



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

Ordinance 19589

Proposed No. 2023-0091.1

Sponsors McDermott

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

8 **STATEMENT OF FACTS:**

9 1. King County, the Washington state Department of Transportation and
 10 the cities of SeaTac and Burien are working cooperatively to construct the
 11 2.2-mile Segment C of the Lake to Sound trail. Segment C connects the
 12 south terminus of Segment B to the Des Moines Creek trail at South 200th
 13 Street.

14 2. The interlocal agreement governs only those portions of Segment C of
 15 the Lake to Sound trail located in the city of Burien.

16 3. Segment C is a critical segment of the sixteen-mile regional Lake to
 17 Sound trail, extending from the southern end of Lake Washington to Puget
 18 Sound as part of a recreation and transportation corridor, and will provide
 19 health benefits to the residents of King County.

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20 4. The portion of the trail within the city of Burien is located within the
21 street right of way for Des Moines Memorial Drive between South
22 Normandy Road and 8th Avenue South.

23 5. Under RCW 36.89.050, King County is authorized to construct a park
24 or recreational facility and transfer to a city the county's ownership interest
25 and the operation and maintenance obligations for the facility, but only if
26 the city continues to use the facility for the same purposes or conveys
27 other equivalent facilities to King County in exchange.

28 6. The county has entered into a funding agreement with the Washington
29 state Department of Transportation, secured a grant from the Washington
30 Recreation and Conservation Office and is also using county levy money,
31 pursuant to King County Ordinance 17941, for the design and construction
32 of Segment C.

33 7. After construction, the county wishes to convey ownership of that
34 portion of Segment C in the city of Burien to the city of Burien. The city
35 is prepared to own, operate and maintain these improvements for use by
36 the general public.

37 8. King County and the city have negotiated their respective rights, roles,
38 and responsibilities regarding Segment C in the interagency agreement,
39 Attachment A to this ordinance.

40 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

41 SECTION 1. The King County executive is hereby authorized to enter into an
42 interagency agreement between King County and the city of Burien, substantially in the


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43 form of Attachment A to this ordinance, for the design, construction, ownership,
44 operation and maintenance of the portion of Segment C of the Lake to Sound trail that is
45 within the city.

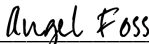
Ordinance 19589 was introduced on 3/7/2023 and passed by the Metropolitan King County Council on 4/4/2023, by the following vote:

Yes: 9 - Balducci, Dembowski, Dunn, Kohl-Welles, Perry, McDermott, Upthegrove, von Reichbauer and Zahilay


KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

DocuSigned by:

E76CE01F07B14EF...
Dave Upthegrove, Chair

ATTEST:

DocuSigned by:

C267B914088E4A0...
Melani Pedroza, Clerk of the Council

APPROVED this _____ day of 4/12/2023, _____.

DocuSigned by:

4FBCAB8196AE4C6...
Dow Constantine, County Executive

Attachments: A. Interagency Agreement Between King County and the City of Burien to Design, Construct, Operate and Maintain Lake to Sound Trail, Segment C, Within City Boundaries

**INTERAGENCY AGREEMENT
BETWEEN KING COUNTY AND THE CITY OF BURIEN
TO DESIGN, CONSTRUCT, OPERATE, AND MAINTAIN
LAKE TO SOUND TRAIL, SEGMENT C, 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 Burien, a municipal corporation of the State of Washington (“Burien”), regarding design, construction, ownership, operation, and maintenance of the portion of Segment C of the Lake to Sound Trail that is within Burien (the “Project”, further defined in section 1.11). The County and Burien are collectively referred to as “the Parties”.

RECITALS

- A. The County, the Washington State Department of Transportation (“WSDOT”), and the cities of SeaTac and Burien are working cooperatively to construct what is known as Segment C of the Lake to Sound Trail. Segment C extends 2.2 miles connecting the south terminus of Segment B to the Des Moines Creek Trail at South 200th Street, generally following the SR 509 Completion Project alignment. This segment utilizes SR 509 right of way owned by WSDOT (“WSDOT ROW”) and an Easement Area on private property.
- B. The Lake to Sound Trail is 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. The Lake to Sound Trail extends 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 Lake to Sound Trail is being constructed in segments. Segment B is a 1.5-mile segment that follows Des Moines Memorial Drive from 156th Way in SeaTac to South Normandy Road in Burien and was completed in 2017. Segment A is a 1.1-mile segment that passes through the Black River Riparian Forest Park in the City of Renton to the Green River Trail in the City of Tukwila’s Fort Dent Park. Segments D, E, and F are in the cities of Renton and Tukwila and will complete an east-west connection along the trail corridor.
- E. Segment C is located within the cities of SeaTac and Burien. This Agreement governs only the “Project”.
- F. The Project will be located substantially within the public street right of way for Des Moines Memorial Drive between South Normandy Road and 8th Avenue South and

will also be located on an easement crossing three (3) private parcels and an off-site mitigation area in Des Moines Creek Park.

- 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. If it is not used for the same purpose, an equivalent facility within the County shall be conveyed to the County in exchange therefor.
- H. The County has entered into a funding agreement with WSDOT, has secured a grant from the Washington Recreation and Conservation Office, and is also using County levy monies for the design and construction of the Project.
- I. After construction, the County wishes to convey ownership of the Project Improvements, as defined in Section 1.12, to Burien. Burien is prepared to own, operate, and maintain these improvements for use by the general public as a regional trail for the benefit of Burien and County residents.
- J. Providing funding for the design and construction of Segment C is consistent with and in furtherance of the King County Equity and Social Justice Strategic Plan 2016-2022.
- K. The Parties intend by this Agreement to establish their respective rights, roles, and responsibilities related to the Project.
- L. Burien and County consider the development of this facility as a partnership between the two jurisdictions. Burien and the County are providing financial, technical, and other agency resources to this project and the County has identified the importance of this project in various planning documents. This project has also received legislative approval by Burien, the County, and Puget Sound Regional Council.

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 Burien Property means Burien's public street right-of-way property for Des Moines Memorial Drive between South Normandy Road and 8th Avenue South where the Project Improvements for Segment C will be constructed. The Burien Property is legally described in **Exhibit A**.

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

1.3 Contractor means the individual, partnership, firm, corporation, or other entity with whom the County has executed the Contract for construction of Segment C.

1.4 Encroachments are defined as unauthorized and/or unpermitted use of public land.

1.5 Final Acceptance means the date on which the County issues to the Contractor a written notice accepting the work under the Contract as complete.

1.6 Final Punchlist means the document or list of items that define the work that does not conform to the contract specifications after Substantial Completion of the project.

1.7 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 C.

1.8 Ninety Percent (90%) Review Submittal means the Ninety Percent Review Submittal drawings and specifications for Segment C prepared on behalf of the County by Parametrix, Inc., dated November 2019.

1.9 Operate and Maintain or Operation and Maintenance means any and all actions necessary to keep the trail and any related Project Improvements open and accessible to the public and in a safe and suitable condition for use as a Regional Trail, including but not limited to, regular inspections, repairs or replacement of Project Improvements, sweeping or cleaning of surfaces, removal and/or covering of graffiti, removal of litter, removal of encroachments, maintenance of vegetation and pruning of trees and shrubs as needed to maintain sight distances; and any and all actions necessary to allow and control the use of the trail in accordance with County provisions for use of trails in King County Code Title 7, as now or hereafter amended.

1.10 Permit(s) means any or all federal, state, and local government permits, licenses, or other regulatory approvals needed for Segment C.

1.11 Project means the portion of Segment C within the boundaries of the City of Burien, including the portions located on Burien Property, and the Easement Area, as well as the stream buffer and wetland buffer mitigation area within Des Moines Creek Park, legally described in the Wetland Mitigation Maintenance Agreement attached hereto as **Exhibit B**.

1.12 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, boardwalks, rebar, wire fabric, landscaping and vegetation planted on-site for mitigation or restoration purposes.

1.13 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.

1.14 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.

1.15 Term means that Burien, as required by RCW 36.89.050, agrees that the Project shall continue to be used in perpetuity by the general public as a Regional Trail for the benefit of City and County residents, and shall not be converted to a different use.

2. DESIGN & PERMITTING

2.1 Design. The County has provided Burien with Ninety Percent (90%) Review Submittal design drawings, which Burien has reviewed and hereby accepts, and which are incorporated herein by reference. The County will be solely responsible for finalizing the design documents for the Project and constructing the trail according to the design, including changes in scope as described in Paragraph 4.7.

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

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2.3 Permitting and Environmental Review. The County shall be the lead agency for the Project under the State Environmental Policy Act (SEPA) and shall apply, or require its Contractor to apply, for all Permits. To the extent that Burien's signature on applications or other involvement is required, as the owner of the real property on which the Project is being constructed, Burien 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 buffer and stream buffer mitigation associated with the Project for the length of time required by any Permit. For any other Permit requirements that impose obligations on the owner of the real property or that contains conditions that will extend past the date of Final Acceptance, including but not limited to ongoing monitoring and maintenance obligations, Burien shall be the named permittee and shall be responsible for those conditions.

2.4 Burien Permits. Concerning any Permits required for the Project from Burien, Burien agrees, as part of its funding contribution to the Project, to waive or pay any and all fees or other charges associated with the application, review, processing, and appeal of Burien Permits.

3. ACCESS & ENCROACHMENTS

3.1 Burien hereby grants to the County and its employees, agents, representatives, invitees, consultants, contractors, and subcontractors performing work on behalf of the County with the following access rights to Burien Property.

(a) The non-exclusive license to enter onto Burien 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 license shall begin upon the effective date of this Agreement and continue until Final Acceptance.

(b) The nonexclusive license to enter onto and construct the Project on Burien Property after section 2.3 is satisfied. This license shall begin upon the County's issuance of the Notice to Proceed and continue until Final Acceptance. This license shall not be exclusive of Burien's right to enter Burien Property for inspections or other actions necessary to implement this Agreement, or for any other purpose, provided that Burien's entry onto Burien Property shall not unreasonably impair, impede, or delay construction of the Project.

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

3.2 The County and Burien are not aware of any Encroachments, improvements, or other structures on Burien Property. Any Encroachments on Burien Property that Burien does not intend to dispose of (for example, Encroachments that will

be salvaged or impounded) must be removed by Burien. The County shall notify Burien in writing no less than 30 business days prior to advertising the Contract for bid. If Burien wishes the County's Contractor during construction to remove certain Encroachments that are to be disposed of, on Burien's behalf, Burien shall provide the County with written notice specifically describing any such Encroachments no later than 30 business days prior to the date the County advertises the Contract for bid. Burien shall manage the administrative portion of encroachment removal (documentation and notification). The County will include this list of Encroachments as part of the bid package and the Contractor shall be responsible for the removal of identified Encroachments as part of the scope.

3.3 Burien hereby represents and warrants to the County that it holds fee simple title to Burien Property or that it possesses sufficient property interests to provide the legal authority to remove Encroachments and construct the Project on Burien Property; that there are no easements, covenants, restrictions, encumbrances, or defects on or to the title of Burien Property that will in any way affect or impair the County's or Burien's ability to perform their respective obligations under this Agreement; and that Burien has met any legal obligations necessary for the County construct the Project and to perform Encroachment removal on its behalf under this Agreement.

3.4 If the County's Contractor removes Encroachments following Burien's direction under Paragraph 3.2, Burien 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, from any and all suits, costs, claims, actions, losses, penalties, judgments, and/or awards of damages arising from the removal of said Encroachments except to the extent that the foregoing in this section arise out of or result from the negligent acts or omissions of the County or a county contractor of any tier.

4. CONSTRUCTION

4.1 The County shall be responsible for the 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.

4.2 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.

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

4.4 The County shall award the Contract to the lowest, responsive, responsible bidder for the Project, subject to applicable laws and regulations.

4.5 The County shall require that Burien be included as an additional insured on all of the Contractor's insurance policies, and that Burien 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/APWA Standard Specifications for Road, Bridge, and Municipal Construction.

4.6 Burien will furnish an inspector, at Burien's sole expense, to monitor compliance with the Contract plans and specifications during the construction of the Project. Burien'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 Burien's inspector shall cite the plan sheet number or specification that she or he considers to be at issue in the deficiency. Burien's inspector shall also provide to the County a written description of the remedy the inspector believes is necessary for each deficiency cited. If the Burien 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, Burien's inspector has the authority to take immediate action, including directing the Contractor to take certain actions to address the safety concern. Concerning all other matters identified by the Burien inspector, the Burien inspector shall not have authority to direct the work of the Contractor and shall not instruct the Contractor directly on any matters.

4.7 The County will hold weekly construction meetings with its Contractor. Burien will be notified of these meetings by the County, at its option, may have its inspector or other representative attend the meetings. Burien 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.

4.8 The County shall update Burien on its progress in constructing the Project in its weekly construction meetings.

4.9 After the Contractor notifies the County in writing that the Project is substantially complete, the Parties shall perform a mutual inspection of the Project. Burien may provide a written deficiency list to the County within five (5) business days after this inspection. The list shall contain only construction deficiencies that Burien believes are out of compliance with the Contract plans and specifications. Burien 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 Burien believes is necessary for each deficiency cited.

4.10 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

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perform a mutual final inspection of the Project. Burien may provide a written deficiency list to the County within five (5) business days after the final inspection. The list shall contain only construction deficiencies that Burien believes are out of compliance with the Contract plans and specifications. Burien 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 Burien believes is necessary for each deficiency cited. The County will consult with Burien and address any deficiencies identified by Burien. Physical completion, as well as Final Acceptance of the Project, shall be by the County.

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

4.12 The County will administer and enforce all warranties in the Contract up until assignment of the warranties to Burien pursuant to Paragraph 5.2(g).

5. PROJECT CLOSEOUT, OWNERSHIP, & LONG-TERM OBLIGATIONS

5.1 Within sixty (60) business days of the date of Final Acceptance the Parties shall jointly undertake all actions necessary to transfer to Burien all Permits for the Project that have not expired or terminated, and for which Burien is not already the named permittee, except for the wetland mitigation obligations as required by permits located in Burien Park Property.

5.2 Within sixty (60) business days of completion of the obligations in Paragraph 5.1, or such additional time as may be required to close out the Contract, the County shall perform the following obligations:

(a) The County shall execute and record a quit claim deed bill of sale conveying to Burien all of the County's right, title and interest to the Project Improvements located on or within Burien Property, as is, where is ("Bill of Sale") in substantially the form set forth in **Exhibit C**;

(b) The County shall execute and record an assignment of easement assigning the County's right, title, and interest to any easement obtained by the County for the installation of the trail in substantially the form set forth in **Exhibit D**;

(c) Deliver to Burien project record drawings in both native file and electronic format for the Project;

(d) Collect and provide to Burien 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;

(e) Provide to Burien unconditional lien releases that the Contractor has collected from all of its consultants, subcontractors, and vendors;

(f) 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;

(g) The County shall 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 Burien, with respect to the Project, except as provided in Paragraph 8.2; and

(h) Assign to Burien 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, except as provided in Paragraph 8.2 or 8.3.

5.3 Unless otherwise mutually agreed to by the Parties in writing, the Project shall not be accessible and open to the public until the completion of items included on the Final Punchlist.

5.4 Upon completion of items included on the Final Punchlist, Burien shall, at its sole expense, Operate and Maintain the Project, including Segment C and any related Project Improvements.

5.5 Burien, as required by RCW 36.89.050, agrees that the Project shall continue to be used in perpetuity as a Regional Trail and shall not be converted to a different use.

5.6 Burien agrees that allowing Project, including Burien Property, to be used for a Regional Trail shall include any and all actions by Burien 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.

5.7 Burien agrees that Project including Burien 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.

5.8 Burien agrees that it will not limit or restrict access to and use of the Project, including Burien Property by non-Burien residents in any way that does not also apply to Burien residents.

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

5.10 Burien agrees that it shall place the covenants in Paragraphs 5.5 through 5.9 in any deed transferring any portion of the Project, including Burien Property.

5.11 Burien covenants that the Project shall be used in perpetuity for a regional shared-use trail accessible to the general public for bicycling, walking, hiking, running, skating, and other non-motorized uses, which provides recreational opportunities and enhances regional mobility (hereafter “Regional Trail”) or that other equivalent facilities shall be made in exchange therefore. The County acknowledges that the provision to allow for equivalent facilities will allow for the revision or realignment of road right of way and signal as may be needed or desired by Burien.

5.12 Burien understands that the Project is part of the Lake to Sound Trail and covenants that Burien’s Park Rules and Regulations apply to the Project except as may be modified or supplemented by the following rules which the County intends to apply across the entirety of the Lake to Sound Trail:

(a) No person shall cause a motorized vehicle to enter or operate upon the Project without express permission of Burien and the County;

(b) No person shall travel on the Project at a speed greater than is reasonable and prudent under the conditions or in an otherwise negligent manner;

(c) No person shall camp, dump, store, or abandon property at or on the Project;

(d) All persons must keep dogs or other pets or domestic animals on a leash, and under control at all times. Any person whose dog or other pet is on the Project shall be responsible for the conduct of the animal and for removing feces deposited by such animal from the Project;

(e) No person shall allow his or her dog or other pet or domestic animal to bite or in any way molest or annoy visitors to the Project or to bark continuously or otherwise disturb the peace and tranquility of the Project;

(f) No person shall use tobacco or equivalent products on the Project;

(g) No person shall leave rubbish, appliances, furniture, or other material on the Project, except in a garbage can or other receptacle designated for those purposes;

(h) No person shall enter or be present on the Project during hours that the Regional Trail is closed except persons authorized by Burien or the County;

(i) No person shall destroy or damage the Project. No person shall disturb, injure, or remove, plant, bury, or leave any vegetation or animal on the Property unless expressly authorized to do so by Burien and the County; and

(j) No person shall enter or remain or loiter about the Project while in a state of intoxication or under the influence of any unlawful controlled substance.

5.13. Burien covenants that it will not transfer or convey the Project, or any portion thereof, except by agreement providing that such lands shall continue to be used for a Regional Trail.

5.14. Burien covenants that it will not limit or restrict access to and use of the Project by non-Burien residents in any way that does not also apply to city residents.

5.15. Burien covenants that any and all user fees charged for use of the Project for Regional Trail purposes, including charges imposed by any lessees, concessionaires, service providers, and/or other assignees shall be at the same rate for non-Burien residents as for Burien residents.

5.16. Burien agrees to grant the County access to the Burien Property for the purposes of constructing, inspecting, reconstructing, maintaining, improving, modifying, and repairing informational signs, public placemaking, and art features for the public related to the Lake to Sound Regional Trail (“Signs”). The County shall have the right at such time as may be necessary to enter upon and to have unimpeded access to, in, and through the Burien Property for the purposes of exercising the County’s rights as described herein. King County agrees to obtain a Type F Permit as shown in Exhibit E, issuance of which should not be unreasonably withheld.

6. PROJECT FUNDING

6.1 The County shall provide funding for the design and construction of the Project.

6.2 Burien shall provide funding for all of Burien’s obligations or activities under or related to this Agreement from the time of execution of this agreement forward, including but not limited to Permit review, construction inspection, other administration or implementation expenses and long-term Operation and Maintenance of the Project.

7. CONDITIONS PRECEDENT TO PROJECT DEVELOPMENT

7.1 The County's obligations related to finalizing the design, permitting and construction of the Project under Sections 2 through 4 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 SeaTac and executed by SeaTac and the County for the design, construction, Operation and Maintenance of the portion of Segment C that is within the City of SeaTac.

(b) The County obtaining all executed and recorded temporary construction easements and all agreements to rebuild driveways necessary for construction of the Project on terms acceptable to the County; and

(c) The County and/or its Contractor obtaining all Permits necessary for the Project.

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

8. LIABILITY

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

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negotiated and agreed upon by them. Nothing in this Paragraph 8.1 modifies or limits in any way Burien's obligations in Paragraph 3.4.

8.2 The County's obligations in Paragraph 8.1 terminate upon the date the County fulfills all its obligations in Paragraph 5.2 ("Closeout Date"), with the exception of Claims that occurred before the Closeout Date that were properly and timely 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.

8.3 The County's obligations in Paragraph 8.1 terminate upon the date the County fulfills all its obligations in Paragraph 5.2 ("Closeout Date"), with the exception of contract claims reserved under the terms of the applicable construction or design contract by the Contractor or by the County's design contractor, Parametrix ("Reserved Claims").

8.4 As of the date of Burien's final acceptance of the Project, except for Reserved Claims, Burien shall release, protect, defend, indemnify and hold harmless the County, its officers, officials, and employees while acting within the scope of their employment, from any and all suits, costs, claims, actions, losses, penalties, judgments, and/or damages, ("Claims") arising out of, in connection with, or incident to the Project. Burien expressly agrees that its duty to release, protect, defend, indemnify and save harmless the County, its officers, officials, and employees under this paragraph excludes negligent acts or omissions by the County occurring after Burien's final acceptance of the Project which are concurrent, contributory, or both. To the extent this Agreement is construed to be subject to RCW 4.24.115, Burien'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 Burien'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.

9. INSURANCE

9.1 Each Party shall maintain, for the duration of each Party's liability exposures under this Agreement, insurance policies or self-insurance responsive to claims for injuries to persons or damage to property, which may arise from or in connection with the performance of the work hereunder by or on behalf of each Party. Each Party shall require its respective contractors to maintain coverage responsive to the exposures inherent in such contractors' work in furtherance of this Agreement.

9.2 King County, a charter county government under the constitution of the State of Washington, maintains a fully funded Self-Insurance program for the protection and handling of the County's liabilities including injuries to persons and damage to property. Burien acknowledges, agrees, and understands that the County is self-funded for

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all of its liability exposures and that the County's self-insurance program meets the requirements of paragraph 9.1. 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 Burien with at least 30 business days prior written notice of any material change in the County's self-funded program and will provide Burien with a certificate of self-insurance as adequate proof of coverage. Burien 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 cannot add Burien as an additional insured.

9.3 The City of Burien shall procure and/or maintain:

(a) **General Liability.** Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 covering **COMMERCIAL GENERAL LIABILITY**, \$3,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$3,000,000 aggregate limit. Limits may be met by a combination of General Liability and Excess Liability policies.

Burien is a noncharter code city of the State of Washington and a member of fully funded Self-Insurance program for the protection and handling of Burien's liabilities including injuries to persons and damage to property. King County acknowledges, agrees, and understands that Burien's self-insurance program meets the requirements of this agreement. Burien agrees, at its own expense, to maintain, through its self-funded program, coverage for all of its liability exposures for this Agreement. Burien agrees to provide King County with at least 30 business days prior written notice of any material change in Burien's coverage. King County acknowledges, agrees, and understands that Burien does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore Burien cannot add King County as an additional insured.

10. EFFECTIVE DATE/DURATION

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

10.2 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.

11. AUDITS AND INSPECTIONS

11.1 Until six (6) years after the effective date of this Agreement, unless the Agreement is terminated under Paragraph 7.2, 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

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shall be made available for inspection during regular business hours within a reasonable time of the request.

12. NOTICE

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

<p>King County: Director’s Office King County Department of Natural Resources and Parks Room 500, King Street Center 201 S. Jackson Street Seattle, WA 98104</p> <p>Via e-mail to: KCParks.LegalNotices@kingcounty.gov</p> <p>With a copy to:</p> <p>King County Prosecuting Attorney’s Office Attn: Chief Civil Deputy 516 Third Avenue W400 Seattle, WA 98104</p>	<p>City of Burien</p> <p>Public Works Director’s Office 400 SW 152nd Street Suite 300 Burien, WA 98116</p> <p>With a copy to:</p> <p>Burien Legal Department Burien City Attorney 400 SW 152nd Street Suite 300 Burien, WA 98116</p>
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13. MISCELLANEOUS PROVISIONS

13.1 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.

13.2 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 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 the implementation of the Project, and weather conditions.

13.3 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 events of negotiation, drafting or execution hereof.

13.4 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 Burien and the County, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Burien and the County and not for the benefit of any other Party.

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

13.6 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.

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

13.8 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.

13.9 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Washington with venue in King County.

13.10 Survivability. The provisions of Paragraph 3.4 and Sections 9 and 10 shall survive termination of this Agreement.

13.11 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: Legal Description and Figure of City Property
- Exhibit B: Wetland Mitigation Maintenance Agreement
- Exhibit C: Quit Claim Deed Bill of Sale
- Exhibit D: Assignment of Deed of Permanent Non-Motorized Trail Easement and Deed of Temporary Construction Easement
- Exhibit E: Type F Permit

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

KING COUNTY

CITY OF BURIEN

Christie True
Director, Department of Natural
Resources and Parks

Sofia Aragon
Mayor

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Senior Deputy Prosecuting Attorney

City of Burien, City Attorney

Date

Date

Certificate Of Completion

Envelope Id: 19B043543D2C413B8A88E171206F4CD2	Status: Completed
Subject: Complete with DocuSign: Ordinance 19589 Attachment A.docx, Ordinance 19589.docx	
Source Envelope:	
Document Pages: 3	Signatures: 3
Supplemental Document Pages: 17	Initials: 0
Certificate Pages: 5	Envelope Originator:
AutoNav: Enabled	Cherie Camp
Enveloped Stamping: Enabled	401 5TH AVE
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	SEATTLE, WA 98104
	Cherie.Camp@kingcounty.gov
	IP Address: 198.49.222.20

Record Tracking

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Security Appliance Status: Connected	Pool: FedRamp	
Storage Appliance Status: Connected	Pool: King County-Council	Location: DocuSign

Signer Events

Dave Upthegrove
dave.upthegrove@kingcounty.gov
Chair
Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:

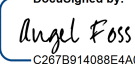
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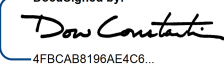
Angel Foss
Angel.Foss@kingcounty.gov
Deputy Clerk of the Council
King County Council
Security Level: Email, Account Authentication (None)

DocuSigned by:

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Dow Constantine
Dow.Constantine@kingcounty.gov
King County Executive
Security Level: Email, Account Authentication (None)

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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Kaitlyn Wiggins kwiggins@kingcounty.gov Executive Legislative Coordinator King County Executive Office Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<div style="border: 2px solid blue; padding: 5px; display: inline-block;">COPIED</div>	Sent: 4/6/2023 3:36:27 PM Viewed: 4/6/2023 4:10:10 PM
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Completed	Security Checked	4/12/2023 11:53:51 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, King County-Department of 02 (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact King County-Department of 02:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: cipriano.dacanay@kingcounty.gov

To advise King County-Department of 02 of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at cipriano.dacanay@kingcounty.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from King County-Department of 02

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to cipriano.dacanay@kingcounty.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with King County-Department of 02

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to cipriano.dacanay@kingcounty.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify King County-Department of 02 as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by King County-Department of 02 during the course of your relationship with King County-Department of 02.