

Appendix G

Draft Memorandum of Agreement

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MEMORANDUM OF AGREEMENT

AMONG

THE FEDERAL TRANSIT ADMINISTRATION,

WASHINGTON STATE HISTORIC PRESERVATION OFFICER,
AND THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

Implementing

Section 106 of the National Historic Preservation Act

for the

EAST LINK LIGHT RAIL TRANSIT PROJECT
IN THE STATE OF WASHINGTON

WHEREAS, the Central Puget Sound Regional Transit Authority (Sound Transit) proposes to construct and operate the East Link Light Rail Transit Project (Project), an extension of its electric light rail transit system, that will connect the cities of Seattle, Mercer Island, Bellevue, and Redmond, crossing Lake Washington in the center lanes of Interstate 90 (I-90) and operating in a dedicated right-of-way between Seattle and Redmond; and

WHEREAS, the Federal Transit Administration (FTA), the responsible Federal agency, has determined that the Project is an undertaking, as defined in Title 36 Code of Federal Regulations (CFR) §800.16(y), and thus is subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. §470f and its implementing regulations, 36 CFR Part 800; and

WHEREAS, Sound Transit is the designated applicant responsible for obtaining the necessary approvals and permits to undertake the Project; and

WHEREAS, FTA and Sound Transit have consulted with the Washington State Historic Preservation Officer (SHPO), interested and affected Indian tribes, and other parties with a demonstrated interest in the effects of the Project on historic properties in accordance with Section 106 of the National Historic Preservation Act (16 USC 4701) and its implementing regulations (36 CFR Part 800.2); and

WHEREAS, FTA and Sound Transit, in consultation with SHPO, have determined the appropriate area of potential effects (APE) for the Project and conducted cultural resource studies constituting a reasonable and good faith effort to identify historic properties and archaeological resources within the APE pursuant to 36 CFR §800.4; and

WHEREAS, the APE and potential historic properties within the APE are described in the Sound Transit East Link Project Historic and Archaeological Resources Technical Report, along with a description and map of the Project; and

WHEREAS, the cultural resource studies resulted in the identification of 16 properties within the APE listed in or eligible for listing in the National Register of Historic Places (NRHP), including a neighborhood (Surrey Downs) that is potentially eligible for listing in the NRHP; and

WHEREAS, as federally recognized tribes, the Muckleshoot Indian Tribe, the Snoqualmie Indian Tribe, the Suquamish Indian Tribe, the Tulalip Tribes of the Tulalip Reservations, and the Confederated Bands and Tribes of the Yakama Nation (the Tribes) have been consulted about the Project and have been invited to concur with this Agreement; and

WHEREAS, the Duwamish Tribal Services (a non-profit organization) has been consulted about the Project and has been invited to concur with this Agreement; and

WHEREAS, FTA and Sound Transit have completed a traditional cultural properties (TCP) archival inventory of the APE using secondary sources and information available in the public domain, and identified no property of cultural interest to the Tribes ; and

WHEREAS, FTA and Sound Transit have consulted about the project with the cities of Seattle, Mercer Island, Bellevue, and Redmond, King County, Washington State Department of Transportation, Federal Highway Administration, and US Army Corps of Engineers, and have invited those entities to concur with this Agreement; and

WHEREAS, FTA and Sound Transit have coordinated the investigations, studies and consultations described above required under Section 106; and

WHEREAS, FTA and Sound Transit have determined that the Project will have an adverse effect, which results from a potential impact on the Winters House, and on the potentially eligible Surrey Downs Historic District, and has the potential to have an impact on undiscovered archaeological resources; and

WHEREAS, FTA and Sound Transit carried out consultations with SHPO, interested and affected Indian tribes, and other consulting parties to identify measures to resolve impacts pursuant to 36 CFR §800.6, resulting in development of this Agreement; and

NOW, THEREFORE, FTA, SHPO, and Sound Transit agree that the Project shall be implemented in accordance with the following stipulations to satisfy FTA's Section 106 responsibilities, and they further agree that FTA shall require that the following terms and conditions be carried out.

STIPULATIONS

FTA and Sound Transit shall implement the following terms and conditions in a timely manner and with adequate resources in compliance with the NHPA (16 USC 470).

During the environmental review for this Project, conceptual engineering plans and conceptual station designs were reviewed for potential impacts on identified historic properties. These conceptual plans and designs, and the potential impacts they describe, are included in the East Link Light Rail Transit Project Final Environmental Impact Statement (FEIS July 2011) and the Archeological and Historic Resources Technical Report to the FEIS. The following stipulations will govern future design, construction, and operation of the Project.

I. WINTERS HOUSE

- A. Sound Transit will perform a conditions assessment of the Winters House building to establish existing conditions, including exterior and interior inspection.
- B. Sound Transit will install vibration and settlement monitoring devices before undertaking ground-disturbing construction sufficient to provide the necessary monitoring and measurements to alert Sound Transit. Where called for, Sound Transit will adjust construction methods as needed based on monitoring results.
- C. Sound Transit will use specific vibration and settlement-reducing construction methods, to be determined by Sound Transit during final design and construction.
- D. If warranted, Sound Transit will build a construction barrier around the Winters House building to minimize damage and minimize dust during construction. This will be determined by Sound Transit during final design and construction.
- E. Sound Transit will apply dust control measures during construction to minimize dust. After construction, in consultation with SHPO, Sound Transit will clean the outside of the Winters House building and windows in a manner sensitive to the historic property.
- F. The Winters House will be closed during construction and Sound Transit will temporarily relocate the tenant. For the duration of the time the Winters House is closed, Sound Transit will provide information to the public regarding how to access the Eastside Heritage Center during construction.
- G. If any physical damage occurs to the Winters House building as a result of the Project, Sound Transit, in consultation with SHPO, will make any necessary repairs consistent with U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties.
- H. Sound Transit will install standard methods of vibration reduction, such as resilient fasteners or ballast mats, to reduce groundborne noise below FTA impact criteria. A floating slab will be incorporated in the project, if necessary, to eliminate groundborne noise and vibration impacts. This will be determined by Sound Transit in consultation with FTA during final design and construction.
- I. Within six months after construction of the Project is completed, Sound Transit will landscape the area of property between the front (west elevation) of the Winters House and Bellevue Way SE to more closely reflect the landscaping of the historic period, in consultation with the City of Bellevue and SHPO. Sound Transit will preserve, as practical, historic period plants that will be affected by Project construction.

- J. Sound Transit will provide interpretive signage on or near the Winters House property in consultation with the City of Bellevue.

II. POTENTIAL SURREY DOWNS HISTORIC DISTRICT

- A. To minimize construction impacts, the following minimization measures will be incorporated into the Project during construction adjacent to properties that contribute to the potential Surrey Downs Historic District:

1. Before construction begins, Sound Transit will install a solid construction barrier south of Main Street between the area of construction activity and adjacent contributing properties.
2. During construction, Sound Transit will comply with the City of Bellevue's Noise Ordinance. Other construction impact minimization measures, including dust control, will be implemented as needed.
3. Sound Transit will remove the construction barrier and will install landscaping along the south side of the guideway south of Main Street within six months after completion of construction.
4. As practical, Sound Transit will preserve the evergreen trees located between the contributing historic properties and proposed project south of Main Street and east of 108th Avenue SE.
5. Reasonable mitigation measures shall be employed for construction-related activities occurring on adjacent property used by Sound Transit for "construction staging" to address noise, dust, visual and other such impacts in recognition of the neighboring residential setting.

- B. To minimize impacts during operation, the following measures will be incorporated into the Project

1. Sound Transit will install a permanent sound barrier, which may include a berm and/or wall, south of the light rail track along Main Street to prevent noise impacts on contributing properties within the potential Surrey Downs Historic District. The SHPO will be consulted for sound barrier design prior to its construction.
2. Sound Transit will install landscaping along the south side of the guideway south of Main Street to provide a buffer for the boundary of the potential Surrey Downs Historic District where noncontributing properties would be removed for the Project.

III. ARCHAEOLOGY

- A. Project archaeologists who meet the Secretary of Interior's professional standards will conduct additional subsurface testing before construction as outlined in the Archaeological Survey Strategy (which is included in the Historic and Archaeological Technical Report).
- B. An Archaeological Resources Monitoring and Treatment Plan or an Unanticipated Discovery Plan will be prepared before construction to provide additional information and protocols that will guide archaeological monitoring work during Project construction.

IV. DISPUTE RESOLUTION

- A. FTA, Sound Transit, and SHPO are signatories to this agreement and are the parties who are authorized to address and informally resolve disagreements concerning the implementation of this Agreement.
- B. If informal resolution cannot be achieved, any signatory to this Agreement may object in writing to FTA or Sound Transit regarding any action carried out or proposed with respect to implementation of this Agreement. The agency receiving the objection shall, within ten working days, initiate consultation with the objecting party to resolve the objection.
- C. If after initiating such consultation FTA or Sound Transit determines that the objection cannot be resolved through consultation, FTA shall forward all documentation relevant to the objection to the Advisory Council on Historic Preservation (ACHP), including the agency's proposed response to the objection.
- D. Within thirty calendar days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
 - 1. Advise FTA that ACHP concurs in the agency's proposed response to the objection, whereupon FTA will respond to the objection accordingly; or
 - 2. Provide FTA with recommendations, which the agency shall take into account in reaching a final decision regarding its response to the objection; or
 - 3. Notify FTA that the objection will be referred for comment pursuant to 36 CFR §800.7(a)(4), and proceed to refer the objection and comment.
- E. FTA shall take the resulting comment into account in accordance with 36 CFR §800.7(c)(4), with reference only to the subject of the specified dispute; FTA's responsibility to ensure that all actions under this Agreement that are not the subjects of the dispute are carried out will remain unchanged.

V. AMENDMENT AND TERMINATION

- A. FTA, Sound Transit, and SHPO are signatories to this agreement and are the parties who are authorized to terminate it by providing 30 calendar days written notice to the other parties. If requested by a signatory, the signatories may meet during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.
- B. In the event of termination, FTA shall comply with 36 CFR 800 with regard to all remaining actions under this Agreement.
- C. If FTA or Sound Transit proposes to modify this Agreement in a manner that alters the resolution of adverse effects of historic properties, the modified Agreement must be signed by all signatories.

VI. CONSULTATION UNDER SECTION 106

- A. FTA notified the ACHP of a potential adverse effect of the Project on properties listed in or eligible for listing in NRHP, affording ACHP an opportunity to comment and/or participate in resolving adverse effects. ACHP has declined to participate in the consultation to resolve adverse effects. The executed MOA will be filed with the ACHP, pursuant to 36 CFR 800.6(b)(1)(iv), when signed by the parties below.
- B. Execution and implementation of this Agreement is evidence that FTA and Sound Transit have taken into account the effects of the Project on historic properties and afforded the ACHP an opportunity to comment on those effects, and is evidence that FTA and Sound Transit have complied with the consultation requirements under Section 106.

VII. EXECUTION

- A. Unless terminated, this MOA shall remain in effect from the date of execution until FTA determines that the terms of this MOA have been satisfactorily fulfilled. Upon such determination, this MOA shall terminate, and FTA shall provide SHPO with written notice of the determination and termination.
- B. The undersigned official representatives of the parties affirm and concur with the agreement and enter into this agreement on behalf of their respective parties. Each party represents that the person executing this agreement on its behalf is duly authorized to execute this agreement.

VIII. MISCELLANEOUS

This MOA creates no right of action for any signatory to this agreement or any other party.

Signatories:

FEDERAL TRANSIT ADMINISTRATION

By: _____ Date: _____

R.F. Krochalis, Regional Administrator

WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION

By: _____ Date: _____

Allyson Brooks, Ph.D., State Historic Preservation Officer

SOUND TRANSIT

By: _____ Date: _____

Joni Earl, Chief Executive Officer

Concurring Parties:

CITY OF SEATTLE

CITY OF MERCER ISLAND

CITY OF BELLEVUE

CITY OF REDMOND

KING COUNTY

FEDERAL HIGHWAY ADMINISTRATION

US ARMY CORPS OF ENGINEERS

MUCKLESHOOT INDIAN TRIBE

SNOQUALMIE INDIAN TRIBE

SUQUAMISH INDIAN TRIBE

TULALIP TRIBES OF THE TULALIP RESERVATION

CONFEDERATED BANDS AND TRIBES OF THE YAKAMA NATION

DUWAMISH TRIBAL SERVICES

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

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