



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

April 17, 2001

Ordinance 14087

Proposed No. 2001-0216.1

Sponsors Thomas and Hague

1 AN ORDINANCE authorizing execution of an agreement
2 between King County and the Central Puget Sound
3 Regional Transit Authority for the park and ride facility at
4 the Kent Commuter Rail Station.

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6
7 **BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:**

8 **SECTION 1.** The county executive is hereby authorized on behalf of the county to
9 execute an agreement, substantially in the form attached, for the park and ride facility at the
10 Kent Commuter Rail Station.

11 **SECTION 2.** The appropriate county officials, agents and employees are hereby
12 authorized to take all actions necessary to implement said agreement and all actions
13 heretofore taken by county officials, agents and employees consistent with the terms and
14 purposes of said agreement are hereby ratified, confirmed and approved.

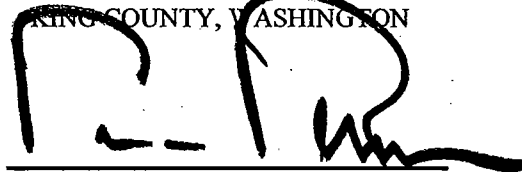
15 **SECTION 3.** If any one or more of the covenants or agreements provided in this
16 ordinance to be performed on the part of the county shall be declared by any court of

17 competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or
18 agreements, shall be null and void and shall be deemed separable from the remaining
19 covenants and agreements of this ordinance and shall in no way affect the validity of the
20 other provisions of this ordinance or of the agreement.
21

Ordinance 14087 was introduced on 4/9/01 and passed by the Metropolitan King County Council on 4/16/01, by the following vote:

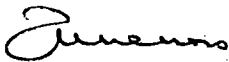
Yes: 12 - Mr. von Reichbauer, Ms. Miller, Ms. Fimia, Mr. Phillips, Mr. Pelz,
Mr. McKenna, Ms. Sullivan, Mr. Nickels, Mr. Pullen, Mr. Gossett, Ms.
Hague and Mr. Thomas
No: 0
Excused: 1 - Mr. Irons

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



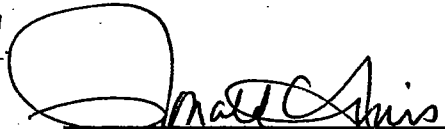
Pete von Reichbauer, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 20 day of April, 2001



Ron Sims, County Executive

Attachments A. Agreement between the Central Puget Sound Regional Transit Authority and King County regarding a Park and Ride Facility at the Kent Commuter Rail Station

14087

AGREEMENT
between
THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY
and
KING COUNTY
regarding a
PARK AND RIDE FACILITY AT
THE KENT COMMUTER RAIL STATION

This Agreement is made and entered into this ___ day of _____, by and between the Central Puget Sound Regional Transit Authority, (hereinafter, "Sound Transit"), and King County, (hereinafter, the "County"), and as may be referred to individually as "Party" and collectively as "Parties".

WHEREAS, Sound Transit is planning to construct a park and ride garage related to the construction of the Commuter Rail Station in the City of Kent; and

WHEREAS, the County desires that Sound Transit permit this garage to be used by County bus riders and participants in County ridesharing programs (hereinafter, "County transit users"); and

WHEREAS, Sound Transit is willing to permit its garage to be used by County transit users in exchange for the County making a capital contribution toward the cost of increasing the capacity of the garage;

WHEREAS, in accordance with the terms of this agreement, the County is willing to contribute a share of the capital funding for Sound Transit's park-and-ride garage in Kent.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, it is mutually agreed as follows:

1. Sound Transit Construction Responsibilities

1.1 Construction Work

Sound Transit agrees to perform all construction work necessary to construct a five-floor park and ride garage with a capacity for approximately 871 parking spaces (hereinafter, the "facility"), said facility to be located in the City of Kent adjacent to Sound Transit's commuter rail station and connected by a pedestrian bridge to King County's bus boarding area. Said construction work shall include, but not be limited to, all demolition, removal, excavation, production, construction, repair or other work necessary to develop the facility (hereinafter, "construction work"). Sound Transit shall not proceed with construction work under this Agreement without the County's written acknowledgement that the conditions of this agreement have been met and the facility's capacity and design are consistent with use by County transit users.

1.2 Contract Administration

Sound Transit shall be responsible for the administration of any contracts it enters into for the performance of its responsibilities under this Agreement. Sound Transit shall submit a written report each month to the County identifying work progress, expenditures by month and to-date, schedule adherence, and change orders executed. The County shall have the right to review and inspect the work in progress upon giving notice to Sound Transit's Construction Manager and complying with posted jobsite safety rules and regulations. Prior to final acceptance of a contractor's construction work by Sound Transit, the County and Sound Transit shall participate jointly in periodic and final inspections of the contractor's construction work. Neither the provisions of this Agreement, nor any County reviews, inspections or approvals provided throughout the course of construction, whether of change orders, progress inspections, final acceptance inspections or otherwise, shall create any responsibility or liability on the part of the County to Sound Transit, its officials, employees, agents and contractors or any third parties.

1.3 Change Orders

Sound Transit shall not agree to any material change in the facility specifications or any contract entered into by Sound Transit for the performance of the scope of work of this Agreement, without the written approval of the County, which approval shall not be unreasonably withheld.

1.4 Environmental, Land Use, and Community Relations

Sound Transit shall be responsible for undertaking all required environmental, land use and other required review processes, issuing and/or obtaining all permits, licenses, easements, and approvals necessary to perform the construction work, and paying all fees or costs associated therewith. Sound Transit shall be responsible for conducting all necessary community relations activities related to the construction work.

1.5 Final Acceptance

Sound Transit shall not accept any construction work of a contractor covered in this Agreement without the written approval of the County.

1.6 Invoice

Sound Transit shall submit an invoice to the County after final acceptance of the facility for the amount provided below as the County's contribution to Sound Transit's costs of constructing the facility.

1.7 Construction Insurance

Sound Transit shall require its contractor(s) to obtain and maintain Commercial General Liability, Professional Liability, Commercial Automobile Liability insurance, and any other insurance coverages required by Sound Transit for other construction projects of similar size and

cost. Such insurance shall include Sound Transit and the County and their officers, officials, agents, and employees as additional insured and shall contain "severability of interest" (cross liability) wording. Sound Transit's and the contractor's insurance shall be primary to and not contributing with any insurance or self-insurance, which may be carried by the County.

2. County Responsibilities

2.1 County Approval of Work

Upon notification by Sound Transit of substantial completion of the work of this Agreement, the County shall have the opportunity to inspect the facility. If the County finds any work that does not meet the terms of this Agreement or any specifications or terms established hereunder, the County will prepare a Punch List of such items and submit it to Sound Transit. Sound Transit shall not accept any work of a contractor without the written approval of the County. Work which does not comply with the agreed upon specifications and terms shall be corrected by Sound Transit at no cost to the County. Notice of County approval shall not constitute acceptance of any unauthorized or defective construction work or material.

2.2 Payment of Amounts Due

The County shall contribute two million and forty thousand dollars (\$2,040,000) toward Sound Transit's actual costs of performing its responsibilities under this Agreement. No other amounts shall be due from the County under this Agreement. The County shall make payment within thirty (30) days after receipt of the invoice submitted by Sound Transit after final acceptance of the facility as provided above.

3. Post-Construction Ownership, Maintenance and Operation of Facility

3.1 Sound Transit

The facility shall become the property of Sound Transit upon its completion and final acceptance. Sound Transit shall thereafter be responsible and liable for operation of the facility including, but not limited to, cleaning, maintenance, security and repairs. Sound Transit shall be responsible for procuring and maintaining "all risk" property insurance coverage, including flood and earthquake coverage, in an amount not less than the replacement value of the facility, with King County being added as a loss payee to the extent of its percentage interest as set forth below.

3.2 Repairs and Replacement

In the event the facility requires repairs in order to continue to be used by County transit users during the term of this Agreement, Sound Transit shall repair the facility without further contribution from King County. If during said period the facility is damaged to the extent it is deemed a total loss, Sound Transit may elect not to replace the facility. If Sound Transit elects to not replace the facility, Sound Transit shall pay the County 20% of the insurance or the applicable percentage based on the year of such loss using a straight-line depreciation of the full

20% over the term of this Agreement.

3.3 Change of Ownership

Sound Transit agrees that it will not convey its interest in the facility or assign its obligations under this Agreement without the written consent of the County, which shall not be unreasonably withheld. Sound Transit further agrees to the recording of an instrument, in a form acceptable to the County, ensuring that the County's transit users may continue to use the facility in accordance with the terms of this Agreement notwithstanding any change in ownership, whether by conveyance, successorship, operation of law or other reason.

4. Use of Facility for County Purposes

4.1 Parking by County Transit Users

County transit users shall be permitted without charge to use 191 parking spaces in the facility every day of the week between the hours of 5:00 a.m. and 12:00 midnight, unless otherwise agreed to by the County. Sound Transit shall post signs within the facility informing users of a Sound Transit contact for questions or complaints regarding the operating rules and conditions of the facility.

4.2 Restrictions on Use of Facility

Sound Transit plans to initially permit parking in the facility by transit and nontransit users alike. If at any point the County determines that its transit users do not have use of the 191 parking spaces, whether on weekdays or weekends and whether for regular or special service, Sound Transit shall implement and enforce prohibitions on parking by nontransit users. If after Sound Transit has excluded nontransit users, it appears to either party that their respective transit users do not have sufficient parking spaces available, the parties shall undertake a survey to determine the usage split between their respective transit users. If the survey demonstrates that Sound Transit users require more spaces at certain times, Sound Transit reserves the right to restrict the number of spaces on each floor of the facility that are available to County transit users during such times; provided, however, in no event will spaces available to County transit users be reduced to less than 191 total spaces in the facility. Sound Transit shall provide written notice to the County at least 120 days prior to implementing any such restriction on parking by County transit users. Implementation shall occur at the start of the next County service change following receipt of the notice from Sound Transit. Cost of surveys any the implementation and operation of any parking restriction program shall be shared by Sound Transit (80%), and the County (20%).

4.3 Temporary Closures

Except in cases of emergency, Sound Transit shall provide written notice at least 30 days prior to closing all or a portion of the facility for maintenance or repairs. In the event of an emergency closure, Sound Transit shall notify the County as soon as is possible. Should a partial closure

result in insufficient spaces to accommodate County transit users, Sound Transit shall implement and enforce prohibitions on parking by nontransit users. In any case, County transit users shall be permitted to use the open portion of the facility on the same basis as Sound Transit users.

5. Legal Relations

5.1 It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of Sound Transit or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees of the County.

5.2 Sound Transit shall comply, and shall ensure its contractors comply, with all federal, state and local laws, regulations, and ordinances applicable to the work and services to be performed under this Agreement.

5.3 To the maximum extent permitted by law, Sound Transit shall defend, indemnify and hold harmless the County and all of its officials, employees, principals and agents from all claims, demands, suits, actions, and liability of any kind, including injuries to persons or damages to property, which arise out of, are connected with, or are due to any errors, omissions or negligent acts of Sound Transit, its contractor, and/or employees, agents, and representatives in performance of this Agreement; provided, however, that if (and only if) the provisions of RCW 4.24.115 apply to the work and services under this Agreement and any such damages and injuries to persons or property are caused by or result from the concurrent negligence of Sound Transit, its contractor or employees, agents, or representatives and the County or its employees, agents, or representatives, the indemnification applies only to the extent of the negligence of Sound Transit, its contractor or employees, agents, or representatives. In the event of any such claims, demands, suits, actions, and lawsuits, Sound Transit shall assume all costs of defense thereof, including administrative and legal fees incurred by the County, and of all resulting judgments that may be obtained against the County or any of its officers, principals, agents, or employees. If resulting therefrom, any lien is placed upon property of the County or any of its officers, principals, agents, or employees, Sound Transit shall at once cause the same to be dissolved and discharged by giving bond or otherwise. Sound Transit specifically assumes potential liability for actions brought by Sound Transit's own employees against the County and for that purpose Sound Transit specifically waives, as respects the County only, any immunity under the Worker's Compensation Act, RCW Title 51; and Sound Transit recognizes that this waiver was the subject of mutual negotiation and specifically entered into pursuant to the provision of RCW 4.24.115, if applicable. In the event either party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section against the other party, all such fees, costs and expenses shall be recoverable by the prevailing party.

5.4 The parties' rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.

5.5 This Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. The Superior Court of King

County, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

5.6 The provisions of this Section 5 shall survive any expiration or termination of this Agreement.

6. Records Retention and Audit

During the progress of the Project and for a period not less than three (3) years from the date of final payment to Sound Transit, records and accounts pertaining to the Project and accounting therefor are to be kept available for inspection and audit by representatives of the County, the State of Washington and the federal government. Copies of the records shall be furnished to the County 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. If any litigation, claim or audit is commenced, the records along with supporting documentation shall be retained until all litigation, claims and/or audit is commenced, the records along with supporting documentation shall be retained until all litigation claim, audit continues past the three year retention.

7. Duration and Termination:

7.1. This Agreement shall take effect upon its signing by both parties and shall expire March 1, 2076 unless terminated earlier in accordance with this section.

7.2 Either party may terminate this Agreement in the event the other fails to perform a material obligation under this Agreement, and such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided to such other party. Notice of termination of this Agreement shall be given by the party terminating this Agreement to the other party not less than thirty days (30) days prior to the effective date of termination.

7.3 If this Agreement is terminated after final acceptance of the facility, Sound Transit shall pay the County the applicable percentage based on the year of such loss using a straight-line depreciation of the full 20% over the term of this Agreement.

7.4 Neither payment by the County nor performance by Sound Transit shall be construed as a waiver of other party's rights or remedies against the other. Failure to require full and timely performance of any provision at any time shall not waive or reduce the right to insist upon complete and timely performance of such provision thereafter.

8. Identification of Contacts at Sound Transit and the County:

The following agency contacts for this project are:

King County: Ron Posthuma (206) 684-1007

Sound Transit: Jeff Wolfe (206) 389-5289

9. Successors

The provisions of this Agreement shall be binding on and inure to the benefit of the parties successors.

10. Entire Agreement:

This document contains all terms, conditions and provisions agreed upon by the parties hereto, and shall not be modified except by written amendment. Such amendments may be made to this Agreement within the previously approved budget or other applicable authority for and on behalf of Sound Transit by its Project Manager and King County by its Project Manager.

11. Severability:

If any provisions of this Agreement are held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives originally contemplated.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY

KING COUNTY

By: _____

By: _____

Date: _____

Date: _____

Approved as to Form:

By: _____

Central Puget Sound Regional
Transit Authority Legal Counsel

By: _____

King County Deputy Prosecuting Attorney