



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

August 28, 2001

Ordinance 14188

Proposed No. 2001-0417.1

Sponsors Fimia

1 AN ORDINANCE authorizing the execution of a
2 cooperative agreement with the Washington state
3 Department of Transportation for the Twin Lakes park-and-
4 ride lot.

5
6

7 **STATEMENT OF FACTS:**

- 8 1. Washington state Department of Transportation has purchased
9 property and constructed a park-and-ride lot commonly known as the
10 Twin Lakes park-and-ride lot, located in the vicinity of 21st Avenue SW
11 and SW 344th Street in Federal Way, with Washington state Department
12 of Transportation motor vehicle funds.
- 13 2. King County provides public transportation within the Seattle-King
14 County metropolitan area and has adopted a comprehensive plan to
15 provide mass transit for the metropolitan area, including transit services
16 at park-and-ride lots.

17 3. Washington state Department of Transportation is willing to allow
18 King County to operate transit services at the Twin Lakes park-and-ride
19 lot in exchange for operating and maintaining the park-and-ride lot.

20 4. Washington state Department of Transportation and King County
21 have negotiated a ten-year cooperative agreement with two additional ten
22 year renewal periods. Under the terms of the agreement, King County
23 will be responsible for all costs of operating and maintaining the park-
24 and-ride lot in exchange for the right to operate transit services out of the
25 park-and-ride lot.

26 5. In consideration of the mutual benefits to be derived, it would be in
27 the best interests of the citizens of King County for the county to operate
28 and maintain the Twin Lakes park-and-ride lot in exchange for the right
29 to operate transit services out of the lot in accordance with the attached
30 cooperative agreement.

31 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

32 SECTION 1. The county executive is hereby authorized to execute a cooperative
33 agreement with the Washington state Department of Transportation for operation and

34 maintenance of the Twin Lakes park-and-ride lot, substantially in the form of Attachment
35 A to this ordinance.

36

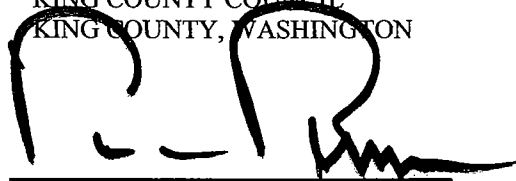
Ordinance 14188 was introduced on 8/20/01 and passed by the Metropolitan King County Council on 8/27/01, by the following vote:

Yes: 11 - Mr. von Reichbauer, Ms. Miller, Mr. Phillips, Mr. Pelz, Mr. McKenna, Ms. Sullivan, Mr. Nickels, Mr. Pullen, Mr. Gossett, Mr. Thomas and Mr. Irons

No: 0

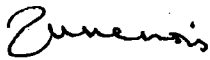
Excused: 2 - Ms. Fimia and Ms. Hague

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



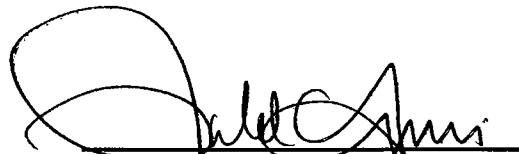
Pete von Reichbauer, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 7 day of September, 2001.



Ron Sims, County Executive

Attachments A. Cooperative Agreement-Operation and Maintenance of the Twin Lakes Park-and-Ride Lot

1

COOPERATIVE AGREEMENT

2

Operation and Maintenance of the Twin Lake Park and Ride Lot

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THIS COOPERATIVE AGREEMENT (hereinafter Agreement) for the operation and maintenance of the Twin Lake Park and Ride Lot is made and entered into by and between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (hereinafter WSDOT) and the KING COUNTY DEPARTMENT OF TRANSPORTATION (hereinafter METRO).

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RECITALS

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WHEREAS, WSDOT has constructed a park and ride lot commonly known as the Twin Lakes Park & Ride Lot located in the vicinity of 21st Avenue SW and SW 344th Street (hereinafter Park and Ride Lot);

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WHEREAS, the Park and Ride Lot is located on real property owned in fee by WSDOT and which was acquired with WSDOT motor vehicle funds;

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WHEREAS, METRO provides public transportation within the Seattle-King County metropolitan area, and has adopted a comprehensive plan to provide mass transit for said metropolitan area, which includes providing transit services at the Park and Ride Lot;

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WHEREAS, METRO agrees to operate and maintain the Park and Ride Lot in exchange for the right to operate transit services; and

19

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WHEREAS, WSDOT and METRO are authorized to enter into this agreement pursuant to RCW 47.28.140.

21

22

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, IT IS MUTUALLY AGREED THAT:

23

1. PREMISES.

24

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A. The premises covered by this Agreement is as shown on **Exhibit A**, attached hereto and by this reference made a part hereof, and as defined as follows:

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1 That portion of the southeast quarter of the northeast quarter of Section 24, Township 21
2 North, Range 3 East, W.M., King County, Washington, described as follows:

3 Beginning at the southwest corner of the southeast quarter of the northeast quarter of said Section
4 24; thence South 88°47'16" East along the south line of said southeast quarter of the northeast
5 quarter a distance of 660.45 feet; thence North 01°41'56" East a distance of 50 feet to the True
6 Point of Beginning; thence continuing North 01°41'56" East a distance of 822.91 feet; thence
7 North 88°47'21" West a distance of 610.02 feet; thence South 01°41'56" West a distance of
8 797.69 feet to a point of curvature; thence southeasterly along a curve to the left with a radius of
9 25 feet an arc distance of 39.48 feet to a point of tangency; thence South 88°47'16" East a
10 distance of 584.81 to the True Point of Beginning. (Hereinafter Premises).

11 B. METRO has examined the Premises and accepts it in its present condition as part
12 of the consideration of this Agreement, provided WSDOT shall install fencing at the drainage
13 pond and shall have responsibility for removing any graffiti and repairing any vandalism
14 occurring prior to the date of execution of this Agreement.

15 2. **TERM.** This Agreement shall be ten (10) years, commencing on the date of execution by
16 both parties.

17 3. **RENEWAL.**

18 A. This Agreement may be renewed by METRO for two (2) additional ten
19 (10) year periods (Renewal Period); Provided that; (1) METRO is not in default and has
20 not been in default during the term or any Renewal Period of this Agreement; (2) there
21 is no other public need for the Premises; (3) the Park and Ride Lot is, in WSDOT's
22 determination, continuing to serve a functional highway purpose; and (4) the terms and
23 conditions of this Agreement conform to then existing state policies or practices, laws,
24 regulations and contracts, or provided METRO is willing to amend this Agreement to
25 bring it into compliance with such policies, practices, laws, regulations, and contracts.

26 B. The Agreement for the Renewal Period shall be on the same terms and
27 conditions as set forth herein, except as modified by any changes in policies, practices,
28 laws, regulations or contracts, as reflected in a written amendment signed by both
29 parties.

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1 C. METRO shall give notice of its intent to renew this Agreement for the
2 Renewal Period at least ninety (90) days, but not more than six (6) months prior to the
3 expiration of this Agreement, or any renewal thereof.

4 **4. TERMINATION BY WSDOT.**

5 A. WSDOT may terminate this Agreement, in whole or in part, without penalty or
6 further liability as follows:

7 (1) upon thirty (30) days written notice to METRO, if METRO defaults, and
8 fails to cure such default within that thirty (30) day period, or such longer period, as may be
9 determined by WSDOT in its sole judgement, if METRO is diligently working to cure the
10 default;

11 (2) upon 180 days written notice, unless an emergency exists, then
12 immediately, if WSDOT determines that it is in the best interest of the State of Washington to
13 terminate this Agreement; and

14 (3) immediately, upon written notice, if a receiver is appointed to take
15 possession of METRO's assets, METRO makes a general assignment for the benefit of creditors,
16 or METRO becomes insolvent or takes or suffers under the Bankruptcy Act.

17 B. Waiver or acceptance of any default of the terms of this Agreement by
18 WSDOT shall not operate as a release of METRO's responsibility for any prior or
19 subsequent default.

20 C. If METRO defaults on any provision in this Agreement three (3) times
21 within a twelve (12)-month period, then the third default shall be deemed "non-
22 curable" and this Agreement may be terminated by WSDOT on thirty (30) days written
23 notice.

24 **5. TERMINATION BY METRO.**

25 A. For the first five (5) years, METRO cannot terminate this Agreement.

26 B. After the expiration of the first five (5) years, METRO may terminate this
27 Agreement without penalty or further liability upon 180 days written notice to WSDOT.

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1 **6. CONSIDERATION.** In exchange for the use of the Premises by METRO to operate
2 transit services, as described elsewhere herein, METRO agrees to perform the maintenance
3 services on the Premises, as provided elsewhere herein.

4

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6 **7. USE OF PREMISES.**

7 A. No use other than operation and maintenance of a park and ride lot and a METRO
8 driver comfort station shall be permitted without the prior written approval of WSDOT.
9 Operation of transit services are the transfer of motorists from private vehicles to busses or to or
10 from private car pool vehicles, bus to bus transfers, transfers to METRO van pools, and
11 necessary security activities. The driver comfort station is a 8-4 x 6-6 x 9-8 high structure
12 containing a toilet and washbasin for METRO driver use. Any other use authorized by WSDOT
13 will be pursuant to separate written agreement. This provision applies to other uses by METRO
14 and uses by third parties.

15 B. METRO shall have access to the Premises at the location shown on **Exhibit A**.

16 C. In using the Premises, METRO must comply with all policies and regulations
17 heretofore adopted or hereafter promulgated by WSDOT relative to the location, operation, and
18 maintenance of improvements located on this Premises; Provided, that if within the first five (5)
19 years of this Agreement METRO cannot legally comply with such policies and regulations
20 adopted after the commencement of this Agreement, the Program Manager for each party shall
21 confer and mutually agree in writing to an alternative compliance option. In the event the
22 Program Managers for both parties can not reach agreement, the matter shall be resolved by the
23 Designated Representatives as provided in **Paragraph 30**. Dispute Resolution.

24 D. In using the Premises, it is expressly agreed that METRO must comply with all
25 applicable federal, state, and local laws, ordinances, and regulations, including environmental
26 requirements, that are in force or which may hereafter be in force and secure and maintain all
27 necessary permits and licenses.

28 E. Metro agrees to maintain the following park and ride parking spaces on the
29 Premises, unless otherwise agreed to in writing by the parties: Total 608 as follows: 482

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1 Standard; 112 Compact; 12 Handicapped; and 2 Handicapped Vans. METRO is also allowed to
2 reserve two (2) parking spaces for METRO Service Quality Supervisors.

3 F. Signs, display lights, or advertising media/materials are not permitted on the
4 Premises except on transit buses, unless shown on a separate plan sheet and must receive prior
5 written WSDOT approval. The signs as shown on **Exhibit B**, attached hereto and by this
6 reference made a part hereof, are hereby approved.

7 G. METRO will not disturb markers installed by a WSDOT franchise/permit
8 holder or lessee and will contact and provide notice to any franchise/permit holder or
9 lessee and all owners of underground facilities prior to any excavation on the Premises.
10 METRO shall contact WSDOT and call the Underground Utility Locating Service, or its
11 successor organization as part of its efforts to ascertain any and all owners of
12 underground facilities and to locate the underground facility. METRO shall not
13 damage legally installed underground facilities. METRO shall comply with all
14 applicable provisions of Chapter 19.122 RCW relating to underground facilities.
15 Excavation on the Premises is considered to be new construction subject to the terms
16 and conditions set forth in **paragraph 12** herein.

17 **8. MAINTENANCE.**

18 A. METRO agrees to maintain the Premises in accordance with WSDOT standards
19 set forth in the WSDOT Maintenance Manual, and any amendments thereto, which by this
20 reference are incorporated herein. Maintenance shall include, but not be limited to, all upkeep,
21 cleaning and repair of any passenger shelters, access roads, parking stalls, driver's restroom and
22 holding-tank, walkways, lot-related signage, landscaping, illumination, drainage facilities, litter
23 receptacles and such other fixtures and appurtenances which may be installed within or adjacent
24 to the passenger shelters for the purposes of passenger comfort, information or safety.
25 Maintenance shall also include snow and ice removal from the Premises.

26 B. Fences shall be maintained by METRO. If any fence is damaged as a result of
27 METRO's activities, METRO will promptly repair such damage at its cost to the WSDOT's
28 satisfaction.

29 C. WSDOT reserves the right to periodically observe and inspect the maintenance
30 work conducted by METRO on the Park and Ride Lot. WSDOT shall provide written notice to
31 METRO to include details of those elements or areas not in compliance with specifically
32 referenced WSDOT maintenance requirements. The notice will set a specified reasonable period

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1 of time in which requested corrective action must be taken; Provided, that if an emergency exists,
2 corrective action must be taken immediately. If corrective measures are not completed within the
3 specified time period, WSDOT may either perform the maintenance as provided elsewhere
4 herein, or issue a notice of default as provided elsewhere herein.

5
6 D. Landscaping.

7
8 (1) WSDOT agrees to maintain landscaping and to repair or replace defective
9 materials covered by warranty during the warranty period specified in the WSDOT construction
10 contract, which is from April 2, 2001 to April 2, 2002. (Landscape Warranty Period).

11
12 (2) During the Landscape Warranty Period, METRO is responsible for
13 landscape maintenance not covered by the warranty

14
15 (3) After the expiration of the Landscape Warranty Period, METRO is
16 responsible for all landscape maintenance.

17
18 (4) The following individuals are the designated representatives for the
19 purposes of reporting and correcting defects covered under the warranty.

20
21 WSDOT: Joe Scanlon, P.E., 21851 84th Ave. S., Kent, WA 98032-1958

22
23 METRO: Design & Construction Manager, Judy Riley, Metro Transit Division,
24 Department of Transportation, 201 South Jackson Street, M.S. KSC-
25 TR-0435, Seattle, WA 98104-3856

26
27 F. WSDOT shall provide METRO with two (2) copies of the construction contract
28 drawings, one (1) copy each of the special provisions and as-built drawings, and CAD files of
29 the contract drawings.

30
31 **9. WSDOT RESERVATION OF RIGHT.**

32 A. Right of Entry.

33 (1) Nothing herein shall affect WSDOT's, its agent's and contractor's, and
34 the Federal Highway Administration's, right to enter upon and use the Premises at any time for
35 any purpose.

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1 (2) Other than in an emergency, WSDOT, as a matter of courtesy, will attempt
2 to give METRO a minimum of thirty (30) working days notice of any entry that will
3 unreasonably disrupt METRO's operation or maintenance on the Premises. All reasonable steps
4 will be taken to minimize impacts to METRO's operation and maintenance, however, WSDOT
5 assumes no liability of any kind for any such disruption.

6 B. Right to Grant, Maintain, and Operate Utility Franchises, Permits, Easements, and
7 Leases.

8 (1) Nothing in this Agreement shall affect WSDOT's right to grant franchises,
9 easements, permits, or enter into leases or other documents concerning the use of the Premises;
10 Provided, that such use does not unreasonably interfere with METRO's operation or maintenance
11 of the Premises.

12 (2) Nothing in this Agreement shall affect the right for franchisees, permittees,
13 or lessees, to enter upon the Premises to maintain, repair and enhance existing facilities and
14 install, maintain and repair new facilities.

15 (3) Any installation, maintenance and repair of the Premises by a
16 franchisee, permittee, or lessee will be accomplished in such a manner as to minimize
17 any disruption to METRO's operation and maintenance on the Premises. Except in the
18 event of an emergency, the franchisee, permittee, or lessee will be required to notify
19 METRO of activities that will involve the use of the Premises prior to such use. In
20 addition, the franchisee, permittee, or lessee will be required to restore paving and
21 grading damaged by the installation, maintenance and/or repair.

22 **10. TAXES, ASSESSMENTS, AND UTILITIES.**

23 A. METRO agrees to pay all assessments that benefit the Premises and/or which may
24 hereafter become a lien on the interest of METRO in accordance with RCW 79.44.010. METRO
25 shall have the right to appeal disputed charges.

26 B. METRO also agrees to pay all taxes that may hereafter be levied or imposed upon
27 METRO or by reason of this Agreement. METRO shall have the right to appeal disputed
28 charges.

29 C. METRO agrees, except as noted herein, to pay the cost for all utility bills incurred
30 at the Park and Ride Lot, including, but not limited to, sewer, electric, water, surcharges, and
31 rate adjustments that serve the Premises.

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1
2 **11. IMPROVEMENTS.** Metro may install up to four (4) passenger shelters and one (1)
3 driver comfort station on the Premises at the locations previously agreed to by the parties and as
4 shown on **Exhibit A**. Prior to the installation of these improvements Metro shall notify WSDOT
5 and the parties shall coordinate their activities to facilitate such installations. The above approved
6 improvements shall be in accordance with the Federal Way Park & Ride Lot # 2 Plans dated
7 April 19, 1999, which by this reference are incorporated herein.

8
9 **12. CONSTRUCTION.** No construction of new or reconstruction of existing improvements
10 is permitted without the prior written approval of the WSDOT. METRO covenants that any
11 regrading or improvements to be constructed on the Premises will not at any time during or after
12 construction either damage, threaten to damage, or otherwise adversely affect any part or element
13 of the highway facility or the operation thereof. WSDOT shall be furnished with two (2) sets of
14 complete plans, details, and specifications and revisions thereto for grading and all improvements
15 proposed to be placed on the Premises, and no work shall be done without prior written approval
16 of such plans by WSDOT. All construction work shall be done in conformity with the plans and
17 specifications as approved. WSDOT may take any action necessary, including directing that
18 work be temporarily stopped or that additional work be done, to ensure observation of the plans
19 and specifications, protection of all parts and elements of the highway facility, and compliance
20 with WSDOT's construction and safety standards. The improvements shall be designed and
21 constructed in a manner that will permit access to the Park and Ride Lot for the purpose of
22 inspection, maintenance, and construction when necessary.

23
24 **13. LIENS.**

25
26 A. Nothing in this Agreement shall be deemed to make METRO the agent of
27 WSDOT for purposes of construction, repair, alteration, or installation of structures,
28 improvements, equipment, or facilities on the Premises. METRO acknowledges that WSDOT
29 may not, and shall not, be subject to claims or liens for labor or materials in connection with such
30 activities by METRO.

31
32 B. METRO shall at all times indemnify and save WSDOT harmless from all claims
33 for labor or materials in connection with construction, repair, alteration, or installation of
34 structures, improvements, equipment, or facilities within the Premises, and from the cost of
35 defending against such claims, including attorney fees.

36
37 C. In the event a lien is filed upon the Premises, METRO shall either:

- 38
39 (1) Record a valid release of lien; or
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1 (2) Deposit sufficient cash with WSDOT to cover the amount of the claim on
2 the lien in question, and authorize payment to the extent of said deposit to any subsequent
3 judgment holder that may arise as a matter of public record from litigation with regard to
4 lienholder claim; or

5
6 (3) Procure and record a bond which releases the Premises from the claim of
7 the lien and from any action brought to foreclose the lien.

8
9 Should METRO fail to accomplish either (1), (2) or (3) above within sixty (60) days after
10 the filing of such a lien, this Agreement shall be in default.

11
12 **14. PERSONAL PROPERTY.**

13
14 A. WSDOT shall not be liable in any manner for, or on account of, any loss or
15 damage sustained to any property of whatsoever kind stored, kept, or maintained in or about the
16 Premises, except for such claims or losses that may be caused by WSDOT or its authorized
17 agents or employees.

18
19 B. METRO shall not be liable in any manner for, or on account of, any loss or
20 damage sustained to any WSDOT, its franchisees, lessees and permittees, or other authorized
21 users' personal property of whatsoever kind stored, kept, or maintained on or about the Premises,
22 except for such claims or losses that may be caused by METRO or its authorized agents or
23 employees.

24
25 C. Upon termination of this Agreement, WSDOT or its agent may remove all
26 personal property of METRO, except the driver comfort station, remaining on the Premises at
27 METRO's expense and dispose of it in any manner WSDOT deems appropriate. METRO agrees
28 to reimburse WSDOT for the costs of such removal and disposal within thirty (30) days of the
29 date of WSDOT's invoice.

30
31 D. Upon termination of this Agreement, if the driver comfort station remains on the
32 Premises, WSDOT or its agents may remove it and place it in storage or to another mutually
33 agreed upon location. If after the expiration of two (2) months METRO has not removed the
34 driver comfort station from storage, WSDOT may dispose of the driver comfort station as it
35 deems appropriate. METRO shall reimburse WSDOT for all expenses incurred in such removal,
36 storage, and disposition within thirty (30) days of WSDOT's invoice for such costs.

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38 E. For the purposes of this Agreement, the passenger shelter improvements, benches,
39 litter receptacles, and driver comfort station installed by METRO shall remain the personal
40 property of METRO.

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15. VACATION OF PREMISES. Upon termination of this Agreement, METRO shall cease its operations on the Premises and, if so directed by WSDOT, restore the Premise to its condition prior to METRO’s occupancy. This restoration shall include the removal of personal property, specifically including but not limited to, the passenger shelters and driver comfort station. This work shall be done at METRO’s expense and to the reasonable satisfaction of WSDOT. In the event METRO fails to vacate and, if so directed by WSDOT, restore the Premises prior to the date of termination, METRO shall be liable for any and all costs to WSDOT arising from such failure and agrees to reimburse WSDOT for all such costs within thirty (30) days of the date of WSDOT’s invoice for such costs.

16. NON-APPLICABILITY OF RELOCATION ASSISTANCE. METRO acknowledges that the signing of this Agreement does not entitle METRO to assistance under the Uniform Relocation and Real Property Acquisition Policy (Ch. 8.26 RCW).

17. ENVIRONMENTAL REQUIREMENTS.

A. WSDOT and METRO each represent, warrant and agree that it will conduct its activities on and off the Premises in compliance with all applicable environmental laws. As used in this Agreement, “Environmental Laws” means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et. seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 1101, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 2601, et seq., the Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., and Washington or any other comparable local, state, or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto.

B. Toxic or hazardous substances are not allowed on the Premises without the express written permission of WSDOT and under such terms and conditions as may be specified by WSDOT. For the purposes of this Agreement, “Hazardous Substances,” shall include all those substances identified as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., and the Washington Model Toxic Control Act, RCW 70.105D et seq., and shall include gasoline and other petroleum products. METRO is hereby authorized to bring on to the Premises gasoline and petroleum products necessary to carryout the maintenance and operation requirements set forth in this Agreement. In the event such permission is granted, the disposal of such materials must be done in a legal manner by METRO.

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1 C. METRO agrees to cooperate in any environmental investigations conducted by
2 WSDOT staff or independent third parties where there is evidence of contamination on the
3 Premises, or where WSDOT is directed to conduct such audit by an agency or agencies having
4 jurisdiction. METRO will reimburse WSDOT for the cost of such investigations, where the need
5 for said investigation is determined to be caused by METRO's operations. METRO will provide
6 WSDOT with notice of any inspections of the Premises, notices of violations, and orders to clean
7 up contamination. METRO will permit WSDOT to participate in all settlement or abatement
8 discussions. In the event that METRO fails to take remedial measures as duly directed by a state,
9 federal, or local regulatory agency within ninety (90) days of such notice, WSDOT may elect to
10 perform such work, and METRO covenants and agrees to reimburse WSDOT for all direct and
11 indirect costs associated with WSDOT's work where said contamination is determined to have
12 resulted from the authorized use of the Premises. METRO further agrees that the use of the
13 Premises shall be such that no hazardous or objectionable smoke, fumes, vapor, odors, or
14 discharge of any kind shall rise above the grade of the right of way.

15
16 D. For the purposes of this Agreement, "Costs" shall include, but not be limited to,
17 all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties,
18 and attorney fees and other litigation costs incurred in complying with state or federal
19 environmental laws, which shall include, but not be limited to the Resource Conservation and
20 Recovery Act, 42 U.S.C. § 6901, et seq.; the Clean Water Act, 33 U.S.C. § 1251; the Clean Air
21 Act, 42 U.S.C. § 7401; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901; and the
22 Washington Model Toxic Control Act, RCW 70.105D et seq.

23
24 E. METRO agrees to defend, indemnify and hold WSDOT harmless from and
25 against any and all claims, causes of action, demands and liability including, but not limited to,
26 any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and
27 attorneys' fees associated with the removal or remediation of any Hazardous Substances that
28 have been released, or otherwise come to be located on the Premises, including those that may
29 have migrated from the Premises through water or soil to other properties which are caused by or
30 result from METRO'S authorized activities on the Premises. METRO further agrees to retain,
31 defend, indemnify and hold WSDOT harmless from any and all liability arising from the offsite
32 disposal, handling, treatment, storage, or transportation of any such Hazardous Substances
33 removed from said Premises.

34
35 F. WSDOT agrees to indemnify, defend and hold METRO harmless from and
36 against any and all claims, causes of action, demands and liability including, but not limited to,
37 any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and
38 attorneys' fees associated with the existence of, and/or removal or remediation of any Hazardous
39 Substances that have been released, or otherwise come to be located on the Premises, including
40 those that may have migrated from the Premises through water or soil to the other properties,

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1 which are caused by or result from the WSDOT's activities on the Premises. WSDOT further
2 agrees to retain indemnify, defend, and hold METRO harmless from any and all liability arising
3 from the off site disposal, handling, treatment, storage or transportation of any such Hazardous
4 Substances removed from the Premises.

5
6 G. The provisions of this section shall survive the termination or expiration of this
7 Agreement.

8
9 **18. INSURANCE.**

10
11 A. METRO's insurance policy or self insurance must provide liability coverage for
12 the Premises, including public liability coverage for bodily injury, property damage, and personal
13 injury of not less than ONE MILLION (\$1,000,000.00) combined single limit per occurrence,
14 with a general aggregate amount of not less than THREE MILLION (\$3,000,000.00) per policy
15 period and naming WSDOT as an additional insured. METRO certifies that it is self-insured,
16 and agrees to provide acceptable evidence of it its self-insured status to WSDOT. METRO
17 agrees that WSDOT may require increases in said coverage amounts by written notice to
18 METRO, as WSDOT deems reasonably necessary.

19
20 B. In the event METRO, after commencement of this Agreement, elects to terminate
21 its self-insured status and secure commercial liability coverage, METRO will promptly notify
22 WSDOT, and provide a certificate of insurance from an insurer licensed to conduct business in
23 the State of Washington.

24
25 C. Coverage, if obtained by METRO in compliance with this section, shall not be
26 deemed as having relieved METRO of any liability.

27
28 **19. INDEMNIFICATION.**

29
30 A. To the extent allowed by law, METRO its successors and assigns, will protect,
31 save, and hold harmless WSDOT, its authorized agents and employees, from all claims, actions,
32 costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of
33 METRO, its agents, contractors, or employees, arising out of, or in connection with, its acts or
34 activities or the acts or activities of its, agents, contractors, or employees, authorized by this
35 Agreement. METRO further agrees to defend WSDOT, its agents or employees, in any
36 litigation, including payment of any costs or attorneys' fees, for any claims or action commenced,
37 arising out of, or in connection with, the acts or activities authorized by this Agreement. The
38 obligations in this paragraph shall not include such claims, costs, damages, or expenses to the
39 extent caused by the acts of WSDOT or its authorized agents or employees; PROVIDED, that if
40 the claims or damages are caused by or result from the concurrent acts of (a) WSDOT, its agents,

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1 contractors, or employees and (b) METRO, its agents, contractors, or employees, or involves
2 those actions covered by Ch. 4.24.115 RCW, this indemnity provision shall be valid and
3 enforceable only to the extent of the acts of METRO's agents or employees.
4

5 B. To the extent allowed by law, WSDOT, its successors and assigns, will protect,
6 save, and hold harmless METRO, its authorized agents and employees, from all claims, actions,
7 costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of
8 WSDOT, it's agents, contractors, or employees, arising out of or in connection with its acts or
9 activities or the acts or activities of its agents, contractors, or employees, authorized by this
10 Agreement. WSDOT further agrees to defend METRO, its agents or employees, in any
11 litigation, including payment of any costs or attorneys' fees, for any claims or action commenced,
12 arising out of, or in connection with, the acts or activities authorized by this Agreement. The
13 obligations in this paragraph shall not include such claims, costs, damages, or expense to the
14 extent caused by the acts of METRO or its authorized agents or employees; PROVIDED, that if
15 the claims or damages are caused by or result from the concurrent acts of (a) METRO, its agents,
16 contractors, or employees by or result from the concurrent acts of; (b) WSDOT, its agents,
17 contractors, or employees, or involves those actions covered by Ch. 4.24.115 RCW, this
18 indemnity provision shall be valid and enforceable only to the extent of the acts of WSDOT or
19 the WSDOT's agents or employees.
20

21 C. METRO specifically assumes potential liability for actions brought by METRO's
22 own employees against WSDOT and, solely for the purpose of this indemnification and defense,
23 METRO specifically waives any immunity under the state industrial insurance law, Title 51
24 RCW and has been mutually negotiated by the parties.
25

26 D. WSDOT specifically assumes potential liability for actions brought by WSDOT's
27 own employees against METRO and, solely for the purpose of this indemnification and defense,
28 WSDOT specifically waives any immunity under the state industrial insurance law, Title 51
29 RCW and has been mutually negotiated by the parties.
30

31 E. The indemnification provisions in this paragraph shall survive the expiration or
32 termination of this Agreement.
33

34 **20. PERFORMANCE BY WSDOT.**
35

36 A. If METRO defaults in the performance or observation of any covenant or
37 agreement contained in this Agreement, WSDOT, without notice if deemed by WSDOT that an
38 emergency exists, or if no emergency, with thirty (30) days notice, may direct METRO to stop
39 work and may itself perform or cause to be performed such covenant or agreement. Such
40 emergency shall include, but not be limited to, endangerment of the life or safety of users of the

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1 Park and Ride Lot and the adjacent highway facility, or the endangerment of the Park and Ride
2 Lot or the adjacent highway facility.

3
4 B. METRO shall reimburse WSDOT the entire cost and expense of such
5 performance by WSDOT within thirty (30) days of the date of WSDOT's invoice.

6
7 C. Any act or thing done by WSDOT under the provisions of this paragraph shall not
8 be construed as a waiver of any agreement or condition herein contained or the performance
9 thereof.

10
11 21. **NONDISCRIMINATION.** METRO, for itself, its successors and assigns, as part of the
12 consideration hereof, do hereby agree to comply with all applicable civil rights and
13 antidiscrimination requirements, including but not limited to Chapter 49.60 RCW.

14
15 22. **INDEPENDENT CAPACITY.** METRO shall be deemed an independent contractor for
16 all purposes and the employees of METRO or any of its contractors, subcontractors, and
17 employees thereof shall not in any manner be deemed employees of WSDOT.

18
19 23. **ASSIGNMENT.** Neither this Agreement nor any rights created by it may be assigned,
20 sublet, or transferred.

21
22 24. **BINDING CONTRACT.** This Agreement shall not become binding upon WSDOT
23 unless and until executed by both WSDOT signatories.

24
25 25. **ATTORNEYS' FEES.** In the event of any controversy, claim, or dispute arising out of
26 this Agreement, the substantially prevailing party shall, in addition to any other remedy, be
27 entitled to recover any reasonable costs or attorneys' fees that it incurs.

28
29 26. **MODIFICATIONS.** This instrument contains all the agreements and conditions made
30 between the parties hereto and may not be modified orally or in any manner other than by an
31 agreement in writing signed by all parties thereto. No failure on the part of either party to
32 enforce any covenant or provision herein contained, nor any waiver of any right thereunder,
33 unless in writing, shall discharge or invalidate such covenant or provision or affect the right of
34 the either party to enforce the same in the event of any subsequent breach or default.

35
36 27. **INTERPRETATION.** This Agreement shall be governed by and interpreted in
37 accordance with the laws of the state of Washington. The title to paragraphs or sections of this
38 Agreement are for convenience only and shall have no effect on the construction or interpretation
39 of any part hereof.
40

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1 **28. TOTALITY OF AGREEMENT.** It is understood that no guarantees, representations,
2 promises, or statements expressed or implied have been made by either party except to the extent
3 that the same are expressed in the Agreement.
4

5 **29. SEVERABILITY.** If any covenant or provision or part thereof, of the Agreement be
6 adjudged void, such adjudication shall not affect the validity, obligation or performance of any
7 other covenant or provision or part thereof, which in itself is valid, if such remainder conforms to
8 the terms and requirements of applicable law and the intent of this Agreement.
9

10 **30. DISPUTE RESOLUTION.**

11
12 A. The following individuals are the Designated Representatives for the purpose of
13 resolving disputes that arise under this Agreement:

14 WSDOT: Bob Caldwell, Multi-Modal Transportation Planner, WSDOT
15 Northwest Region, 15700 Dayton Avenue North, MS 210, P.O. Box
16 330310, Seattle, WA 98133-9710.
17

18 METRO: Design and Construction Manager, Judy Riley, Metro Transit
19 Division, Department of Transportation, 201 South Jackson Street,
20 M.S. KSC-TR-0435, Seattle, WA 98104-0431
21

22 B. The WSDOT Designated Representative and the METRO Designated
23 Representative shall confer to resolve disputes that arise under this Agreement as requested by
24 the either party. The Designated Representatives shall use their best efforts and exercise good
25 faith to resolve such disputes.

26 C. In the event the Designated Representatives are unable to resolve the dispute, the
27 appropriate the WSDOT Regional Administrator and the General Manager of Metro Transit for
28 METRO shall confer and exercise good faith to resolve the dispute.

29 D. In the event the WSDOT Regional Administrator and the General Manager of
30 Metro Transit for METRO are unable to resolve the dispute, the parties may, if mutually agreed
31 in writing, submit the matter to non-binding mediation. The parties shall then seek to mutually
32 agree upon the mediation process, who shall serve as the mediator, and the time frame the parties
33 are willing to discuss the disputed issue(s).

34 E. Each party shall bring to the mediation session, unless excused from doing so by
35 the mediator, a representative from its side with full settlement authority. In addition, each party

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1 shall bring counsel and such other persons as needed to contribute to a resolution of the dispute.
2 The mediation process is to be considered settlement negotiations for the purpose of all state and
3 federal rules protecting disclosures made during such conference from later discovery or use in
4 evidence; Provided that any settlement executed by the parties shall not be considered
5 confidential and may be disclosed. Each party shall pay its own costs for mediation and share
6 equally in the cost of the mediator. The venue for the mediation shall be in Olympia,
7 Washington, unless the parties mutually agree in writing to a different location.

8 F. If the parties cannot mutually agree as to the appropriateness of mediation, the
9 mediation process, who shall serve as mediator, or the mediation is not successful, then either
10 party may institute a legal action in the County of Thurston, State of Washington, unless other
11 venue is mutually agreed to in writing. The parties agree that they shall have no right to seek
12 relief in a court of law until and unless each of the above procedural steps has been exhausted.

13 31. **VENUE.** In the event any party deems it necessary to institute legal action or
14 proceedings to ensure any right or obligation under this Agreement, the parties hereto agree that
15 such action or proceedings shall be brought in a court of competent jurisdiction situated in
16 Thurston County, Washington.

17 32. **AGREEMENT MANAGEMENT.**

18
19 A. The Program Manager for each of the parties shall be responsible for
20 administration of this Agreement and shall be the contact person for all communications and
21 billings regarding the administration of this Agreement, which expressly excludes notices of
22 default and reporting and correcting defects covered under warranty.
23

24 B. The Program Manager for METRO is: Supervisor, Transit Real Estate &
25 Environmental Planning, Susan Serdahl, Metro Transit Division, Department of Transportation,
26 201 South Jackson Street, M.S. KSC-TR-0431, Seattle, WA 98104-3856
27

28 C. The Program Manager for WSDOT is: Bob Caldwell, Multi-Modal Transportation
29 Planner, WSDOT Northwest Region, 15700 Dayton Avenue North, MS 210, P.O. Box 330310,
30 Seattle, WA 98133-9710.
31

32 D. Either party may, from time to time, by notice in writing served upon the other
33 party as required elsewhere herein, designate an additional and/or a different mailing address or
34 an additional and/or different person to whom such notice, request, report or other
35 communication are thereafter to be addressed.
36

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33. NOTICES.

A. Wherever in this Agreement written notices are to be given or made, they will be served, personally delivered or sent by certified mail or overnight mail addressed to the appropriate party(ies) at the addresses provided herein, unless a different address is designated in writing or delivered to the other party.

B. Notices of default of this Agreement shall be given to the Program Manager and the individuals listed below:

(1) METRO: Design & Construction Manager, Judy Riley, Metro Transit Division, Department of Transportation, 201 South Jackson Street, M.S. KSC-TR-0435, Seattle, WA 98104

(2) WSDOT: Bob Caldwell, Multi-Modal Transportation Planner, WSDOT Northwest Region, 15700 Dayton Avenue North, MS 210, P.O. Box 330310, Seattle, WA 98133-9710 AND Department of Transportation, Attn: Cindy Tremblay, Assistant Director, Property Management Program, 310 Maple Park Avenue S.E., P.O. Box 4-7338, Olympia, WA 98504-7338.

C. Either party may, from time to time, by notice in writing served upon the other party as required elsewhere herein, designate an additional and/or a different mailing address or an additional and/or different person to whom notices of default are to thereafter to be addressed.

KING COUNTY	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
Date: _____	Date: _____
By: _____	By: _____
	Gerald L. Gallinger, Director, Real Estate Services

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	Date: _____ By: _____ Craig Stone, South King Area Administrator
APPROVED AS TO FORM By: _____	APPROVED AS TO FORM By: _____ Assistant Attorney General

1

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1 STATE OF WASHINGTON)

2 ss:

3 COUNTY OF KING)

4

5 On this ____ day of _____ 2001, before me personally appeared,
6 _____ to me known to be the _____ and
7 _____ of the corporation that executed the foregoing
8 instrument, and acknowledged said instrument to be the free and voluntary act and deed of said
9 corporation, for the uses and purposes therein mentioned, and on oath stated that _____
10 was authorized to execute said instrument.

11

12 GIVEN under my hand and official seal the day and year last above written.

13

14

15

16 _____

17

18

19

20

Notary Public in and for the state of Washington,
residing at _____
My commission expires _____.

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1

2 STATE OF WASHINGTON)

3 ss:

4 COUNTY OF THURSTON)

5

6 I, the undersigned, a Notary Public in and for the state of Washington, do hereby certify that
7 on this _____ day of _____, 2001, before me personally appeared Gerald L.
8 Gallinger, Director, Real Estate Services, for the state of Washington Department of
9 Transportation, and that he executed the within and foregoing instrument and acknowledged the
10 said instrument to be the free and voluntary act and deed of said state of Washington, for the uses
11 and purposes therein set forth, and on oath states that he is authorized to execute said instrument.

12

13 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day
14 and year first above written.

15

16

17

18

19

20

Notary Public in and for the state of Washington,

21

residing at _____

22

My commission expires _____.

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1 STATE OF WASHINGTON)

2 ss:

3 COUNTY OF KING)

4

5 I, the undersigned, a Notary Public in and for the state of Washington, do hereby certify that
6 on this _____ day of _____, 2001, before me personally appeared Craig Stone,
7 South King Area Administrator, for the state of Washington Department of Transportation,
8 Northwest Region, and that he executed the within and foregoing instrument and acknowledged
9 the said instrument to be the free and voluntary act and deed of said state of Washington, for the
10 uses and purposes therein set forth, and on oath states that he is authorized to execute said
11 instrument.

12

13 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day
14 and year first above written.

15

16

17

18

19

20

Notary Public in and for the state of Washington,
residing at _____

21

22

My commission expires _____.

23

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