

**RESOLUTION NO. 2830**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING APPROVAL OF A SYSTEM ACCESS FUND PROJECT AGREEMENT WITH CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY FOR THE ELHI HILL TRAIL CONNECTOR**

**WHEREAS**, the Sound Transit 3 (“ST3”) high capacity transit system expansion plan was approved by the voters in November 2016 and includes a \$100 million System Access Program to “fund such projects as safe sidewalks and protected bike lanes, shared use paths, improved bus-rail integration, and new pick-up and drop-off areas that provide convenient access so that more people can use Sound Transit services;” and

**WHEREAS**, Sound Transit opened the System Access Fund 2019 Call for Projects in February 2019 and subsequently evaluated applications from local governments against evaluation criteria identified by the Sound Transit Executive Committee; and

**WHEREAS**, the City submitted an application to connect the Fennel Creek Trail to the Sound Transit Transfer Facility in response to the call for projects in 2019 for \$661,936; and

**WHEREAS**, at the conclusion of the public comment period and online open house in August 2019, the Sound Transit Board of Directors approved 30 applications from 27 local governments on September 26, 2019; and

**WHEREAS**, the City was one of the 30 applications approved by the Sound Transit Board of Directors; and

**WHEREAS**, Sound Transit and the City have a joint interest in delivering the Elhi Hill Trail Connector which will be approximately 430 feet in length and overcome about a 90 foot grade change to connect the Fennel Creek Trail to the SR 410 Pedestrian Corridor and the Sound Transit Transfer Facility which was duly approved by the Sound Transit Board;

**NOW THEREFORE, BE IT RESOLVED** that the City Council of the City of Bonney Lake does hereby authorize the Mayor to sign the attached System access fund Project Agreement with Central Puget Sound Regional Transit Authority for the Elhi Hill Trail Connector.

**Passed by the City Council this 26th day of May, 2020.**

DocuSigned by:

*Neil Johnson, Jr.*

20583FB9C201400

Neil Johnson, Jr., Mayor

AUTHENTICATED:

DocuSigned by:

*Harwood T. Edvalson*

E46A40AD29884A1...

Harwood T. Edvalson, City Clerk

APPROVED AS TO FORM:

DocuSigned by:

*Kathleen Haggard*

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Kathleen Haggard, City Attorney

City of Bonney Lake, Washington  
**City Council Agenda Bill (AB)**

<b>Department/Staff Contact:</b> PS / John Woodcock	<b>Meeting/Workshop Date:</b> 26 May 2020	<b>Agenda Bill Number:</b> AB20-46
<b>Agenda Item Type:</b> Resolution	<b>Ordinance/Resolution Number:</b> 2830	<b>Sponsor:</b>

**Agenda Subject:** Authorizing a System Access Fund Project Agreement with Central Puget Sound Regional Transit Authority for the Elhi Hill Trail Connector.

**Full Title/Motion:** A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing A System Access Fund Project Agreement With Central Puget Sound Regional Transit Authority For The Elhi Hill Trail Connector.

**Administrative Recommendation:** Approve

**Background Summary:** Sound Transit 3 (“ST3”) high capacity transit system expansion plan was approved by the voters in November 2016 and includes a \$100 million System Access Program to “fund such projects as safe sidewalks and protected bike lanes, shared use paths, improved bus-rail integration, and new pick-up and drop-off areas that provide convenient access so that more people can use Sound Transit services. Sound Transit opened the System Access Fund 2019 Call for Projects in February 2019.

The City submitted an application in reponse to this call which would connect the Fennel Creek Trail to the Sound Transit Transfer Facility. The project is approximately 430 feet in length and will overcome about a 90 foot grade change to connect the Fennel Creek Trail to the SR 410 Pedestrian Corridor and the Sound Transit Transfer Facility.

At the conclusion of the public comment period and online open house in August 2019, the Sound Transit Board of Directors approved 30 applications from 27 local governments on September 26, 2019 and the City was one of the 30 applications approved by the Sound Transit Board of Directors.

The grant is projected to cover 100 percent of both design and construction. The grant provided is for \$661,936. Design and Construction Services costs are estimated to be \$124,113, Construction costs are estimated to be \$413,710, Contingency is estimate to be \$124,113 (30%).

**Attachments:** Resolution 2830, Agreement, Planning Estimate, Map

**BUDGET INFORMATION**

<b>Budget Amount</b>	<b>Current Balance</b>	<b>Required Expenditure</b>	<b>Budget Balance</b>	<b>Fund Source</b>
\$0	\$0	\$0	\$0	<input type="checkbox"/> General <input type="checkbox"/> Utilities <input checked="" type="checkbox"/> Other

**Budget Explanation:** Sound Transit Grant

**COMMITTEE, BOARD & COMMISSION REVIEW**

<b>Council Committee Review:</b>	Community Development	<i>Approvals:</i>		<b>Yes</b>	<b>No</b>
	Date: 19 May 2020	Chair/Councilmember	Dan Swatman	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Councilmember	Michelle Keith	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Councilmember	Tom Watson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Forward to:	<b>Consent Agenda:</b>		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

**Commission/Board Review:**

**Hearing Examiner Review:**

**COUNCIL ACTION**

Workshop Date(s):

Public Hearing Date(s):

Meeting Date(s):

Tabled to Date:

**APPROVALS**

**Director:**

*Ryan Johnstone*

**Mayor:**

*Neil Johnson Jr.*

**Date Reviewed**

**by City Attorney:**  
(if applicable)

## SYSTEM ACCESS FUND PROJECT AGREEMENT

### BETWEEN THE CITY OF BONNEY LAKE AND THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY FOR

#### ELHI HILL TRAIL CONNECTOR

#### GA 0017-20

This Agreement, made and entered into on 6/8/2020 between the City of Bonney Lake (hereinafter "City"), and the Central Puget Sound Regional Transit Authority, (hereinafter "Sound Transit");

WHEREAS, the Sound Transit 3 ("ST3") high capacity transit system expansion plan was approved by the voters in November 2016 and includes a \$100 million System Access Program to "fund such projects as safe sidewalks and protected bike lanes, shared use paths, improved bus-rail integration, and new pick-up and drop-off areas that provide convenient access so that more people can use Sound Transit services;"

WHEREAS, Sound Transit opened the System Access Fund 2019 Call for Projects in February 2019 and subsequently evaluated applications from local governments against evaluation criteria identified by the Sound Transit Executive Committee;

WHEREAS, at the conclusion of the public comment period and online open house in August 2019, the Sound Transit Board of Directors approved 30 applications from 27 local governments on September 26, 2019;

WHEREAS, Sound Transit and the City have a joint interest in delivering the Elhi Hill Trail Connector which will be approximately 430 feet in length and overcome about a 90 foot grade change to connect the Fennel Creek Trail to the SR 410 Pedestrian Corridor and the Sound Transit Transfer Facility, (hereinafter the "Project), which was duly approved by the Sound Transit Board as part of the System Access Program by virtue of M2019-97;

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, it is mutually agreed as follows:

#### 1. GENERAL

- 1.1. Purpose. The intent of this Agreement is to establish the terms and conditions for the eligible work to be performed for the Project during the duration of this Agreement. Attached hereto as **Exhibit A**, is the Scope of Work and Deliverables, which outlines the activities, products and general capital improvements eligible for funding by Sound Transit, as presented to Sound Transit in the City's application for Project funding. Funds may be expended on eligible elements listed in **Exhibit A** up to the not to exceed amount outlined in Section 1.2 below.

- 1.2. Agreement Not-to-Exceed Amount. The total amount of the Agreement shall not exceed \$661,936. No payments will be made in excess of the established not-to-exceed amount according to the Project Description outlined in Section 2.1 below.

The funding amount provided by Sound Transit does not include federal funding.

## 2. PROJECT DESCRIPTION

- 2.1. The Project is a missing link between the Fennel Creek Trail and the commercial corridor along SR 410. This link will connect the trail with the existing Sound Transit Transfer Facility. The connector length will be about 430 feet in plan length with an elevation rise of about 90 feet. The staircase width will be ten (10) feet with periodic landing (as identified in **Exhibit A**, Scope of Work and Deliverables). Sound Transit funding will support two Phases:
- 2.1.1. Design Phase. The City will design the improvements. The Design Phase is expected to require up to \$125,000 of the total Not-to-Exceed amount noted in Section 1.2. Any work in the Design Phase exceeding \$125,000 must be approved by Sound Transit. To be reimbursed for the Design Phase, the City must provide the following: to be reimbursed for the Design Phase, the City must provide the following: 1) **Exhibit B**, Project Schedule, 2) **Exhibit C**, Engineer's Estimate.
- 2.1.2. Construction Phase. The City will construct the Project. To be reimbursed for the Construction Phase, the City must provide the following: 1) completed design plans for Sound Transit review, 1) updated **Exhibit B**, Project Schedule; 2) **Exhibit D**, Environmental Review Certification; 3) **Exhibit E**, ROW Certification; 4) updated **Exhibit C**, Engineer's Estimate.

## 3. PROJECT MANAGEMENT

- 3.1. Designated Representatives. The City and Sound Transit have designated formal points of coordination for this Agreement. The Designated Representatives shall communicate regularly to discuss the status of the tasks to be performed, to identify upcoming decisions related to the Project, to provide any information or input necessary to inform those decisions, and to resolve any issues or disputes related to the Project consistent with this Agreement.

The Designated Representatives are:

### CITY

John Woodcock  
City Engineer  
9002 Main Street E  
Bonney Lake, WA 98391  
253-447-4336  
woodcockj@cobl.us

### SOUND TRANSIT

Alex Krieg  
Deputy Director, Planning & Integration  
401 S Jackson St  
Seattle WA 98104  
206-903-7663  
Alex.Krieg@soundtransit.org

The Parties may change designated representatives by written notice to the other Party during the term of the Agreement.

- 3.2. Reporting Requirements. The City is required to submit a Quarterly Progress Report to Sound Transit's Designated Representative to include the below elements (**Exhibit F**: Template for Reporting Requirements). The report may include supporting documentation (photos, City documentation, financial information, etc.).
  - 3.2.1. Project Update. Status of major activities including, Phase 1-Design and Phase 2-Construction, in the reporting period, both current and upcoming.
  - 3.2.2. Assessment of on-going risks. The City will notify Sound Transit of any issues that may affect the Project Schedule and overall implementation of the Project.
  - 3.2.3. Project Funding. Summary of expenditures during reporting period, and expected expenditures in the subsequent reporting period.
- 3.3. Eligible Costs. Eligible costs include actual costs identified in **Exhibit A**, Scope of Work and Deliverables.

Additional Project Funding. The Not-to-Exceed funding amount in Paragraph 1.2 represents approximately one hundred percent (100%) of the total Project cost. The City is responsible for obtaining any overruns of the Project funding if it occurs.

- 3.4. Project Schedule. The parties agree to the project schedule identified in **Exhibit B**, Project Schedule. The City shall complete all work and deliverables of the Project by one year after the expected project completion date shown in **Exhibit B**, Project Schedule, unless otherwise mutually agreed in writing by both Parties. The City is responsible for notifying Sound Transit of any material changes to the Project Schedule and rationale for the change in writing as part of its quarterly reporting requirements.
- 3.5. City Work. The City is solely responsible for the environmental review, design, permitting, construction, project and construction management of all applicable Project elements including, but not limited to, procurement and construction administration. The City is responsible for all costs relating to the operations or maintenance of service and capital improvements related to the Project upon its completion. The City will be the owner of the completed Project. Sound Transit is not responsible for funding any service operations or for maintenance of any improvements implemented under this Agreement.
- 3.6. Signage. Any identification signage that is used during the Project shall identify Sound Transit as a funding partner.
- 3.7. Design Review. The City shall provide Sound Transit the opportunity to review design plans at milestones identified in **Exhibit B**, Project Schedule.
- 3.8. Project Closeout. Before payment of the final invoice, the City and Sound Transit will meet to ensure final deliverables are complete per **Exhibit A**, Scope of Work and Deliverables.

#### 4. INVOICING

- 4.1. The City will submit quarterly invoices and supporting documentation that align with the Scope of Work and Deliverables for payment (See **Exhibit G**, Invoice Template). The invoices must include the Sound Transit purchase order number provided by Sound Transit.
- 4.2. The City will submit its invoices with the required documentation, in two (2) .pdf files, via email to [accountspayable@soundtransit.org](mailto:accountspayable@soundtransit.org) (and carbon copying Sound Transit's Designated Representative). Invoices will be paid within (30) days of Sound Transit's receipt of the invoice and acceptable and complete supporting documentation.
- 4.3. The City agrees to submit a final invoice to Sound Transit within forty-five (45) days after the City has completed each phase of the work.
- 4.4. 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 shall not be unreasonably withheld.

## 5. TERM, SUSPENSION, AND TERMINATION

- 5.1. Term. This Agreement shall take effect upon the last date of signature by the Parties as set forth below. This Agreement shall remain in effect until 180 days following Project completion, unless extended by mutual written agreement of the Parties, superseded by a future agreement, or suspended or terminated in accordance with this Section 5.
- 5.2. Termination by Sound Transit. Sound Transit may terminate this Agreement under the following circumstances:
  - 5.2.1. If work as defined in **Exhibit A** is not completed by one year after the expected project completion date shown in **Exhibit B**, Project Schedule, unless otherwise agreed to by the Parties.
  - 5.2.2. If the City fails to make progress towards completing the Project and the City has not provided adequate assurances of its desire or ability to complete the Project and commence operations.

If the Agreement is terminated under this Section 5.2, the City shall reimburse Sound Transit the full amount of all payments it made to the City under this Agreement within 90 days of the date of termination. The City may ask for an extension of time to complete the Project for good cause. Sound Transit's agreement to extend the completion will not be unreasonably withheld.

- 5.3. Termination by Either Party. 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 has failed to reach resolution within the timelines described therein. The Party wishing



to terminate this Agreement for cause will provide the other Party with notice of its intent to terminate and will 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.

- 5.4. 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.

## 6. INDEMNITY

- 6.1. To the maximum extent permitted by law, the City will hold harmless from, and indemnify and defend Sound Transit (including its board members, officers, directors and employees) (the "Indemnified Parties") from and against any and all claims, demands, losses, lawsuits, actions, or liability of any kind or nature, arising out of or relating to the City's design, construction, maintenance or operation of the Project, including claims by the City's employees. **THE CITY SPECIFICALLY ASSUMES POTENTIAL LIABILITY FOR ACTIONS BROUGHT BY THE CITY'S OWN EMPLOYEES OR FORMER EMPLOYEES AGAINST ANY INDEMNIFIED PARTY, AND FOR THAT PURPOSE THE CITY SPECIFICALLY WAIVES ALL IMMUNITY AND LIMITATIONS ON LIABILITY UNDER THE WORKERS COMPENSATION ACT, RCW TITLE 51, OR ANY INDUSTRIAL INSURANCE ACT, DISABILITY BENEFIT ACT OR OTHER EMPLOYEE BENEFIT ACT OF ANY JURISDICTION THAT WOULD OTHERWISE BE APPLICABLE IN THE CASE OF SUCH CLAIM. THIS INDEMNITY OBLIGATION SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CITY OR A CONTRACTOR UNDER WORKERS' COMPENSATION, DISABILITY BENEFIT OR OTHER EMPLOYEE BENEFITS LAWS. THE CITY RECOGNIZES THAT THIS WAIVER WAS SPECIFICALLY ENTERED INTO AND WAS THE SUBJECT OF MUTUAL NEGOTIATION. PROVIDED, HOWEVER, THE CITY'S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS PARAGRAPH EXTENDS ONLY TO CLAIMS AGAINST THE CITY BY SOUND TRANSIT, AND DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CITY'S EMPLOYEE(S) DIRECTLY AGAINST THE CITY.** The foregoing indemnity applies only to the extent of the City's negligence.

- 6.2. The City further agrees to assume the defense of the Indemnified Parties with legal counsel acceptable to Sound Transit, whose acceptance shall not be unreasonably withheld. In all legal or claim proceedings arising out of, in connection with, or incidental to the City's work or that of its contractors, subcontractors of any tier, suppliers, consultants and sub-consultants. The City shall pay all defense expenses, including attorney's fees, expert fees, and costs incurred directly or indirectly on account of such litigation or claims, and shall satisfy any judgment rendered in connection therewith. The City may settle any suit, claim, action cost, loss penalty

or damages, subject to the approval of Sound Transit, whose approval shall not be unreasonably withheld, if such settlement completely and forever extinguishes any and all liability of the Indemnified Parties. In the event of litigation between the Parties hereto to enforce the rights under this provision, reasonable attorney fees shall be allowed to the prevailing party.

- 6.3. Each Party agrees to bear full responsibility for any and all tax liabilities owed that may arise in relation to this Agreement, and each Party will fully indemnify and hold the other Party, its officers, agents and employees harmless from any tax liability owed by the other Party arising from or related to the transactions set forth herein, including, but not limited to, any taxes, penalties, fines, and/or interest that are assessed by any tax authority against the indemnifying Party and further including all attorneys' fees and costs incurred in response to any claims or assessments by any tax authority against indemnifying Party, its officers, agents and employees.
- 6.4. The obligations in this Section will survive termination or completion of this Agreement as to any claim, loss or liability arising from events occurring prior to such termination or completion.

## **7. AUDITS**

- 7.1. Each Party will maintain accounts and records, including contract and financial records that sufficiently and properly reflect all direct and indirect costs of any nature expended 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 Parties.
- 7.2. The City will make all Project records available for Sound Transit inspection upon prior reasonable request. Audits may be performed by Sound Transit or its independent public accountants to ensure compliance with and enforcement of this Agreement. Should the audit determine that funds from Sound Transit have been used for expenses that were ineligible, then Sound Transit shall provide a copy of the auditor's determination to the City. If the City agrees with the determination, then the City will reimburse Sound Transit the amounts found to have been ineligible. If the City disputes the auditor's determination, then the matter shall be referred to the dispute resolution process set forth in Section 9.

## **8. INSURANCE**

- 8.1. Coverage. During the construction phase of any eligible elements within the Project, the City shall provide primary insurance coverage in the amounts that it deems necessary for construction projects of similar size and cost. If the City is self-insured, it shall provide to Sound Transit's risk manager a certificate of self-insurance. The City shall require their contractor(s) and sub-contractors to obtain and maintain insurance in amounts and types suitable to protect Sound Transit and the City from exposures presented by the work

performed under this Agreement. The minimum insurance requirements during the entire term of this Agreement are set forth below:

a) Commercial General Liability in the amount of two million dollars (\$2,000,000) each occurrence limit, two million dollars (\$2,000,000) general aggregate limit, covering bodily injury including death, personal injury, property damage, Employers' Liability and contractual coverage endorsements, and utilize insurers and coverage forms acceptable to Sound Transit.

b) Commercial Auto Liability coverage for bodily injury and property damage utilizing insurers and coverage forms acceptable to Sound Transit, with a limit of at least one million dollars (\$1,000,000) combined single limit.

c) Worker's Compensation insurance coverage, where applicable, shall comply with State of Washington Labor and Industries requirements.

d) Builders Risk coverage will be the responsibility of all contractors and subcontractors.

e) Pollution Liability (if there is any potential environmental liability exposure) in the amount of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

f) Professional Liability (if there is a potential professional liability exposure) in the amount of one million dollars (\$1,000,000) per claim.

8.2. Certificates. Certificates of insurance must name Sound Transit as an "Additional Insured," and shall reference the number and title of this Agreement. All insurance coverage obtained by the City or its contractors and subcontractors must name Sound Transit, its officers and employees as "additional insured's" and contain "severability of interest" (cross liability) provisions. The City's and the contractor's insurance policies shall be primary to and not contributing with any insurance or self-insurance that may be carried by Sound Transit and waive their right of Subrogation against Sound Transit. Certificates of Insurance, including the Additional Insured Endorsements, Waiver of Subrogation Endorsements and Primary and Non-Contributory Endorsements, will be provided to Sound Transit before the start of any work performed under this Agreement.

## 9. DISPUTE RESOLUTION

9.1. 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 shall be governed under the dispute resolution provisions in this Section 9. The Parties agree that neither Party may take or join any action in any judicial or administrative forum to challenge the other Party's performance under this Agreement until the dispute resolution process in this Section 9 has been exhausted.

- 9.2. The Parties agree that cooperation and communication are essential to resolving issues efficiently. The Parties agree to use their best efforts to prevent and resolve potential sources of conflict at the lowest level possible.
- 9.3. 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 using good faith negotiations by engaging in the following dispute resolution process should any such disputes arise:
- a. 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.
  - b. Level Two - Sound Transit's Deputy Executive Director of the Office of Planning & Integration and the City's Departmental Leads 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.
  - c. Level Three - Sound Transit's Executive Director of the Planning, Environment, and Project Development Department or Designee and the City's Department Directors or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner.
- 9.4. In the event the dispute is not resolved at Level Three within fourteen (14) days after referral of that dispute to Level Three, the Parties are free to 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 any obligation to participate in mediation or any other form of alternative dispute resolution following completion of Level Three of the process described herein. A Party may decline to participate in such proceeding for any reason or no reason.

## 10. LEGAL PROVISIONS

- 10.1. Warranties. By execution of this Agreement, both Parties warrant that they have the full right and authority to enter into and perform this Agreement, and that by entering into or performing this Agreement, they are not in violation of any law, regulation, or agreement; and that the execution, delivery and performance of the Agreement has been duly authorized by all requisite corporate action, and that the signatories hereto, which have signed on each Parties behalf, are authorized to sign this Agreement.

- 10.2. No waiver. Neither Party will 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.
- 10.3. Costs. Each Party will be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties. If either Party brings any claim or lawsuit arising from this Agreement, each Party will 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; however, nothing in this paragraph will be construed to limit the Parties' rights to indemnification.
- 10.4. Public Records. Each Party shall be responsible for its own public records and public records requests.
- 10.5. Notices. All notices required under this Agreement must be in writing and addressed to the Designated Representative. All notices must 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. However, notice under Section 5, termination, must be delivered in person or by certified mail, return receipt requested.
- 10.6. The parties may 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 the City Board are recognized to be legislative actions. The parties will take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement. The City and Sound Transit will work cooperatively with each other to achieve the mutually agreeable goals as set forth in this Agreement.
- 10.7. Time is of the essence in every provision of this Agreement. Unless otherwise set forth in this Agreement, the reference to "days" shall mean calendar days unless otherwise noted. Any reference to "working days" shall exclude any legal holidays and weekend days. If any time for action occurs on a weekend or legal holiday, then the time period shall be extended automatically to the next business day.
- 10.8. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one Party shall be deemed, or represent themselves to be, employees of any other Party.
- 10.9. This Agreement has been reviewed and revised by legal counsel for both Parties and no presumption or rule that ambiguity shall be construed against the Party drafting the

document applies to the interpretation or enforcement of this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by applicable law.

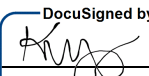
10.10. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.


10.11. Severability. In case any term of this Agreement is held invalid, illegal, or unenforceable in whole or in part, by a court of law, the Parties will reform the agreement to satisfy the original intent of the Parties.

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

SOUND TRANSIT

CITY

DocuSigned by:  
By:   
Kimberly Farley, Deputy CEO

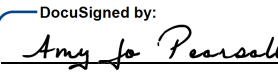
DocuSigned by:  
By:   
Neil Johnson, Jr., Mayor

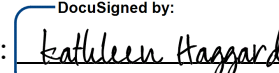
Date: 6/8/2020

Date: 6/8/2020

Approved as to form:

Approved as to form:

DocuSigned by:  
By:   
Sound Transit Legal Counsel

DocuSigned by:  
By:   
City Attorney

**Exhibit List:**

- Exhibit A: Scope of Work and Deliverables
- Exhibit B: Project Schedule
- Exhibit C: Engineer's Estimate
- Exhibit D: Environmental Review Certification
- Exhibit E: ROW Certification
- Exhibit F: Template for Reporting Requirements
- Exhibit G: Invoice Form

## **Exhibit A: Scope of Work and Deliverables**

The Elhi Hill Trail Connector is a missing link between the Fennel Creek Trail that meanders Fennel Creek (approximately 3 miles in length when completed) connecting residential neighborhoods and ultimately the commercial corridor along SR 410.

The connector length will be about 430 feet in plan length with an elevation rise of about 90-feet.

The staircase width will be ten (10) feet with periodic landings. Assuming an 8-inch rise and 12-inch tread we are anticipating around 16 landings (5-foot long landings).

### **SCOPE OF WORK (Phase 1)**

- **Contract with Engineering Team**
- **Survey project limits**
- **Design Trail Connector**
- **Review 90% Plans**
- **Approve 100% PS&E Package for Advertisement**

### **DELIVERABLES (Phase 2)**

- **Plans, Specifications, and Engineering for Advertisement**
- **Notice of Award**
- **Notice of Completion**
- **Final Pay Estimate**
- **Project Photographs**

## Exhibit B: Project Schedule

<b><u>Title</u></b>	<b><u>Month/Year</u></b>
<b>Approve System Access Funding Agreement through City Council</b>	<b>March/2020</b>
<b>Select A&amp;E Team for Project Design</b>	<b>April/2020</b>
<b>Award contract to A&amp;E Team</b>	<b>May/2020</b>
<b>Review 90% Plans for Elhi Hill Trail Connector</b>	<b>Nov/2020</b>
<b>Approve 100% PS&amp;E Package for Advertisement</b>	<b>Jan/2021</b>
<b>Advertise PS&amp;E Package for 2 Weeks</b>	<b>Feb/2021</b>
<b>Bid Opening</b>	<b>March/2021</b>
<b>Council Approves Low Bidder</b>	<b>April/2021</b>
<b>Notice of Award</b>	<b>April/2021</b>
<b>Notice to Proceed</b>	<b>May/2021</b>
<b>Notice of Completion</b>	<b>Nov/2021</b>



## Exhibit C: Engineer's Estimate

<b>Elhi Hill Trail Connection</b>					
City of Bonney Lake, WA					
Planning Level Estimate of Probable Construction Cost					
March 6, 2019					
Spec Sec.	Item Description	Qty	Unit	Unit Price	Amount
1-04	Unanticipated Site Conditions	1	EQ. ADJ	\$30,000	\$30,000
1-05	Record Drawings (Minimum Bid \$500)	1	LS	\$1,500	\$1,500
1-05	Surveying	1	LS	\$25,000	\$25,000
1-07	SPCC Plan	1	LS	\$1,500	\$1,500
1-09	Mobilization	1	LS	\$37,610	\$37,610
1-10	Project Temporary Traffic Control	1	LS	\$10,000	\$10,000
2-02	Clearing and Grubbing <sup>1</sup>	0.20	AC	\$45,000	\$9,000
2-02	Removal of Structures and Obstructions	1	LS	\$10,000	\$10,000
2-03	Unclassified Excavation Incl. Haul	100	CY	\$30	\$3,000
2-03	Unsuitable Foundation Excavation Incl. Haul	50	CY	\$50	\$2,500
4-04	Crushed Surfacing Top Course	200	TON	\$50	\$10,000
4-04	Permeable Ballast	110	TON	\$60	\$6,600
6-02	Cement Conc. Stairs (10 feet wide)	120	EA	\$350	\$42,000
6-02	Handrail	1,000	LF	\$125	\$125,000
8-01	ESC Lead	60	DAY	\$100	\$6,000
8-01	Erosion/Water Pollution Control	1	LS	\$10,000	\$10,000
8-01	High Visibility Silt Fence	1,000	LF	\$6	\$6,000
8-01	Seeding, Fertilizing, and Mulching	0.10	AC	\$25,000	\$2,500
8-14	Cement Conc. Landings	350	SY	\$200	\$70,000
8-21	Permanent Signing	1	LS	\$2,000	\$2,000
8-32	Amenities (benches, waste receptacles, etc.)	1	LS	\$3,500	\$3,500
				<b>Subtotal</b>	
				<b>Const. Cost</b>	<b>\$413,710</b>
				<b>Contingency</b>	
				<b>(30%)</b>	<b>\$124,113</b>
				<b>PE/ENV/CN</b>	
				<b>(30%)</b>	<b>\$124,113</b>
				<b>TOTAL</b>	<b>\$661,936</b>

## Exhibit D: Environmental Review Certification

The City of \_\_\_\_\_, as lead agency for purposes of the State Environmental Policy Act (SEPA), hereby certifies that the proposal described herein has undergone environmental review in accordance with all applicable SEPA rules pursuant to Chapter 197-11 Washington Administrative Code.

The City of \_\_\_\_\_ has completed the following project-level environmental review documentation and submitted to Sound Transit for review:

- Letter of exemption from SEPA pursuant to WAC 197-11-800
- SEPA Environmental Checklist/Determination of Non-significance (DNS) or Mitigated DNS
- Environmental Impact Statement
- SEPA Addendum
- Other: \_\_\_\_\_

---

Signature of Authorized Local Government SEPA Responsible Official

Sound Transit's office of Environmental Affairs and Sustainability has reviewed the provided documents checked above and authorizes the following:

- Payment for construction (Design and Construction Agreements)
- Environmental approval to execute agreement for construction of project (Construction Only Agreement)

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Signature of Corridor Environmental Manager

**Exhibit E: ROW Certification**

*The City to provide ROW Certification*

**Exhibit F: Template for Reporting Requirements**

**ELHI HILL TRAIL CONNECTOR  
PROJECT REPORT**

**GA0017-20**

Reporting Period: \_\_\_\_\_

Submitted By: \_\_\_\_\_

1. **Project Update.** Status of major activities in the reporting period, both current and upcoming.
  
2. **Assessment of on-going risks.** The City will notify Sound Transit of any issues that may affect the Project Schedule and overall implementation of the Project.
  
3. **Summary of expenditures during reporting period.** Summary of expenditures during reporting period, and expected expenditures in the subsequent reporting period.

**Exhibit G: Sound Transit Invoice Form**

Invoice No. \_\_\_\_\_ Dated: \_\_\_\_\_

TO: Sound Transit  
Accounts Payable  
401 S Jackson Street  
Seattle, WA 98104  
[accountspayable@soundtransit.org](mailto:accountspayable@soundtransit.org)

Attention: Accounts Payable and Alex Krieg

Re: Elhi Hill Trail Connector, System Access Fund Project, GA 0017-20

The City’s authorized representative certifies that Sound Transit’s pro rata share of costs under this invoice is \$\_\_\_\_\_, and is due and payable to the City in accordance with the provisions of the Agreement, and is supported by the attached invoice and supporting documentation. [*Identify the element(s), and the amounts by element, for which the amount due applies*]

The City makes the following representations and warranties to Sound Transit in connection with the Invoice:

- All work performed to date has been, unless otherwise specifically stated by the City, performed in accordance with the terms and conditions of this Agreement.
- The amount specified above has been computed in accordance with, and is due and payable under, the terms and conditions of the Agreement, has not been the subject of any previous invoice (unless disputed or rejected for payment) and is not the subject of any pending invoice from the City.

Any liability of Sound Transit arising from these representations and warranties are governed by the terms and conditions of the Agreement.

City of Bonney Lake

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Name, Position]

**EXHIBIT E**

**Elhi Hill Trail Connection**

City of Bonney Lake, WA  
 Planning Level Estimate of Probable Construction Cost  
 March 6, 2019

<b>Spec Sec.</b>	<b>Item Description</b>	<b>Qty</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Amount</b>
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<b>Contingency (30%)</b>					<b>\$124,113</b>
<b>PE/ENV/CN (30%)</b>					<b>\$124,113</b>
<b>TOTAL</b>					<b>\$661,936</b>

## ELHI HILL TRAIL CONNECTOR

### Project Description

The Elhi Hill Trail Connector is a missing link between the Fennel Creek Trail that meanders Fennel Creek (approximately 3 miles in length when completed) connecting residential neighborhoods and ultimately the commercial corridor along SR 410.

The connector length will be about 430 feet in plan length with an elevation rise of about 90-feet.

The staircase width will be ten (10) feet with periodic landings. Assuming an 8-inch rise and 12-inch tread we are anticipating around 16 landings (5-foot long landings).

