

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

