



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

November 14, 2018

Ordinance 18814

Proposed No. 2018-0457.2

Sponsors Dembowski and McDermott

1 AN ORDINANCE authorizing the King County executive
2 to enter into an interagency agreement between King
3 County, a political subdivision of the state of Washington,
4 and the city of Tukwila, a municipal corporation in the state
5 of Washington, regarding design, construction, ownership,
6 operation, and maintenance of the portion of Segment A of
7 the Lake to Sound trail that is within the city.

8 **STATEMENT OF FACTS:**

- 9 1. King County and the city of Tukwila are working collaboratively to
10 construct what is known as Segment A of the Lake to Sound trail, a
11 segment of trail that traverses the Black River Riparian Forest, crossing
12 Monster Road and connecting to the Green River trail in Tukwila's Fort
13 Dent park.
- 14 2. Segment A will be a critical segment of the larger sixteen-mile regional
15 Lake to Sound trail, extending from the southern end of Lake Washington
16 to Puget Sound as part of a recreation and transportation corridor, and will
17 provide health benefits to residents of cities and King County.
- 18 3. Under RCW 36.89.050, King County is authorized to construct a park
19 or recreational facility and transfer to a city the county's ownership interest

20 in, and the operation and maintenance obligations for, the facility,
21 provided the city continues to use the facility for the same purposes or
22 conveys other equivalent facilities to King County in exchange thereof.

23 4. King County received one million two hundred ninety thousand dollars
24 in Federal Highway Administration grant funds, five hundred thousand
25 dollars in state Recreation and Conservation Office grant funds, and is also
26 using county levy moneys, in accordance with King County Ordinance
27 17941, for the design and construction of Segment A.

28 5. After construction, King County intends to convey ownership of
29 Segment A of the trail to the city of Tukwila. The city is ready, willing
30 and able to assume ownership of this facility.

31 6. The parks and recreation division of the department of natural
32 resources and parks will operate and maintain the trail for use by the
33 general public as a regional trail.

34 7. King County and the city have negotiated their respective rights, roles
35 and responsibilities regarding Segment A in this interagency agreement.

36 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

37 SECTION 1. The King County executive is hereby authorized to enter into an
38 interagency agreement between King County and the city of Tukwila, substantially in the
39 form of Attachment A to this ordinance, for the design, construction, ownership,

40 operation and maintenance of the portion of Segment A of the Lake to Sound trail that is
41 within the city.

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Ordinance 18814 was introduced on 9/24/2018 and passed by the Metropolitan King
County Council on 11/13/2018, by the following vote:

Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn,
Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles
and Ms. Balducci

No: 0

Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Joseph McDermott, Chair

ATTEST:

Melani Pedroza, Clerk of the Council



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2018 NOV 20 PM 1:17
CLERK
KING COUNTY COUNCIL

APPROVED this 19 day of NOVEMBER 2018.

Dow Constantine, County Executive

Attachments: A. Interagency Agreement Between King County and the City of Tukwila_ Revised
October 23, 2018

**INTERAGENCY AGREEMENT
BETWEEN KING COUNTY AND THE CITY OF TUKWILA
TO DESIGN, CONSTRUCT, OPERATE AND MAINTAIN
LAKE TO SOUND TRAIL, SEGMENT A, WITHIN CITY BOUNDARIES**

This Interagency Agreement (“Agreement”) is made and entered into by and between King County, a political subdivision of the State of Washington (“the County”) and the City of Tukwila, a municipal corporation of the State of Washington (“the City”), regarding design, construction, ownership, operation and maintenance of the portion of Segment A of the Lake to Sound Trail (“Segment A”) that is within the City or on property owned by the City. The County and the City are collectively referred to as “the Parties”.

RECITALS

- A. The County and the Cities of Tukwila and Renton are working cooperatively to construct what is known as Segment A of the Lake to Sound Trail, a segment of trail that traverses Renton’s Black River Riparian Forest (“BRRF”) and connects to the Green River Trail in Tukwila.
- B. The Lake to Sound Trail will become part of King County’s Regional Trail System (“RTS”), one of the nation’s most extensive multi-use trail networks with more than 175 miles of trails for recreation and non-motorized mobility and commuting.
- C. Segment A will be a critical segment of the larger regional Lake to Sound Trail, extending from the southern end of Lake Washington to Puget Sound and will provide recreational and health benefits to residents of the cities and the County.
- D. The portion of Segment A within the City of Tukwila (“the Project”) will be located substantially within the northern edge of Fort Dent Park. The trail also crosses one parcel of property within the City of Renton owned by the City of Tukwila. In addition, there are two railroad corridors operated by the Union Pacific Railroad (“UPRR”) and Burlington Northern Santa Fe Railway (“BNSF”) located at the border of the Cities of Renton and Tukwila. The trail connection for Segment A passes underneath these two railroad corridors to connect the Cities of Renton and Tukwila.
- E. A portion of Segment A is located in the City of Renton. This Agreement governs only those portions of Segment A located in the City of Tukwila or parcels owned by the City of Tukwila. King County is negotiating a trail easement with BNSF on behalf of the City of Tukwila for that portion of trail that is located on land owned by BNSF in the City of Tukwila.
- F. The County is negotiating a trail easement with UPRR on behalf of the City of Renton for that portion of trail that is located on land owned by UPRR in the City of Renton.

G. Under RCW 36.89.050, the County is authorized to construct a park or recreational facility and transfer to a city the County's ownership interest in, and the operation and maintenance obligations for, that facility, provided such transfer is subject to the condition that the facility shall continue to be used for the same purposes or that other equivalent facilities within the County shall be conveyed to the County in exchange therefor.

H. The County has received \$1,286,053 in Federal Highway Administration grant funds and is also using County levy monies, pursuant to King County Ordinance 17941, for the design and construction of Segment A.

I. After construction, the County wishes to convey ownership of the Project Improvements, with the exception of those improvements located on the City of Renton property, and the City is ready, willing and able to own these improvements for use by the general public as a Regional Trail, for the benefit of both City and County residents.

J. After completion of the Project Improvements and conveyance to the City, the County will continue to operate and maintain Segment A.

K. The County is committed to implementing the King County Equity and Social Justice Strategic Plan 2016-2022 ("ESJ"). Providing funding for design and construction of the Lake to Sound Trail, Segment A, and continuing to operate and maintain it after completion, advances equity and is consistent with the goals, objectives and strategies of ESJ.

L. The Parties intend by this Agreement to establish their respective rights, roles, and responsibilities related to the Project.

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

AGREEMENT

1. DEFINITIONS

For purposes of this Agreement, the following definitions shall apply.

1.1 Contract means the public works contract entered into between the County and its Contractor for construction of Segment A.

1.2 Contractor means the individual, partnership, firm, corporation, or other entity with whom the County has entered into the Contract for construction of Segment A.

- 1.3 Final Acceptance means the date on which the County issues to the Contractor a written notice accepting the work under the Contract as complete.
- 1.4 One Hundred Percent (100%) Review Submittal means the One Hundred Percent Review Submittal drawings and specifications for Segment A prepared on behalf of the County by Parametrix, Inc., dated December 2016.
- 1.5 Notice to Proceed means the written notice from the County to the Contractor authorizing and directing the Contractor to proceed with the construction of Segment A.
- 1.6 Permit(s) means any or all federal, state, and local government permits, licenses or other regulatory approvals needed for Segment A; and a construction permit from BNSF to construct a portion of Segment A on property owned by the BNSF along the Black River. The term "Permits" does not include a lease from BNSF.
- 1.7 Project means the portion of Segment A within the boundaries of the City, including the portion of Segment A located on the City's Real Property, the BNSF Easement Area and the restoration area adjacent to the trail on property owned by the City. The Project also includes one parcel owned by the City of Tukwila that is located within the City of Renton.
- 1.8 Project Improvements means all physical aspects of the Project including, but not limited to the following and their components: curbing, catch basins, drains, inlets, piping, conduits, trenches, asphalt, concrete, signage, striping, electrical components, signals, control boxes, fencing, lighting, base materials, bollards, artwork, markers, driveways, covers, frames, railing, retaining walls, bridges, abutments, rebar, wire fabric, landscaping and vegetation planted on site for mitigation or restoration purposes.
- 1.9 City's Real Property means the Real Property encompassed within parcel numbers 2323049001, 7229500360 and 1323049080 owned by the City as legally described in **Exhibit A**.
- 1.10 Regional Trail means a regionally significant, shared-use trail accessible to the general public on which bicycling, walking, hiking, running, skating, and other non-motorized uses are allowed, which provides recreational opportunities and enhances regional mobility.
- 1.11 Segment A means the design, public involvement, environmental review, permitting, construction, ownership, operation and maintenance of a Regional Trail extending east from the Green River Trail Bridge #2405-2 in Fort Dent Park through the BRRF to Naches Avenue SW in the City of Renton. It also includes the acquisition (facilitated by King County) and maintenance by the City of Tukwila of a permanent trail easement from BNSF for property owned by BNSF that is required for the trail

connection into Renton. The boundaries of Segment A are shown in the One Hundred Percent (100%) Review Submittal.

1.12 Substantial Completion means the stage in the progress of the work under the Contract where the County has full and unrestricted use and benefit of the facilities for the purpose intended, both from the operational and safety standpoint, all the initial plantings are completed, all the systems and parts of the Contract work are functional, utilities are connected and operate normally, and only minor incidental work, replacement of temporary substitute facilities, plant establishment periods, or correction or repair remains to complete all Contract requirements.

2. DESIGN & PERMITTING

2.1 Design. The County has provided the City with the One Hundred Percent (100%) Review Submittal Design Drawings, which the City has reviewed and hereby accepts as noted with plan review comments, and which are incorporated herein by reference. The County will be solely responsible for finalizing the design documents for Segment A, obtaining the necessary input and approval from Washington State Department of Transportation, and constructing the trail according to the approved design, including changes in scope as described in Paragraph 5.7.

2.2 Plans and Specifications. The County shall provide the City with a copy of the plans and specifications to be advertised for bid and an electronic file of the Contract documents.

2.3 Permitting and Environmental Review. The City of Renton shall be the lead agency for Segment A under the State Environmental Policy Act (“SEPA”). The County shall apply, or require its Contractor to apply, for all Permits. To the extent the City’s signature on applications or other involvement, as the owner of the Real Property on which the Project is being constructed, is required, the City agrees to cooperate with the County and/or its Contractor and take all necessary actions to obtain the Permits. The County shall be responsible for the monitoring, reporting, and any required corrective actions for wetland mitigation associated with the Project for the length of time required by any Permit. The County or the Contractor shall submit a Notice of Termination for the Construction Stormwater General National Pollutant Discharge Elimination System (“NPDES”) Permit to the Washington State Department of Ecology prior to Final Acceptance.

2.4 City Permits. If required by the City, the County shall submit pedestrian and vehicle Temporary Traffic Control Plans (“TTC Plans”) to the City for review and approval prior to invasive occupancy of City Real Property. City approval shall not be unreasonably withheld. The County shall immediately correct any deficiencies noted by the City in the TTC Plans or their field implementation. The City has made a determination that the Project requires the following permits: Shoreline Substantial Development, Shoreline Conditional Use, Shoreline Variance, and Construction Permits and these Permits have been issued to the County, subject to execution of this Agreement.

2.5 Underpass Agreement. The County shall take all actions necessary to obtain an agreement with BNSF granting the County and City temporary access for construction and permanent access for operation and maintenance of the Project. BNSF Structures Department has approved use of its property for the Project and the construction and maintenance terms have not yet been finalized. The County agrees that after completion of the Project, the County shall transfer all rights acquired from BNSF to the City as part of the transfer of Project Improvements covered in Section 6.2 (e).

3. ACCESS & ENCROACHMENTS

3.1 The City hereby grants to the County and its employees, agents, representatives, invitees, consultants, contractors and subcontractors performing work on behalf of the County the following access rights to the City's Real Property.

(a) The non-exclusive right and license to enter onto City's Real Property to analyze, assess, investigate, inspect, measure, survey, study and gather information for purposes of design, permitting and construction of the Project, including but not limited to completing borings and other subsurface investigations. This right and license shall begin upon the effective date of this Agreement and continue until Final Acceptance.

(b) The exclusive right and license to enter onto, and take actions on the City's Real Property necessary for construction of the Project and completion of the Contract. This right and license shall begin upon the County's issuance of the Notice to Proceed and continue until Final Acceptance. This right and license shall not be exclusive of the City's right to enter the City's Real Property for the purposes of inspections or other actions necessary to implement this Agreement, or for any other purpose, provided that the City's entry onto the property shall not impair, impede or delay construction of the Project.

(c) The non-exclusive right and license to enter onto real property encompassed within parcel numbers 2323049001, 7229500360 and 1323049080, owned by the City, and take actions necessary to fulfill the County's maintenance and operations obligations under Paragraph 6.1 and as further described in **Exhibit C**. This right of entry shall begin upon Final Acceptance and continue in perpetuity unless amended by agreement of the Parties.

(d) The access rights set out in Paragraphs 3.1(a-d) are irrevocable during their respective terms and are not subject to modification by the City through Permits or otherwise without the express written agreement of the County.

3.2 The County and the City are not aware of any encroachments, improvements or other structures ("Encroachments") on the City's Real Property. If, however, Encroachments are identified within the boundaries of construction of the Project and the Encroachments will interfere with construction of the Project, the City

shall take all actions necessary to remove all Encroachments prior to the date the County issues the Notice to Proceed. Any Encroachments that the City does not intend to be disposed of (for example, Encroachments that will be salvaged or impounded) must be removed by the City. The County shall notify the City 60 days prior to advertising the Contract for bid. If the City wishes the County’s Contractor during construction to remove certain Encroachments that are to be disposed of, on behalf of the City, the City shall provide the County with written notice specifically describing any such Encroachments no later than 30 days prior to the date the County advertises the Contract for bid.

3.3 The City hereby represents and warrants to the County that it holds fee simple title to the City’s Real Property; or that it possesses sufficient property interests to provide the legal authority to remove Encroachments on the City’s Real Property; and that there are no easements, covenants, restrictions, encumbrances or defects on or to the title of the City’s Real Property that will in any way affect or impair the County’s or the City’s ability to perform their respective obligations under this Agreement.

3.4 If the County’s Contractor removes Encroachments in accordance with the City’s direction under Paragraph 3.2, the City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees, agents, Contractor and subcontractors, while acting within the scope of their employment as such, from any and all suits, costs, claims, actions, losses, penalties, judgments, and/or awards of damages arising from removal of said Encroachments except when caused by the negligence of the County, its officers, officials, employees, agents, Contractor and subcontractors.

4. EASEMENTS

4.1 Temporary Construction Easement. The City has granted a Temporary Construction Easement (“TCE”) to the County allowing construction of the Project on the City’s Real Property. The City waived its right to appraisal and donated this easement. The TCE is attached as **Exhibit C**.

4.2 BNSF Permanent Trail Easement. The County shall continue to use its reasonable best efforts to obtain a permanent trail easement from BNSF that allows the County and its Contractor and other agents to design and construct Segment A as a Regional Trail on BNSF Real Property in accordance with this Agreement, and that allows the County to operate and maintain the Project in accordance with the obligations and requirements of this Agreement, and that is in all other respects consistent with the terms of this Agreement.

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5. CONSTRUCTION

5.1 The County shall be responsible for construction of the Project, including Contract procurement, and shall provide the necessary engineering, administrative, inspection, clerical and other services necessary for the construction of the Project.

5.2 The County shall advertise the Contract in the official legal publication for the County and if necessary other publications, consistent with applicable laws and regulations.

5.3 The County shall open the bids and shall notify the City of the time and date of the bid opening, which is typically three weeks after the bid is advertised. The City may attend the opening of the bids.

5.4 The County shall award the Contract to the lowest, responsive, responsible bidder for Segment A, subject to applicable laws and regulations.

5.5 The County shall require that the City be included as an additional insured on all of the Contractor's insurance policies and that the City be included as a party indemnified by the Contractor in the Contract's indemnification provisions and receives the same indemnification protection as the County. Policy coverage limits shall match or exceed those specified in the edition current at the time of bid of the WSDOT/American Public Works Association ("APWA") Standard Specifications for Road, Bridge and Municipal Construction.

5.6 The City may furnish an inspector, at the City's sole expense, to monitor compliance with the Contract plans and specifications during the construction of the Project. The City's inspector shall advise the County in writing of any deficiencies noted. Deficiencies shall be limited to items that the inspector believes are out of compliance with the Contract plans and specifications and the City's inspector shall cite the plan sheet number or specification that she or he considers to be at issue in the deficiency. The City's inspector shall also provide a written description of the remedy the inspector believes is necessary for each deficiency cited. If the City inspector determines that there is an unsafe traffic control condition at any intersection or if there is an immediate threat to public safety posed by the Contractor's actions, the City inspector has the authority to take immediate action, including directing the Contractor to take certain actions, in order to address the safety concern. With regard to all other matters identified by the City inspector, the City inspector shall not have authority to direct the work of the Contractor and shall not instruct the Contractor directly on any matters.

5.7 The County will hold weekly construction meetings with its Contractor. The City, at its option, may have its inspector or other representative attend the meetings. The City may provide the County with its preferences concerning any significant proposed changes in the scope of the work to be performed under the Contract at the weekly meetings, but as between the Parties, any changes in scope are subject only to the County's approval.

5.8 The County shall update the City on its progress in constructing the Project in its weekly construction meetings.

5.9 After the Contractor notifies the County in writing that Segment A is substantially complete, the Parties shall perform a mutual inspection of the Project. The City may provide a written deficiency list to the County within five (5) working days after this inspection. The list shall contain only construction deficiencies that the City believes are out of compliance with the Contract plans and specifications. The City shall cite the plan sheet number and/or specification that it considers to be at issue in the deficiency and provide a written description of the remedy the City believes is necessary for each deficiency cited.

5.10 The County shall, in its sole discretion, determine whether Substantial Completion has occurred under the Contract. After the County provides the Contractor with notice that Substantial Completion has occurred and the Contractor indicates to the County that all physical work required by the Contract is complete, the Parties shall perform a mutual final inspection of the Project. The City may provide a written deficiency list to the County within five (5) working days after the final inspection. The list shall contain only construction deficiencies that the City believes are out of compliance with the Contract plans and specifications. The City shall cite the plan sheet or specification that it considers to be at issue in the deficiency and provide a written description of the remedy the City believes is necessary for each deficiency cited. Final Acceptance of the Project shall be by the County, in its sole discretion.

5.11 The County represents to the City that it will require its Contractor in performing work under the Contract to comply with all applicable rules, regulations, statutes and ordinances.

5.12 The County will administer and enforce all warranties in the Contract up until assignment of the warranties to the City pursuant to Paragraph 6.2(e).

6. PROJECT CLOSEOUT AND OWNERSHIP

6.1 Within sixty (60) days of the date of Final Acceptance, the Parties shall perform the following obligations:

(a) The Parties shall execute and the City shall record the Restrictive Covenant in substantially the form set forth in **Exhibit D**, which covenant shall run with the land for the benefit of the County and its citizens and the County land that makes up its public park, recreation and open space system. The County and the City agree that the County shall have standing to enforce the Restrictive Covenant both as a matter of contract and as a real property interest. The Parties further agree that Segment A is a critical segment of the larger regional Lake to Sound Trail, that there are no equivalent facilities within the County that would serve the same purpose, and that recording of the Restrictive Covenant is essential to fulfilling the obligations of RCW 36.89.050.

(b) The Parties shall jointly undertake all actions necessary to transfer to the City all Permits for the Project that have not expired or terminated, and for which the City is not already the named permittee, except for the wetland mitigation obligations.

6.2 Within sixty (60) days of completion of the obligations in Paragraph 6.1, or such additional time as may be required to close out the Contract, the County shall perform the following obligations:

- (a) Deliver to the City project record drawings for Segment A;
- (b) Collect and provide to the City a copy of any applicable warranties and other information and materials in the County's possession that relate to the use, operation and maintenance of the Project Improvements;
- (c) Provide to the City unconditional lien releases that the Contractor has collected from all of its consultants, subcontractors and vendors;
- (d) Collect and provide copies of certificates obtained from the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries that all taxes, increases, and penalties due from the Contractor, and all taxes due and to become due with respect to such Contract, have been paid in full or that they are, in each department's opinion, readily collectible;
- (e) Execute and record a quit claim bill of sale conveying to the City all of the County's rights, title and interest to the Project Improvements located on or within the City's Real Property, and BNSF's Property as is, where is ("Bill of Sale"), which is in substantially the form set forth in **Exhibit E**.
- (f) Execute an assignment of the Contract warranties and an assignment of the warranties in the *Agreement for Professional Services for Lake to Sound Trail Design*, Contract No. E00178E10, between King County and Parametrix in favor of the City, with respect to the Project, with the exception of those Contract warranties that apply to the portions of Segment A located on the County's Real Property, except as provided in Paragraph 10.2;
- (g) Assign to the City the County's right to assert any claim it may have against the Contractor or against Parametrix under Contract No. E00178E10 arising out of or related to Project work, with the exception of those portions of Segment A located on the County's Real Property, and except as provided in Paragraph 10.2; and

6.3 Unless otherwise mutually agreed to by the Parties in writing, the Project shall not be accessible and open to the public until the obligations in Paragraphs 6.1 and 6.2 have been fulfilled.

6.4 The City, as required by RCW 36.89.050, agrees that Segment A shall continue to be used in perpetuity for a Regional Trail and shall not be converted to a different use.

6.5 The City agrees that allowing Segment A, including the City's Real Property, to be used for a Regional Trail shall include any and all actions by the City necessary to allow and control use of the trail in accordance with County provisions for use of trails in King County Code Title 7, as now or hereafter amended.

6.6 The City agrees that Segment A, including the City's Real Property and Right of Way Property, or any portion thereof, shall not be transferred or conveyed except by agreement providing that such lands shall continue to be used for a Regional Trail.

6.7 The City agrees that it will not limit or restrict access to and use of Segment A, including the City's Real Property and Right of Way Property by non-City residents in any way that does not also apply to City residents.

6.8 The City agrees that any and all user fees charged for use of Segment A, including charges imposed by any lessees, concessionaires, service providers, and/or other assignees shall be at the same rate for non-City residents as for the residents of the City.

6.9 The City agrees that it shall place the covenants in Paragraphs 6.4 through 6.8 in any deed transferring any portion of Segment A, including the City's Real Property.

7. Operations, Maintenance and Long Term Obligations

7.1 After Substantial Completion of the Project, the County shall maintain the Project Improvements and operate that portion of Segment A within the boundaries of the City. For purposes of this section, maintain and operate includes the maintenance and operation activities identified and described in **Exhibit B**. The City is solely responsible for all maintenance and operations activities not identified and described, or specifically excluded in **Exhibit B** and all maintenance and operations activities that are not associated with the trail improvements.

7.2 The County maintenance and operations activities shall be limited to the area shown in **Exhibit B** and generally described as a thirty foot corridor, fifteen feet to either side on the trail center line.

8. PROJECT FUNDING

8.1 The County shall provide funding for design, construction, operations and maintenance of the Project.

8.2 The City shall provide funding for all of the City's obligations or activities under or related to this Agreement from the time of execution of this Agreement forward, including but not limited to construction inspection pursuant to Paragraph 5.6, other administration or implementation expenses, and on all maintenance and operation activities except those identified in **Exhibit B**.

9. CONDITIONS PRECEDENT TO PROJECT DEVELOPMENT

9.1 The County's obligations related to finalizing design, permitting and construction of the Project under Sections 2 through 6 of this Agreement, and providing funding for same, are expressly subject to and contingent upon all of the following conditions precedent being satisfied to the County's satisfaction in its sole discretion (the "Project Conditions"):

(a) An Interagency Agreement being approved by the legislative authority of the City of Renton and executed by the City of Renton and the County for the design, construction, operation and maintenance of the portion of Segment A that is within the City of Renton.

(b) The County, on behalf of the City of Renton, obtaining an executed permanent trail easement from UPRR on terms acceptable to the County.

(c) The County, on behalf of the City of Tukwila, obtaining an executed permanent trail easement from BNSF on terms acceptable to the County.

(d) The County and/or its Contractor obtaining all Permits necessary for Segment A.

9.2 If the County, in its sole discretion, determines that the Project Conditions have not been satisfied, the County shall notify the City in writing, and neither Party shall have any further rights or obligations under this Agreement and this Agreement shall terminate.

10. LIABILITY

10.1 Each Party shall protect, defend, indemnify and save harmless the other Party, its officers, officials, employees and agents while acting within the scope of their employment as such, from any and all suits, costs, claims, actions, losses, penalties, judgments, and/or damages of whatsoever kind ("Claims") arising out of, or in connection with, or incident to the breach of any warranty under this Agreement or the exercise of any right or obligation under this Agreement by the indemnifying Party, including any negligent acts or omissions, except to the extent such Claims arise out of or result from the other Party's own negligent acts or omissions. Each Party agrees that it is fully responsible for the acts and omissions of its own contractors and franchisees, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. Each Party agrees that its

obligations under this paragraph extend to any Claim brought by or on behalf of the other Party or any of its employees, or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects 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 indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them. Nothing in this Paragraph 10.1 modifies or limits in any way the City's obligations in Paragraph 3.4.

10.2 The County's obligations in Paragraph 9.1 terminate upon the date the County fulfills all its obligations in Paragraph 6.2 ("Closeout Date"), with the exception of Claims filed with the clerk of the County Council under King County Code ("K.C.C.") 2.21.070 or served on the clerk of the County Council under K.C.C. 2.04.010 prior to the Closeout Date or contract claims reserved under the terms of the applicable construction or design contract by the Contractor or by the County's design contractor, Parametrix, at the time of Final Acceptance of the applicable contract ("Reserved Claims"). If the County determines that Reserved Claims will exist at the Closeout Date, the County may, in its sole discretion, choose not to assign its contract warranties and/or its claims against the County's contractors under Paragraphs 6.2(f) and 6.2(g).

10.3 As of the Closeout Date, except for Reserved Claims, the City shall release, protect, defend, indemnify and save harmless the County, its officers, officials, and employees while acting within the scope of their employment as such, from any and all suits, costs, claims, actions, losses, penalties, judgments, and/or damages, of whatsoever kind ("Claims") arising out of, or in connection with, or incident to either Party's breach of any warranty under this Agreement or exercise of any right or obligation under this Agreement, and any and all Claims relating to or arising out of, in whole or in part and directly or indirectly, the Project. The City agrees that its obligations under this provision extend to any Claims brought by or on behalf of the County or any of its employees, or agents. The City expressly agrees that its duty to release, protect, defend, indemnify and save harmless the County, its officers, officials, and employees under this paragraph includes negligent acts or omissions which are concurrent, contributory, or both by the County. To the extent this Agreement is construed to be subject to RCW 4.24.115, the City's duties under this paragraph will extend only to the maximum extent permitted by law or as defined by RCW 4.24.115, as now enacted or hereafter amended. The foregoing indemnity is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity of claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

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11. INSURANCE

11.1 Each Party shall maintain, for the duration of each Party's liability exposures under this Agreement, self-insurance against claims for injuries to persons or damage to property, which may arise from or in connection with performance of the work hereunder by each Party, their agents, representatives, employees, contractors or subcontractors.

11.2 King County, a charter county government under the constitution of the State of Washington, maintains a fully funded Self-Insurance program as contemplated in King County Code chapter 2.21 for the protection and handling of the County's liabilities including injuries to persons and damage to property. The City acknowledges, agrees and understands that the County is self-funded for all of its liability exposures and that the County's self-insurance program meets the requirements of paragraph 11.1. The County agrees, at its own expense, to maintain, through its self-funded program, coverage for all of its liability exposures for this Agreement. The County agrees to provide the City with at least 30 days prior written notice of any material change in the County's self-funded program and will provide the City with a certificate of self-insurance as adequate proof of coverage. The City further acknowledges, agrees and understands that the County does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore the County does not have the ability to add the City as an additional insured.

11.3 It is agreed that the City's participation in a governmental self-insured risk pool with Washington Cities Insurance Authority ("WCIA") will meet the requirements of Paragraph 11.1. The City agrees, at its own expense, to maintain, through WCIA, coverage for all of its liability exposures for this Agreement. The City agrees to provide the County with at least 30 days prior written notice of any material change in the City's WCIA coverage and will provide the County with an evidence of coverage letter as adequate proof of coverage. The County further acknowledges, agrees and understands that the City does not purchase Commercial General Liability insurance and is with a self-insured pool; therefore the City does not have the ability to add the County as an additional insured. The City participates in the State's worker's compensation program.

12. EFFECTIVE DATE/DURATION

12.1 This Agreement shall be effective upon signature by both Parties.

12.2 Unless expressly stated otherwise in this Agreement, the terms, covenants, representations and warranties contained herein shall continue in force unless both Parties mutually consent in writing to termination of this Agreement.

13. AUDITS AND INSPECTIONS

13.1 Until six (6) years after the effective date of this Agreement, unless the Agreement is terminated under Paragraph 9.2, any of either Party's records related to any

matters covered by this Agreement not otherwise privileged shall be subject to inspection, review, and/or audit by either Party at the requesting Party’s sole expense. Such records shall be made available for inspection during regular business hours within a reasonable time of the request.

14. NOTICE

14.1 Any notice provided for herein shall be sent to the respective Parties at:

<p>King County:</p> <p>Director's Office King County Department of Natural Resources and Parks Rm 700, King Street Center 201 S. Jackson Street Seattle, WA98104</p> <p>With a copy to: King County Prosecuting Attorney's Office Attn: Chief Civil Deputy 516 Third Avenue W400 Seattle, WA98104</p>	<p>City of Tukwila</p> <p>Rick Still, Director Tukwila Parks & Recreation 12424 42nd Ave S. Tukwila, WA 98168</p>
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15. MISCELLANEOUS PROVISIONS

15.1 Waiver. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition shall be waived, modified or deleted except by an instrument, in writing, signed by the Parties hereto.

15.2 Force Majeure. If either Party cannot perform any of its obligations due to events beyond its reasonable control, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond a Party’s reasonable control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or materials, government regulations or restrictions, lawsuits filed challenging one or more Permits or other agreements necessary for implementation of the Project, and weather conditions.

15.3 Joint Drafting Effort. This Agreement shall be considered for all purposes as prepared by the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

15.4 Third Party Beneficiaries. Nothing in this Agreement is intended to, nor shall be construed to give any rights or benefits in the Agreement to anyone other than the City and the County, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the City and the County and not for the benefit of any other Party.

15.5 Exhibits. All Exhibits referenced in this Agreement are incorporated by reference as if fully set forth.

15.6 Entire Agreement. This Agreement contains the entire agreement of the Parties and any representations or understandings, whether oral or written, not incorporated herein are excluded.

15.7 Amendment. This Agreement may be amended only by an instrument in writing, duly executed by both Parties.

15.8 Relationship of the Parties. The Parties execute and implement this Agreement as separate entities. No partnership, joint venture or joint undertaking shall be construed from this Agreement.

15.9 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Washington.

15.10 Survivability. The provisions of Paragraph 3.4 and Section 10 shall survive termination of this Agreement.

15.11 Authority. Each Party executing this Agreement represents that the Party has the authority to execute the Agreement and to comply with all terms of this Agreement.

Exhibits

- Exhibit A: Lake to Sound Trail City of Tukwila – West Parcel
- Exhibit B: Lake to Sound Trail Segment A - Operations and Maintenance Agreement
- Exhibit C: Temporary Construction Easement and Amendment to Temporary Construction Easement
- Exhibit D: Form of Restrictive Covenant – Lake to Sound Trail Segment A Restrictive Covenant
- Exhibit E: Form of Bill of Sale - Quit Claim Bill of Sale

(Signatures on next page)

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date last written below.

KING COUNTY

CITY OF TUWILA

for _____
DOW CONSTANTINE
King County Executive

Mayor

Date

Date

ATTEST:

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Deputy Prosecuting Attorney

City Attorney

Date

Date