

July 19, 2010 Council Meeting

Sponsor: Larry Phillips

[Pdc]

Proposed No.: 2010-0375

LP MOVED
PASSED: 8-0 PUR EXCUSED

1 AMENDMENT TO PROPOSED ORDINANCE 2010-0375, VERSION 2

2 Beginning on page 3, delete lines 57 through 69 and insert:

3 "SECTION 3. Ordinance 16759, Section 2, is hereby amended to read as follows:

4 **Approval of Ground Lease and Project Lease.** Subject to ~~((section 4 of this~~

5 ~~e))~~Ordinance 16759, Section 4, the county executive is authorized to sign the Ground

6 Lease, the Lease Agreement (With Option to Purchase) and the Exclusive Negotiating

7 Agreement in substantially the forms set forth as Attachments ~~((A, B and C to this~~

8 ~~ordinance))~~ B, C and D to this ordinance (Proposed Ordinance 2010-0375), respectively;

9 provided, however, that (i) the term of the Ground Lease shall commence no earlier than

10 the effective date of this ordinance and shall expire no later than December 31, 2027, and

11 (ii) the term of the Lease Agreement (With Option to Purchase) shall commence no

12 earlier than the effective date of this ordinance and shall expire no later than December

13 31, 2027, nor shall the amount of Monthly Rent payable under the Project Lease exceed

14 the monthly rental rate of 68 cents per square foot. When fully executed, copies of the

15 Ground Lease and Lease Agreement (With Option to Purchase) shall be filed with the

16 clerk of the council."

17

18 Delete Attachment A and replace with Attachment A. Funding and Cooperative
19 Agreement for the design, construction, operation and maintenance of the Burien Transit
20 Center Expansion Project (dated 7- 19-10)
21
22 Add Attachment D, Exclusive Negotiating Agreement (dated 7-19-10)
23
24 **EFFECT: Amends the ordinance to approve the latest version of the Exclusive**
25 **Negotiating Agreement between the County and Alliance Wasatch I and attaches**
26 **this Agreement as Attachment D. Attaches a revised Funding and Cooperative**
27 **Agreement between the County and Sound Transit, which makes drafting**
28 **corrections.**
29

**FUNDING AND COOPERATIVE AGREEMENT
FOR THE
DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE OF
THE BURIEN TRANSIT CENTER EXPANSION PROJECT**

This Funding and Cooperative Agreement is dated _____, 2010, and is between the Central Puget Sound Regional Transit Authority (“**Sound Transit**”) and King County (the “**County**”). Sound Transit and the County are sometimes collectively referred to as the “Parties” and individually as a “Party.”

RECITALS

- A. In accordance with the Regional Transit Long-Range Plan, adopted by the Sound Transit Board of Directors on July 7, 2005, Sound Transit has an interest in the continued use of the Burien Transit Center for regional transit services, and in making long-term investments that improve accessibility and promote usage of these services.
- B. The Sound Transit Board of Directors adopted Sound Transit 2, A Mass Transit Guide, the Regional Transit System Plan for Central Puget Sound (“ST2”) on July 24, 2008. ST2 was approved by the voters in November 2008. ST2 includes a funding contribution for expanding the Burien Park and Ride and Transit Center (the “Burien Transit Center”).
- C. Both County and Sound Transit buses serve the Burien Transit Center.
- D. The County is interested in developing a portion of the 2.2 acre tract that is adjacent to the Burien Transit Center as transit oriented development, including the construction of a parking structure that would expand current parking capacity by 157 spaces.
- E. The County issued a request for proposal for a transit oriented development that has resulted in the negotiation with Alliance Wasatch I, LLC (“Alliance”) of a lease-leaseback arrangement with an option to purchase. The County is authorized to enter into lease, lease back arrangements pursuant to RCW 35.42 and 36.34.205. The County represents that it will have no obligation under the lease, lease back until construction has been completed, at which time the County will lease the completed development for a term of 25 years. The lease also contains an option to purchase.
- F. Under the lease-leaseback arrangement, the County will enter into a ground lease with Alliance for a portion of the Burien Transit Center (the “Ground Lease”). The County will also enter into a lease with Alliance (the “Project Lease”) under which

Alliance will construct and the County will lease the newly-constructed 466-stall parking garage and an adjacent 36-stall surface parking lot (the "Project" or "Facility").

- G. As part of the process, the County will file a short plat that will divide the 2.2 acre tract into two (2) lots: Lot 1 (1.41 acres) on which the Project will be constructed ("Garage Land" or "Project Real Property") and Lot 2 (.82 acres) on which a future mixed use transit oriented development may be constructed ("Short Plat"). The short plat will be substantially in the form of **Exhibit A** attached hereto.
- H. The County and Sound Transit entered into a Term Sheet dated June 1, 2009 provided a framework under which Sound Transit would contribute funding to this transaction. This agreement implements the Term Sheet.
- I. After Substantial Completion of the Project (as that term is defined in the Project Lease), the County intends to exercise its option to purchase the Project and terminate the Ground Lease and Project Lease. The Option Price under the Option (as defined in the Project Lease) is \$20,518,000.
- J. Both Sound Transit and the County have determined that it is in the public interest for Sound Transit to partially fund the County's Project.

For the valuable consideration described herein, the adequacy of which is hereby acknowledged, the Parties therefore agree as follows:

AGREEMENT

1. Project Scope

The Project consists of the design and construction (directly or by others under the County's direction) of the Project, which is on the property described in the recitals as Lot 1, and as set forth in the Project Lease, a substantially similar copy of which is attached hereto as **Exhibit B**.

2. Project Management and Construction

- 2.1.** The County certifies that the environmental process under SEPA and NEPA is completed. With regard to Sound Transit's obligations under this agreement, the County will indemnify and hold Sound Transit harmless for the cost of any additional environmental process required of federal agencies, Sound Transit, King County, or the City of Burien for the Project.
- 2.2.** The County will take all steps necessary to ensure that the Project is properly designed and constructed as identified in the Project Lease prior to determining that the Project is Substantially Complete, as that term is

defined in the Project Lease, and exercising its option to purchase under the Project Lease.

- 2.3. The County agrees that it will act as the primary contact for inquiries and requests for information regarding the project. It further agrees to a project information document that will be made available to the public at the Project site and via their agency website at least one month prior to and during Project construction. Sound Transit will be given a draft of the document at least two (2) months prior to the commencement of Project construction. Sound Transit may provide comments on the draft to the County to be received by the County no later than two (2) weeks after receiving the draft. An electronic copy of the document will be provided to Sound Transit for its own distribution.
- 2.4. The County will cause through the Project Lease, or directly where appropriate, the employment or contracting of all persons or entities necessary to complete construction of the Project, including design, environmental compliance, permitting, management, control, operation, construction, maintenance, and acquisition of real property interests. Sound Transit may place an engineer and/or other inspection personnel on the Project site during the term of this agreement to monitor progress of the Project and/or to monitor adherence to the required provisions of this agreement while the Project is under construction. The County will make the Project site accessible to Sound Transit inspection personnel.
- 2.5. The County will include information for Sound Transit users on Facility signs and include the Sound Transit logo on all park-and-ride signs naming the Facility. Signage during construction shall identify Sound Transit as a funding partner.

3. Sound Transit's Financial Participation-Capital Expenditures

- 3.1. **Maximum Funding Contribution to the Project.** Sound Transit will provide funding for the Project in accordance with section 3.2, up to the maximum funding contribution of Fourteen Million Seven Hundred Thirty Thousand Dollars (\$14,730,000) ("Sound Transit's Funds").
- 3.2. **Sound Transit's Funding Procedure and Conditions:**
 - 3.2.1 The County will advise Sound Transit of the impending completion of the Project and the County's desire to exercise its option to purchase the Project.
 - 3.2.2 The County will provide Sound Transit with an opportunity to inspect the Project and determine whether the Project was constructed in accordance with the Lease and this agreement.

- 3.2.3 Upon substantial completion of the Project the County will certify to Sound Transit the following:
- A. that construction of the Project was substantially completed in accordance with the Lease and this agreement; and
 - B. a certificate of occupancy has been issued; and
 - C. the County is legally in a position to exercise its option to purchase the Project and terminate the Ground Lease and Project Lease and that it intends to exercise that option.
- 3.2.4 Within ten (10) business days of the County providing the certification described in subsection 3.2.3 herein, Sound Transit shall provide the County with its written acknowledgement that it is satisfied that the Project has been completed in conformance with the Lease and this agreement (acknowledgment that shall not be unreasonably withheld, delayed or conditioned) or with a detailed and specific written explanation of why the Project has not been completed in conformance with the Project Lease and this agreement and the proposed remedy or procedure in order to satisfy Sound Transit's objection. If Sound Transit has not provided its response within the prescribed time period, it shall be deemed to have found the Project was completed satisfactorily. Upon receiving Sound Transits acknowledgement of satisfaction or satisfaction being deemed received and after it has exercised its option and closed on the purchase of the Project, the County will invoice Sound Transit in the amount specified in section 3.1. Sound Transit will pay such invoice within 30 days of receipt.

4. Ownership, Operations and Maintenance

- 4.1 County Responsibility.** Upon Substantial Completion of the Project the County will be responsible for operating and maintaining the Project in accordance with standard operating procedures for the County.
- 4.2 O&M Funding and Payments.** As between the County and Sound Transit, the County shall be solely responsible for the cost of operating and maintaining the Project including, but not limited to, providing signage, utilities, cleaning, maintenance, security and major and minor repairs. The County shall bear all costs and expenses for the operation and maintenance of the Facility, except for damage and/or destruction caused by Sound Transit's negligent or intentional acts or omissions.
- 4.3** The County agrees that it will not convey its interest in the Facility or assign its obligations under this agreement without the written consent of Sound Transit, which shall not be unreasonably withheld, conditioned or delayed. The County further agrees, concurrent with payment by Sound Transit pursuant to subsection 3.2 herein, to the execution and recording of an

easement, substantially in the form of the attached **Exhibit C** ("Easement"), describing Sound Transit's transit rights regarding its continuing use of the Facility in accordance with the terms of this agreement.

4.4 Sale of Project real property or facilities. If, with Sound Transit's approval, King County wishes to sell the Facility and/or the property on which the Facility is situated free and clear of Sound Transit's easement, or if King County changes the functional use of the Facility in a manner that substantially precludes the transit use of the Facility by Sound Transit's and/or King County's transit customers, then Sound Transit shall be reimbursed, prior to or upon such sale, Sound Transit's investment in the Project as follows: Reimbursement shall be based on the fair market value (FMV) of the Project at the time of sale or functional use. If the FMV is equal to or less than Sound Transit's Funds, Sound Transit shall be reimbursed the FMV. If FMV is greater than Sound Transit's Funds, Sound Transit shall be reimbursed the amount of the Sound Transit's Funds plus the pro-rata share of Sound Transit's Funds to the Project Value (where Project Value is defined as the County's purchase price according to the Project Lease plus the Project Real Property value based on an appraisal by McKee & Shalka using a valuation date of October 10, 2009, which equals \$1,350,074) times the FMV net of Sound Transit's Funds, the FTA funds used in the Project ("FTA Funds"), the value of the Project Real Property (\$1,350,074) and an amount of up to \$750,000, which is pro-rated from the first day of Project operation over a 13-year period, this amount in consideration of potential unanticipated expenditures beyond regular and routine operating and maintenance costs that may be borne by the County as operator and maintainer of the Project, i.e., Sound Transit reimbursement = Sound Transit's Funds + ((Sound Transit's Funds / Project Value) x (FMV - Sound Transit's Funds - FTA Funds - \$1,350,074 - 13-year pro-rata share of \$750,000)). Upon payment, Sound Transit shall record a relinquishment of the Easement using a form provided by King County. The Parties agree to work together to equitably comply with federal, state or local grant conditions that may require repayment or reprogramming of grant funds applied to the Project. The fair market value of the Project including Project real property will be determined at the time of the sale or change in functional use. Reimbursement will be made at the time of the sale or change in functional use. As used herein, the term "substantially precludes the transit use" means the Facility and/or property can no longer be used by Sound Transit's and King County's transit customers for the purpose for which it was designed, constructed and funded. Sound Transit may agree to waive this reimbursement provision. Notwithstanding the foregoing, if the Project is damaged beyond repair, the Parties will proceed as provided for in Section 10.3 herein.

4.5 RIGHT OF FIRST REFUSAL ("ROFR").

4.5.1 **Grant.** Until such time as Sound Transit is reimbursed its contribution pursuant to subsection 4.4 herein, Sound Transit shall have the option to acquire, upon the terms and conditions hereinafter set forth, the Project and the Project Real Property during the First Refusal Period (as hereinafter defined).

4.5.2 **ROFR Period.** During the First Refusal Period, if King County reaches substantial agreement on the basic business terms of a purchase with a prospective buyer (the "Prospective Buyer") to purchase, exchange, merge or transfer a substantial fee interest in all or any portion of the Project and the Project Real Property, then King County shall notify Sound Transit in writing (a "King County's Notice") setting forth (i) the purchase/exchange/transfer price and/or consideration, (ii) the closing date (iii) the specific deal terms, and (iv) all other economic terms upon which King County is prepared to sell, exchange, merge or transfer such portion of the Project and Project Property to the Prospective Buyer.

4.5.3 **Notice.** Sound Transit's right to acquire the Project and Project Real Property upon the terms and conditions set forth therein shall be exercisable by written notice from Sound Transit to King County given not less than twenty (20) business days after the giving of King County's Notice. If Sound Transit fails to notify King County in writing that it may acquire the Project and Project Real Property within the prescribed twenty (20) business day period, Sound Transit's rights under this ROFR as to the Project and Project Real Property shall terminate, and King County shall have no further obligation under this subsection 4.5 with respect to the Project and Project Real Property; except that if King County, within six (6) months after the date of King County's Notice, does not enter into a purchase and sale agreement for the Project and Project Real Property under terms and at a purchase/exchange/transfer price, which are materially the same as those set forth in the King County's Notice, then Sound Transit's rights under this subsection 4.5 to acquire the Project and Project Real Property shall not terminate but shall continue in full force and effect; provided, however, said six (6) month period shall be extended for as long as King County is pursuing negotiations diligently with the Prospective Buyer.

4.5.4 **Effective.** Sound Transit may exercise its option to acquire the Project and Project Real Property, and an exercise thereof shall be only effective, if at the time of Sound Transit's exercise of its rights to acquire the Project and Project Real Property, this agreement is in full force and effect and there are no events or circumstances which, with the giving of notice or the passage of time, or both, could constitute a default by Sound Transit under this agreement.

4.5.4 **ROFR Period.** As used herein, the term "First Refusal Period" or "ROFR" shall mean the period commencing on payment by Sound

Transit pursuant to subsection 3.2 herein and expiring upon the termination or expiration of this agreement.

4.5.5 **Validity.** If Sound Transit has validly exercised its right to acquire the Project and Project Property under this agreement, then, within sixty (60) business days after the request by either Party, Sound Transit and King County shall enter into a written purchase and sale agreement, subject to approval by each Parties' governing authority, confirming the terms, conditions and provisions applicable to the purchase/exchange/transfer of the Project and Project Property as provided in this agreement.

5. Use of Completed Project

- 5.1 Commensurate with the County's rights and obligations pursuant to the Project Lease, and for the term of this agreement, Sound Transit and its transit users have the right to use the Project facilities jointly and in common with the County's transit users, on a first-come, first-served basis. The County acknowledges that Sound Transit's contribution to the Project constitutes sufficient compensation for its use, and no additional compensation or charge will be required of Sound Transit. However, if the balance of use as between Sound Transit and County transit customers shifts significantly towards one user as compared to the balance of use as of the first year of the Project's use, the Parties will confer regarding such shift such that the use by both Parties remains fair, balanced and equitable.
- 5.2 When Substantially Complete, the Project will provide at least 485 automobile parking spaces for transit users of the County and/or Sound Transit. These parking spaces shall be available for transit users on days and during time periods when transit is operating and serving the Burien Transit Center. Dedicated parking for other uses including the County's related transit oriented development projects will not reduce the number of parking spaces available for transit users without Sound Transit's written approval. The County must have Sound Transit's written approval, not to be unreasonably withheld, conditioned or delayed, before the County may charge any fees to transit customers for parking.
- 5.3 King County will provide, or cause to be provided in accordance with the Project Lease, ADA-compliant parking or other accommodations for parking displaced at the existing park-and-ride lot during construction of the Project.

6. Dispute Resolution

- 6.1 Sound Transit and the County shall confer to resolve disputes that arise under this agreement as requested by either Party.
- 6.2 The individuals identified in the attached **Exhibit D** are the **Designated Representatives of the Parties** for the purpose of resolving disputes that arise under this agreement. The Parties may unilaterally amend this exhibit to change their respective representative by sending a copy of the amended exhibit to the other Party. The amendment becomes effective upon delivery.
- 6.3 Each Designated Representative shall notify the other in writing of any problem or dispute the Designated Representative believes needs formal resolution. This written notice shall include: (1) a description of the issue to be resolved; (2) a description of the difference between the parties on the issue; and (3) a summary of steps taken by Designated Representatives to resolve the issue. The Designated Representatives shall meet within three business days of receiving the written notice and attempt to resolve the dispute.
- 6.4 In the event the Designated Representatives are unable to resolve the dispute within 10 business days, the Executive Director of Planning, Environment and Project Development of Sound Transit and the Director of the County's Department of Transportation, or their respective designees, shall confer and resolve the dispute.
- 6.5 In the event that Sound Transit and the County still are unable to resolve the dispute, the Parties will submit the matter to a mutually agreed upon non-binding mediator. The Parties will share equally in the cost of the mediator.
- 6.6 Sound Transit and the County agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.

7. **Termination of the Agreement**

- 7.1 **Failure to Complete.** This agreement automatically terminates if completion of construction and commencement of operations of the Project does not occur by September 30, 2018.
- 7.2 **Reimbursement of Sound Transit's Investment.** This agreement automatically terminates if Sound Transit is reimbursed its investment in the Project pursuant to Section 4.4 herein.
- 7.3 **Termination for Default.** If for any cause, either Party does not fulfill in a timely and proper manner its material obligations under this agreement, the aggrieved Party will give the other Party written notice of such failure or violation. The responsible Party will be given the opportunity to correct the violation or failure within 30 days, unless the default cannot be completed within that timeframe; and so long as the defaulting Party is proceeding

diligently and in good faith to remedy the default, shall have a reasonable time to remedy the default. If the default is not corrected, this agreement may be terminated five working days from written notice of the non-defaulting Party's intent to terminate.

8. Audit and Public Records.

During design and construction of the Project and for not less than three (3) years after the date Sound Transit pays the Sound Transit's Funds to the County, records and accounts pertaining to the design and construction of the Project will be kept available for inspection and audit by representatives of Sound Transit, the State of Washington and the federal government. Copies of the records will be furnished to Sound Transit upon request and shall be maintained in accordance with a work order accounting procedure prescribed by the Division of Municipal Corporations of the State Auditor's Office. The County will cooperate with Sound Transit's auditor or an independent auditor chosen, retained, and paid by Sound Transit to audit costs incurred in design, construction, operation and maintenance of the Project.

9. Indemnity

9.1 Indemnity During Construction. To the maximum extent allowed by law and except as otherwise provided in this agreement, the County will defend, indemnify, and hold harmless Sound Transit and its elected officials, officers, agents and employees, or any of them, from and against any and all claims, demands, damages, injuries, liabilities, actions, fines, penalties, costs and expenses (including reasonable attorney fees) that arise out of or are related to the acts or omissions of the County (or its officials, agents, or employees acting within the course and scope of their employment, and contractors (hereinafter "Actors")) during the construction of the Project. In the event any such liability arises from the concurrent negligence of the County and Sound Transit, or any of their respective Actors, the indemnity obligation of this subsection shall apply only to the extent of the negligence of the County and its Actors.

9.2 Indemnification After Construction. After Final Completion of the Project and during the period of joint use of the Project Facility by both Parties, Sound Transit and the County agree to defend, indemnify and hold harmless each other, their respective officials, agents and employees, from and against any and all claims, damages, injuries, liabilities, actions, fines, penalties, costs and expenses (including reasonable attorney fees) that arise out of or are related to the acts or omissions of the indemnifying Party and its Actors in the performance of a Party's obligations under this agreement or the exercise of a Party's rights and privileges under this agreement. In the event any such liability arises from the concurrent negligence of the

indemnifying Party and the other Party, or any of their respective Actors, the indemnity obligation of this Subsection shall apply only to the extent of the negligence of the indemnifying Party and its Actors.

9.3 Waiver of Immunity under Title 51 RCW. Subsection 9.1 and Subsection 9.2 above, specifically and expressly intend to constitute a waiver of each Party's immunity under the industrial insurance provisions of Title 51 RCW, with respect to the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnifying Party's employees. This waiver has been mutually negotiated. In the event that a Party receives any judgment or award, or incurs any cost, including attorneys' fees, to enforce the provisions of this section, all such fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's liability. This indemnification will survive the termination of this agreement.

9.4 Taxes. The County will indemnify Sound Transit for any taxes, including business and occupation taxes, sales taxes, utility tax, miscellaneous tax, due to the taxing authority by the County or Sound Transit with regard to payment of Sound Transit's Funds.

10. Insurance.

10.1 During Construction Period. During the construction period, the County will require Alliance, through the Project Lease, to obtain and maintain insurance of the type and amount provided in the Project Lease.

10.2 Insurance For Operations. No later than Final Completion of the Project the County will obtain insurance coverage for the Facility or provide self insurance for the Facility in the amounts that it deems appropriate for facilities of similar type and use. Each Party will provide insurance coverage for its respective operations at the Facility. Except where self insured, each Party will name the other Party as an "additional insured" in its insurance policies covering operations at the Facility, and provide to each Party's risk manager certification of such additions to their respective policies. If either Party is self-insured for its operational liability, the self-insured Party will provide a certificate of self-insurance to the other Party's Risk Manager.

10.3 Insurance Proceeds for Repairs. If the Facility is rendered partially or totally unusable by fire or other casualty after completion of construction, if the damage is repairable within six months from the date of the occurrence, and if insurance proceeds are available to pay the full cost of the repairs, the County will use its best efforts to promptly repair the Facility. If the available insurance proceeds are not sufficient to pay the full cost of repair of the Facility, the Parties may agree to jointly fund the remaining repair

costs, apply the insurance proceeds to another mutually beneficial transit project, or split the proceeds based on the pro rata share of the initial investment with the County.

11. Miscellaneous

- 11.1 Entire Agreement.** This agreement and the attached exhibits constitute the entire agreement and understanding between County and Sound Transit relating to the Project. All exhibits referenced herein and attached to this agreement are a material part of this agreement and are each incorporated herein as if fully set forth. There are no restrictions, promises, representations, warranties, covenants or undertakings, oral or otherwise, except those expressly set forth or referenced in this agreement.
- 11.2 Amendments.** Waivers, modifications, additions, or amendments to this agreement must be in writing and signed by the authorized representatives of each Party.
- 11.3 Severability.** In the event that any term, covenant, condition, or provision of this agreement, or the application of the agreement to any person or circumstance, is found to be invalid or unenforceable in any respect, the remainder of this agreement, and the application of such term or provision to other persons or circumstances nevertheless will be binding with the same effect as if the invalid or unenforceable provision were originally deleted. The Parties agree to bargain in good faith to reform this agreement or replace any invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision.
- 11.4 Primary Contacts.** The primary contacts for each Party in the day-to-day dealings of this agreement are listed in **Exhibit D**. The Parties may unilaterally amend this exhibit to change their respective primary contact by sending a copy of the amended exhibit to the other Party. The amendment becomes effective upon delivery.
- 11.5 Notices.** Except as otherwise expressly provided in this agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this agreement shall be in writing and either shall be: **(i)** delivered in person, **(ii)** deposited postage prepaid sent certified mail 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 primary contact as listed in **Exhibit D**.
- 11.6 Rights and Remedies.** The duties and obligations imposed by this agreement and the rights and remedies available hereunder are in addition to

and not a limitation of or waiver regarding any duties, obligations, rights, and remedies otherwise available by law. Waiver by either Party of any default will not affect or impair any right arising from any subsequent default. The failure of either Party to insist at any time upon the strict observance or performance of any of the provisions of this agreement or to exercise any right or remedy provided for in this agreement will not impair any such right or remedy nor be construed as a waiver or relinquishment of that right or remedy.

- 11.7 Transfer/Assignment.** Neither Party may assign any interest, obligation, or benefit in this agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent by the other Party. This agreement is binding upon, and inures to the benefit of, the Parties and their respective permitted successors and assigns.
- 11.8 Benefits.** This agreement is intended for the sole benefit of the Parties to this agreement. Nothing in this agreement is intended to give any person or entity, other than the Parties any legal or equitable right, remedy, or claim under this agreement.
- 11.9 No Agency or Employee Relationship.** 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. In performing work and services in accordance with this agreement, Sound Transit, its employees, consultants, agents, and representatives will be acting as agents of the Sound Transit and shall not be deemed or construed to be employees or agents of the County in any manner whatsoever. Sound Transit will not hold itself out as, nor claim to be, an officer or employee of County and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the County. Sound Transit is solely responsible for any claims for wages or compensation by Sound Transit's employees, consultants, agents, and representatives, including sub-consultants, or any agency, and will defend, indemnify and hold the County harmless from such claims. In performing work and services in accordance with this agreement, the County, its, employees, consultants, agents, and representatives will be acting as agents of the County and will not be deemed or construed to be employees or agents of the Sound Transit in any manner whatsoever. The County will not hold itself out as, nor claim to be, an officer or employee of the Sound Transit and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Sound Transit. The County is solely responsible for any claims for wages or compensation by the County's employees, consultants, agents, and representatives, including sub-consultants, or any agency, and will defend, indemnify, and hold Sound Transit harmless from such claims.

11.10 Preparation. The Parties and their legal counsel have cooperated in the drafting of this agreement. Accordingly, the Parties do not intend for any provision of this agreement to be construed against a Party on the basis of authorship.

11.11 Counterparts. This agreement may be simultaneously executed in duplicate counterparts, each of which will be deemed to be an original, and such counterparts together shall constitute one and the same instrument

11.12 Authority. The persons signing this agreement warrant that they have the respective power and authority to sign this agreement on behalf of the County or Sound Transit, respectively.

12. Term of Agreement.

This agreement is effective on the date of the last written below and, unless it is otherwise terminated in accordance with the provisions of this agreement, by agreement of the Parties or on May 1, 2080.

The authorized representatives of Sound Transit and County are signing this agreement and the effective date shall be the last date written below.

CENTRAL PUGET SOUND
REGIONAL TRANSIT AUTHORITY

KING COUNTY

Signed: _____

Signed: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

Approved to form

Approved to form

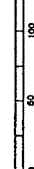
Sound Transit Legal Counsel

Deputy Prosecuting Attorney

Dated: _____

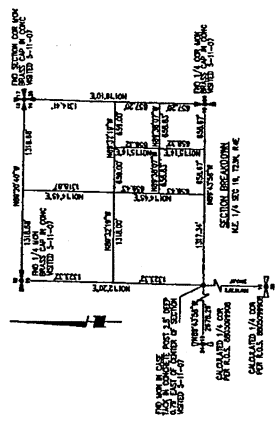
Dated: _____

CITY OF BURIEN
 SHORT PLAT NO. PLA 07-0255
 BURIEN, WASHINGTON

RECORDING NO. _____ VOL./PAGE _____
 SCALE: 1 INCH = 50 FT. 
 PORTION OF
 SE 1/4 of NE 1/4, S. 19 T. 23 N., R. 4 E., W.M.

CONDITIONS OF APPROVAL
 - PLA 10-0255 -

- A. SITE DRAINAGE DESIGN AND DISPOSAL SHALL CONFORM TO THE PROVISIONS OF THE 2008 WING COUNTY SURFACE WATER CODE 13.10.020 AND 13.10.025 SPECIFIED IN BURIEN MUNICIPAL CODE 13.10.020 AND 13.10.025.
- B. FULL FRONTAGE IMPROVEMENTS SHALL CONSIST OF CURB, CUTTER AND MINIMUM 10 FEET WIDE SIDEWALK ON 4TH AVE. IMPROVEMENTS SHALL INCLUDE BUT NOT BE LIMITED TO: SIDEWALK, WALKWAY, BENCH, PLANTING, STREET LIGHTS, STREET FURNITURE, INCLUDING PEDESTRIAN STREET LIGHTS, AND BENCHES. IMPROVEMENTS ON THE EAST SIDE OF 4TH AVE SW SHOULD MATCH THE WEST SIDE OF 4TH AVE SW. DECORATIVE SIDEWALK LIGHTS SHALL BE INSTALLED IN ACCORDANCE WITH 2008 BURIEN ROAD STANDARD FIGURES # 5.27, 5.28 AND 5.29. SIDEWALKS, STREET PLANTINGS, AND SIDEWALK SCORING PROJECT SHOULD BE IN ACCORDANCE WITH APC 4TH AVE SW.
- C. IRRIGATION SYSTEM ALONG 4TH AVE SW THE IRRIGATION SYSTEM SHALL HAVE A WATER SUPPLY AND CONTROL SYSTEM OF THE PROPERTY AND CONTROLS FOR THE IRRIGATION SYSTEM SHALL BE INSTALLED PER THE VALVE HANDLE SHALL BE INSTALLED PER KPG DETAILED DRAWINGS.
- D. FULL FRONTAGE IMPROVEMENTS SHALL CONSIST OF CURB, CUTTER AND MINIMUM 10 FEET WIDE SIDEWALK ON 4TH AVE SW. IMPROVEMENTS SHALL INCLUDE BUT NOT BE LIMITED TO: SIDEWALK, WALKWAY, BENCH, PLANTING, STREET LIGHTS, STREET FURNITURE, INCLUDING PEDESTRIAN STREET LIGHTS, AND BENCHES. IMPROVEMENTS ON THE EAST SIDE OF 4TH AVE SW SHOULD MATCH THE WEST SIDE OF 4TH AVE SW. DECORATIVE SIDEWALK LIGHTS SHALL BE INSTALLED IN ACCORDANCE WITH 2008 BURIEN ROAD STANDARD FIGURES # 5.27, 5.28 AND 5.29.
- E. THE PROPOSED IMPROVEMENTS AND SIDEWALKS SHALL BE INSTALLED IN ACCORDANCE WITH THE 2008 BURIEN ROAD STANDARD FIGURES # 5.27, 5.28 AND 5.29. THE PROPOSED IMPROVEMENTS AND SIDEWALKS SHALL BE INSTALLED IN ACCORDANCE WITH THE 2008 BURIEN ROAD STANDARD FIGURES # 5.27, 5.28 AND 5.29.
- F. APPLICANT SHALL PROVIDE A 10 FOOT EASEMENT FOR THE DRAINAGE, IRRIGATION AND UTILITIES ALONG 4TH AVE SW.



RECORDER'S CERTIFICATE
 FILED FOR RECORD THIS DAY OF 20..... AT M IN BOOK OF AT PAGE AT THE REQUEST OF "SURVEYOR'S NAME"
 MANAGER SUPT. OF RECORDS

LAND SURVEYOR'S CERTIFICATE
 THIS SHORT PLAT CORRECTLY REPRESENTS I SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION IN ACCORDANCE WITH THE REQUIREMENTS OF THE APPROPRIATE WASHINGTON STATE AND LOCAL ORDINANCE IN 20.....
 CERTIFICATE NO.

KPG
 7336 N
 202 Mirco Ave
 Seattle, WA 98108
 (206) 365-5900
 www.kpg.com



BURIEN TRANSIT CENTER
 DWN. BY R. REOHEL DATE 01-12-2010 JOB NO. 0844
 CHKD. BY T. NICKHAM SCALE 1"=50' SHEET 1 OF 1

Exhibit B: Project Lease, Lease (With Option to Purchase) dated 7-13-2010

Exhibit B is available on request

Exhibit C

recording requested by and

Return Address:

Sound Transit Real Estate
Central Puget Sound Regional Transit Authority
~~401 South Jackson Street~~
Seattle, WA 98104

SOUND TRANSIT CUSTOMER PARKING EASEMENT

GRANTOR: KING COUNTY
GRANTEE: CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY
ABBREVIATED LEGAL DESCRIPTION:
ASSESSOR'S TAX PARCEL NO.:

SOUND TRANSIT CUSTOMER PARKING EASEMENT

This Sound Transit Customer Parking Easement (the "Easement") is made effective upon the date of recording by KING COUNTY, a municipal corporation and subdivision of the State of Washington ("Grantor"), in favor of the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority ("Grantee").

RECITALS:

A. Grantor is a charter county in the State of Washington. Grantor is the owner of certain real property located in the City of Burien, King County, Washington legally described and depicted in Exhibit A attached hereto and by this reference incorporated herein ("Grantor's Property"). Grantor has expanded its park and ride facility (the "Burien Transit Center") by adding a parking structure containing 466 spaces and 36 surface parking spaces (the "Parking Facility") on Grantor's Property.

B. Grantee is a regional transit authority, authorized by Chapter 81.104 and 81.112 RCW and votes of the people to implement a high capacity regional transportation system. Grantee requires non-exclusive rights for its transit system customers ("ST Transit Customers") to park vehicles in the Parking Facility and non-exclusive rights of access for ingress and egress for the ST Transit Customers to and from the Parking Facility over Grantor's Property, and through the Parking Facility.

C. The parties have entered into the Funding and Cooperative Agreement for the Design, Construction, Operation and Maintenance of the Burien Transit Center Expansion Project dated _____ (the "Agreement"), in Section 4.3 of which, Grantor agreed to record a parking easement substantially in the form of this Easement ensuring that the ST Transit Customers may continue to use the Parking Facility in accordance with the terms of the Agreement.

D. Grantor intends to grant Grantee the rights for its ST Transit Customers to ingress, egress and use of the Parking Facility, as described in the Agreement and as described herein.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants to Grantee an easement over Grantor's Property, consisting of certain rights in Grantor's Property, as defined in this Easement, subject only to the restrictions contained in this Easement.

1. Recitals Incorporated. Each recital set forth above is incorporated into this Easement as though fully set forth herein.

2. Grant of Parking Facility Easement. Grantor does hereby make, declare, sell, transfer, convey, warrant and establish to Grantee a permanent, continuous, non-exclusive easement over, across and through Grantor's Property for the benefit of Grantee and the ST Transit Customers, subject to the restrictions contained herein, and

for all purposes necessary or incidental to provide parking and vehicular and pedestrian access to and from the Parking Facility and other public transportation facilities and the public streets, sidewalks adjoining Grantor's Property. Grantee's rights and obligations with regard to the Grantor's Property are further defined in the Agreement, which is hereby incorporated by reference and attached hereto as Exhibit B, and which may be amended from time to time by written agreement of the parties. The grant in this Easement shall control in the event of any conflict with said Agreement.

3. Grantor's Reserved Use of the Parking Facility. Grantor reserves the right to use Grantor's Property for its transit purposes and for all other lawful purposes not inconsistent with Grantee's rights hereunder.

4. Assignment. The Easement granted herein shall be personal to Grantee and may not be assigned, except that Grantee may assign this Easement to a successor agency which provides public transit services to the Burien Transit Center of a similar nature to those services provided by Grantee at the time the Agreement was entered.

5. Termination. Except as otherwise provided, this Easement terminates on May 1, 2080. Grantee may terminate this Easement by written notice to Grantor at any time. In such event, at Grantor's request, the parties shall record a termination of easement in the King County real property records. Further, this Easement shall terminate automatically upon the occurrence of any of the events listed below. In the case of such automatic termination, the recording of a termination of easement in the King County real property records by Grantor shall constitute lawful notice of its termination.

- (a) In the event that the Agreement expires or is terminated and any applicable payments are made;
- (b) In the event that Grantee ceases to exist and no successor agency lawfully succeeds to Grantee's rights and obligations under the Agreement.

6. Binding Effect. This Easement shall burden Grantor's Property and the Parking Facility and shall be binding upon the Grantor and its successors, assigns, mortgagees and sublessees and each and every person or entity which shall at any time have a fee, leasehold, mortgage or other interest in any part of Grantor's Property or Parking Facility. The Easements granted hereby shall have priority over any and all liens, encumbrances or other interests in the Grantor's Property and the Parking Facility hereafter, and shall survive transfer of the fee ownership of, or any leasehold estate in, the Grantor's Property and the Parking Facility.

7. Recording. This Easement shall be recorded in the real property records of King County, Washington.

8. Costs and Attorneys' Fees. The parties hereto agree that in the event it becomes necessary for any party to defend or institute legal proceedings as a result of the failure of either party to comply with the terms, covenants, agreements and/or conditions of this Easement, it is understood and agreed that the prevailing party in such litigation

shall be entitled to be reimbursed for all costs incurred or expended in connection therewith, including, but not limited to, reasonable attorney's fees (including paralegal fees and fees for any appeals) and court costs.

9. Notices. Any and all notices or other communications required or permitted by this Easement or by law to be delivered to, served on or given to either party to this Easement by the other party to this Easement, shall be in writing and shall be deemed properly delivered, given or served when personally delivered to such party, or in lieu of personal services, when sent by electronic facsimile or when mailed by United States mail, express, certified or registered, postage prepaid, or by a nationally recognized overnight delivery service, charges prepaid, to the addresses as follows:

If to Grantor : [Transit recipient]

With a copy to:

Real Property Division
King County Prosecuting Attorney's Office
516 3rd Avenue, Room W-400
Seattle, WA 98104

If to Grantee :

Sound Transit
401 South Jackson Street
Seattle, WA 98104
Attn: Division Manager, Real Estate

With a copy to:

Sound Transit
401 South Jackson Street
Seattle, WA 98104
Attn: Legal Counsel

All notices sent by electronic facsimile shall be deemed delivered upon transmission thereof and all notices sent by overnight delivery service shall be deemed received on the date which is 24 hours after delivery to the overnight delivery service by the sender, or if placed in the United States mails, on the date of the return receipt or, if delivery of such United States mail is refused or cannot be accomplished, 48 hours after deposit in the United States mails. Either party may change its address for the purpose of this Section by giving ten (10) days advance written notice of such change to the other party in the manner provided in this Section.

10. Amendment. This Easement may not be modified, amended or terminated without the prior written approval of the Grantor and Grantee or their respective successors in interest or assigns.

11. Waiver. No waiver or any of the provisions of this Easement shall be effective unless it is in writing, signed by the party against whom it is asserted. Any such written waiver shall only be applicable to the specific instances to which it relates and shall not be deemed to be a continuing or future waiver.

12. Captions. The captions and paragraph headings contained in this Easement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Easement, nor the intent of any provision hereof.

13. Governing Law. This Easement shall be governed by and construed in accordance with the laws of the State of Washington.

14. Miscellaneous. As used herein, the term "Grantee" shall refer to Grantee and its permitted successors and assigns and the term "Grantor" shall refer to Grantor and its successors and assigns.

GRANTEE

CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY does hereby
accept the above Sound Transit Customer
Parking Easement.

Dated: _____

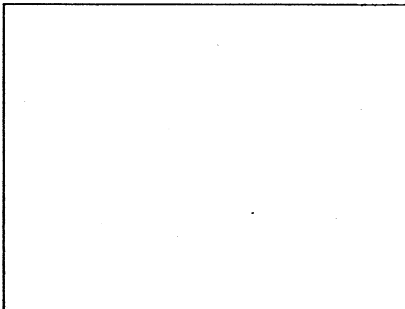
By: _____

Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of Central Puget Sound Regional Transit Authority to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public
Print Name _____
My commission expires _____

Exhibit D

Primary Contacts

King County:

Randy Witt
Manager, Design and Construction
Metro Transit Division
Department of Transportation
201 South Jackson Street
Seattle, WA 98124-4996

Sound Transit:

Eric Chipps
Senior Planner
Planning, Environment and Project Development Department
Sound Transit
401 South Jackson Street
Seattle, WA 98104

Alliance Wasatch I, LLC
617 W. Seventh St.
Suite 405
Los Angeles, CA 90017

Dear Ms. Curls-Bennett:

In accordance with the terms and conditions of this Exclusive Negotiation Agreement ("ENA"), King County, a political subdivision of the State of Washington (the "County"), and Alliance Wasatch I, LLC, a California limited liability company authorized to transact business in the State of Washington ("Alliance"), mutually agree that Alliance shall have an exclusive right to negotiate a Housing Land Ground Lease and TOD Development Agreement for the real property adjacent to the Garage Land for the purpose of developing a multi-family, affordable housing and retail project. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Project Lease. King County and Alliance are alternatively and collectively referred to as "Parties" and individually as "Party."

The legal description of the Housing Land is more particularly described on Exhibit A, attached hereto and made a part hereof. Concurrent with the execution of this ENA, King County and Alliance have also entered into a Ground Lease and Project Lease, dated for reference purposes August 1, 2010, for the construction of the Garage on the Garage Land. As this ENA is wholly dependent on Alliance's performance under both the Ground Lease and Project Lease, any event of default under either or both of those documents shall also be a default under this ENA.

The County and Alliance have agreed that the following minimum terms shall apply to this transaction: (1) a minimum of 80 units of multi-family rental housing that provide affordable rents to a minimum of 24 units qualifying at 80 percent of the area median income; (2) a minimum of 4,000 square feet of retail space; and (3) sufficient off-street parking for this development as required by the City of Burien such that there is no offset or variance established by using the Garage to satisfy any parking requirements. To further this project, the County and Alliance must consult with one another on coordinated pre-development feasibility, design work and construction planning for the integration of the Housing Project with the Garage Project and must commence this work immediately upon execution of this ENA and in good faith to meet the schedule goals of both Parties. While negotiations remain to be completed to establish the terms of any possible Housing Land Ground Lease and TOD Development Agreement (collectively, "Housing Land Development Documents"), the Parties seek to memorialize their good faith intentions to negotiate and enter into such Housing Land Development Documents no later than the Substantial Completion Date. Toward that end the Parties agree as follows:

1. **Term.** This ENA shall take effect concurrent with the Execution Date and it shall terminate on the earlier of a) Substantial Completion Date or b) termination of the Ground Lease and/or the Project Lease pursuant to the terms thereof or c) default of the Ground Lease and/or Project Lease and subject to termination as stated in any notice of default ("Term"). Notwithstanding the foregoing, after August 1, 2011, if for any reason either Party reasonably determines that the Housing Project is not feasible, this ENA may be terminated upon 30-days written notice to the other Party.

2. **Negotiation.** The Parties herein desire to explore all possibilities to enter into a definitive Housing Land Ground Lease or other arrangement and TOD Development Agreement no later than the date set forth in this ENA so as to further the goals of the project as provided in Request for Proposals -- Burien Downtown Park & Ride, lot A: Mixed Use Development No. 1180-07 dated December 13, 2007, as amended, and agree to negotiate diligently and in good faith toward that end.
3. **Feasibility, Design and Construction Planning.** The County and Alliance agree to assist and coordinate with each other as reasonably needed to allow for the successful and timely completion of negotiations for Housing Land Development Documents so that Alliance may construct the Housing Project. Alliance agrees that the County shall have the right and be given the opportunity to review, comment and approve each stage of design for the Housing Project at no cost to the County. If Alliance determines that the County's requested changes are not feasible, the Parties shall confer in good faith to determine if feasible alternatives exist. This right to review and approve is intended to prevent design proceeding in a manner that does not meet the needs of the County for the Housing Project.
4. **Permits.** Alliance further acknowledges that its obligations to apply for and obtain all permits and approvals under the Project Lease shall include participation in a pre-application meeting with the permitting jurisdiction and submittal of various aspects of a potential Housing Project on the Housing Plans. Alliance agrees to make best efforts, wherever feasible, to integrate conditions required by the permitting jurisdiction or the County under all permits and approvals obtained pursuant to the Project Lease with its ongoing design, construction, and planning obligations regarding the Housing Project and this ENA at no additional cost to the County.
5. **Financing.** Alliance further acknowledges that its obligations pursuant to this ENA include providing evidence reasonably acceptable to the County of the source and availability of any debt and equity funding required to build the Housing Project, including copies the proposed project budget and executed term sheets or executed commitment letters from institutional lenders and equity investors reasonably acceptable to the County with terms and conditions reasonably acceptable to the County. If Alliance is proposing to finance the construction of the Housing Project with tax exempt financing, evidence of financing shall include information that the project has received a volume cap allocation from the Washington State Housing Finance Commission or other qualified issuer.
6. **Exclusivity.** During the Term of this ENA the County shall not (a) solicit offers to lease any of the portion of the Housing Land, (b) negotiate with any other prospective lessee for the Housing Land, or (c) enter into any other exclusivity agreement pertaining to development on the Housing Land with any person or entity other than Alliance.
7. **Exclusivity Payment.** As consideration for the County to enter into this ENA with Alliance, Alliance shall pay to the County the amount of \$5,000.00 per month ("ENA Payment") starting on the Execution Date and due on or before the 1st day of each full calendar month thereafter. The ENA Payment for any partial month shall be prorated on a daily basis at the rate of 1/30 of the ENA Payment. All ENA Payment(s) under this ENA shall be paid in lawful money of the United States and in immediately available funds and are fully earned and non-refundable once paid. In the event that the date on which an ENA Payment is due is not a Business Day, such ENA Payment shall be due on the following Business Day.

8. **Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) faxed with proof of receipt and placed in the United States mail, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to King County:

Transit Division
King County Department of Transportation
201 South Jackson Street, KSC-TR-0415
Seattle, WA 98104-3856
Attn: Randy Witt
Tel: (206) 684-1619
Fax: (206) 684-1778

With copy to:

Civil Division
Office of the King County Prosecuting Attorney
516 Third Avenue, W400
Seattle, WA 98104-2316
Attn: Timothy Barnes
Tel: (206) 296-9015
Fax: (206) 296-0191

If to Alliance:

Alliance/Wasatch I, LLC
617 W. Seventh St.
Suite 405
Los Angeles, CA 90017

With copy to:

Sam S. Balisy, Esq.
Kutak Rock, LLP
515 Figueroa Street, Ste. 1240
Los Angeles, CA 90071
Tel: (213) 312-4009
Fax: (213) 312-4001

9. **Exclusive Remedy for Termination.** As a material inducement for either Party to enter into this use ENA, if at the end of the Term, the Parties are unable to come to an agreement on the terms of the Housing Land Development Documents, each Party agrees that it has no recourse whatsoever against the other Party. Both Parties hereby agree and understand that in the event that any contest over the inability to come to an agreement on the terms of the Housing Land Development Documents would exact substantial harm to the to the public in general such that there is no remedy for damages under this ENA either in law or equity, all of which are hereby waived and disclaimed. As such, the Parties hereby waive trial by jury. The Parties also acknowledge that each would not have entered into this ENA without this provision and in the event that either Party attempts to contest or contests the other Party's termination under this ENA either in a court of law or in another administrative arena, this ENA shall automatically terminate without any further action necessary by either Party. The filing of any such contest action shall serve as a notice of termination and is unconditionally binding on the Parties.
10. **Default.** Any Landlord Default under the Project Lease or Lessee Default under the Ground Lease shall constitute a default under this ENA. The County shall have the right, at its sole discretion, to terminate this ENA without obligation or cost.
11. **Miscellaneous.** In the event any portion of this ENA shall be found to be invalid by any court of competent jurisdiction, such holding shall not impact or affect the remaining provisions of this ENA. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the Party giving such waiver, and no such waiver shall be deemed a waiver of any prior or subsequent breach or default. The Parties

understand and agree that this ENA does not create any partnership, joint venture or joint undertaking nor shall such an arrangement be construed from this ENA. The captions of any articles, paragraphs or sections contained herein are for purposes of convenience only and are not intended to define or limit the contents of said articles, paragraphs or sections. This ENA and all amendments, if any, shall be governed by and construed in accordance with the laws of the State of Washington applicable to exclusive rights to negotiate in good faith made and to be performed therein, without giving effect to any conflicts of law provisions. This ENA may not be assigned by Alliance without the prior written consent of the County, which consent may be withheld in the County's sole and absolute discretion, which may be arbitrary. This ENA and each of its terms and provisions are deemed to have been explicitly negotiated between the Parties, and the language in all parts of this ENA will, in all cases, be construed according to its fair meaning and not strictly for or against either Party. All Parties acknowledge and represent, as an express term of this ENA, that they have had the opportunity to obtain and utilize legal review of the terms and conditions outlined in this ENA. The Exhibits described herein and attached hereto are fully incorporated into this ENA by this reference.

AGREED AND ACCEPTED:

KING COUNTY, WASHINGTON

Kevin Desmond
Manager, Transit Division
Date: _____

AGREED AND ACCEPTED:

ALLIANCE WASATCH I, LLC

Date: _____