attached hereto and incorporated by this reference (the "Real Property Matrix"). The City shall convey the property interests described in the Real Property Matrix to Sound Transit. The Mayor and Sound Transit's Chief Executive Officer, or their respective designees, are authorized to enter into such conveyances documents as may be necessary to accomplish the transactions described in the Real Property Matrix.
 - b. The Parties acknowledge the importance of completing the real property transactions in a timely manner in order to complete the Project and begin light rail operations on time. The Parties will work in good faith toward meeting the target dates identified in the schedule attached as Exhibit B and incorporated by this reference (the "Schedule"). The Parties will regularly review staffing plans and levels of effort with the intent to maintain adequate staffing for the timely completion of the real property transactions contemplated in this Agreement.
3. Designated Representatives Authority and Responsibilities. Each Party shall have a designated representative (the "Designated Representative") who shall serve as a single point of contact for the real property transactions contemplated in this Agreement. The Designated Representatives shall participate in interagency meetings and coordinate involvement by their respective staff and consultants. Each Party's Designated Representative is identified below. A Party may change its Designated Representative by providing written notice to the other Party during the term of this Agreement.

City of Redmond

Name
Title
Address
Phone
Email

Sound Transit

Rhonda Thomsen
Real Property Project Manager
401 S. Jackson St.
Seattle, WA 98104
(206) 398-5455
rhonda.thomsen@soundtransit.org

4. Cooperation and Good Faith Efforts. The Parties will incorporate the following principles of cooperation in the execution of this Agreement and the Project:

- a. Support an open and transparent decision-making process.
- b. Recognize the constraints and obligations of each Party's regulatory framework.
- c. Provide for a proactive and collaborative working relationship to increase Project benefits and understand each other's goals and strive to support those goals wherever practicable.
- d. Commit the Parties to work in good faith to deliver the Project within scope, schedule, and budget.

The Parties understand and agree that completing the activities described in this Agreement depends upon timely and open communication and cooperation between the Parties. In this regard, communication of issues, changes, or problems that arise with any aspect of the work should occur as early as possible in the process, and not wait for explicit due dates or deadlines. Each Party agrees to work cooperatively and in good faith toward resolution of any such issues.

5. Reimbursement for Professional Services.

- a. Sound Transit shall reimburse the City up to the amounts shown on the attached Exhibit C for its use of on-call real estate services, appraisal, survey, and outside legal counsel services (the "Consultant Services") to complete the transactions described on the Real Property Matrix. Reimbursement shall be for actual expenses incurred and shall not include City staff time associated with directing such Consultant Services. The City shall submit invoices no more frequently than monthly with a description of the services provided by the consultant, the time spent by the consultant, and the consultant's hourly rate or flat fee amount.

6. Invoicing. The City shall submit its invoices with the required documentation (described above) via email to AccountsPayable@SoundTransit.org or via mail to:

Sound Transit
Accounts Payable
401 South Jackson St.
Seattle, WA 98104-2826

Sound Transit shall pay invoices accompanied by appropriate documentation within 30 calendar days of receipt. If Sound Transit determines that an invoice lacks sufficient documentation to support payment, Sound Transit will notify the City of its determination and request that the City provide additional documentation. Sound Transit may withhold payment of the invoice until supporting documentation is provided; however, such approval will not be unreasonably withheld.

7. Audits. Sound Transit and the City shall maintain accounts and records, including contract and financial records that sufficiently and properly reflect costs incurred for work performed under this Agreement so as to ensure proper accounting for all monies paid to the City by Sound Transit. These records will be maintained for a period of six (6) years after termination or

expiration of this Agreement unless permission to destroy the records is granted by the Office of the Archivist pursuant to RCW Chapter 40.14 and agreed to by the City and Sound Transit.

8. Suspension and Termination. If the City has not received payment from Sound Transit as provided in Section 6, the City may suspend performance of all or any part of the associated work after giving Sound Transit thirty days' notice of the City's intent to do so. Such suspension will remain in effect until payment is made in full, at which time the suspension will be lifted.
 - a. Either Party may terminate this Agreement for cause in the event that the other Party fails to fulfill its material obligations under this Agreement in a timely manner or breaches any material provision of this Agreement and the dispute resolution process described below and has failed to reach resolution within the timelines described therein. The Party wishing to terminate this Agreement for cause shall provide the other Party with notice of its intent to terminate and shall give the other Party an opportunity to correct the failure to perform or breach within thirty (30) days of the notice or within such longer period as may be necessary in the event that correction cannot reasonably be accomplished within thirty (30) days. If the failure or breach is not corrected or cured, this Agreement may be terminated by the aggrieved party by giving ninety (90) days' notice to the other Party.
 - b. This Agreement will also terminate with the mutual consent of both parties.
 - c. Except as provided in this Section, a termination by either Party will not extinguish or release either Party from liability for costs or obligations existing as of the date of termination. Any costs incurred prior to proper notification of termination will be borne by the Parties in accordance with the terms of this Agreement.
9. Dispute Resolution
 - a. The Parties agree to work cooperatively and in good faith to resolve issues. Neither party shall take or join any action in any judicial or administrative forum to challenge actions of the other party associated with this Agreement or the Project, except as set forth herein.
 - b. The Parties will use their best efforts to prevent and resolve potential sources of conflict at the lowest level possible.
 - c. Any disputes or questions of interpretation of this Agreement or the performance of either Party under this Agreement that may arise between Sound Transit and the City will be governed under the dispute resolution provisions in this Section. The Parties agree that cooperation and communication are essential to resolving issues efficiently.
 - d. Either Party may refer a dispute to the dispute resolution process by providing written notice of such referral to the other Party's Designated Representative. The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement or Project using good faith negotiations by engaging in the following dispute resolution process should any such disputes arise:

- i. Level One - Sound Transit's Designated Representative and the City's Designated Representative shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) days after referral of that dispute to Level One, either party may refer the dispute to Level Two.
 - ii. Level Two - Sound Transit's Director of Real Estate, and the City's [Public Works Director] or [Planning Director], depending on the dispute, shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.
 - iii. Level Three - Sound Transit's Chief Executive Officer or designee and the City's Mayor or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner.
 - e. Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within fourteen days after referral of that dispute to Level Three, the Parties may file suit, seek any available legal remedy, or agree to alternative dispute resolution methods such as mediation. At all times prior to resolution of the dispute, the Parties shall continue to perform any undisputed obligations and make any undisputed required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute. Notwithstanding anything in this Agreement to the contrary, neither party has an obligation to agree to refer the dispute to mediation nor other form of dispute resolution following completion of Level Three of the process described herein. Such agreement may be withheld for any reason or no reason.
10. Duration of Agreement. This Agreement will take effect upon the last date of signature by the Parties as set forth below. This Agreement will remain in effect until the Project contemplated by this Agreement is completed and open to the public, unless this Agreement is suspended or terminated pursuant to Section 6.
11. Assignment and Beneficiaries. Neither Party may assign all or any portion of this Agreement without the express written consent of the other Party. There are no third-party beneficiaries to this Agreement.
12. Notices
- a. Unless otherwise provided herein, all notices and communications concerning this Agreement will be in writing and addressed to the Designated Representative.
 - b. Unless otherwise provided herein, all notices will be either: (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 Designated Representative as listed herein; however, notice under Section 11,

Suspension and Termination, must be delivered in person or by certified mail, return receipt requested.

13. Federal Provisions. Sound Transit's design and construction of the Project may become subject to a financial assistance contract between Sound Transit and the FTA. Both Parties recognize that changes to this Agreement may be necessary to comply with FTA funding requirements.

14. General Provisions

- a. The Parties shall not unreasonably withhold requests for information, approvals, or consents provided for in this Agreement; provided, however, that approvals or consents required to be given by vote of the Sound Transit Board or Redmond City Council are recognized to be legislative actions. The Parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement provided, however, that where such actions or documents must be first approved by vote of the Sound Transit Board or Redmond City Council, such actions are recognized to be legislative actions. The City and Sound Transit agree to work cooperatively with each other to achieve the mutually agreeable goals as set forth in this Agreement.
- b. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party will be deemed, or represent themselves to be, employees of any other party.
- c. Neither Party shall be relieved of its obligations to comply promptly with any provision of this Agreement by reason of any failure by the other Party to enforce prompt compliance, and such failure to enforce will not constitute a waiver of rights or acquiescence in the other Party's conduct.
- d. Each Party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement. If either Party brings any claim or lawsuit arising from this Agreement, each Party shall pay all its legal costs and attorney's fees and expenses incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law.
- e. This Agreement and related task orders may be amended only by a written instrument executed by each of the Parties hereto. The Designated Representatives may by mutual agreement amend the Exhibits and such amendments will be binding upon the parties without the need for formal approval by the Sound Transit Board and the Redmond City Council, as long as the amendments are generally consistent with this Agreement and do not exceed the authority granted by the Sound Transit Board and City Council.
- f. This Agreement may be executed in counterparts, each of which will be deemed an original, and all counterparts together will constitute but one and the same instrument.
- g. In case any term of this Agreement is held to be invalid, illegal, or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement will in any way be affected thereby.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement by having its authorized representative affix his/her name in the appropriate space below:

SOUND TRANSIT

THE CITY OF REDMOND

By: _____
Peter M. Rogoff, Chief Executive Officer

By: _____
John Marchione, Mayor

Date: _____

Date: _____

Authorized by Motion No. M2018-XX

Authorized by City Council
Motion on _____, 2018.

Approved as to form:

Approved as to form:

By: _____
Joanna Valeri, Senior Legal Counsel

By: _____
James E. Haney, City Attorney

Exhibits

- A. Real Property Matrix
- B. Schedule
- C. Reimbursement Amounts

Exhibit A

Real Property Matrix

Exhibit B

Schedule

Exhibit C
Reimbursement for Consultant Services

Real Estate Consultant: \$184,262

Outside Legal Counsel: \$ 50,000

Surveying & Mapping: \$ 11,440

Review Appraiser: \$ 7,500

Total: \$ 253,202