



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

June 25, 2013

Ordinance 17609

Proposed No. 2013-0155.2

Sponsors Dembowski

1 AN ORDINANCE approving the sale to the city of
2 Shoreline of the surplus North Maintenance Roads Service
3 facility located in district 1.

4 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

5 SECTION 1. Findings:

6 A. The road services division is the custodian of the North Maintenance Roads
7 Services facility, commonly known as the Brugger's Bog facility, located at 19547 25th
8 Avenue Northeast, Shoreline.

9 B. The road services division has determined that Brugger's Bog is surplus to its
10 needs and the needs of the public.

11 C. The King County executive has negotiated a purchase and sale agreement for
12 the sale of the surplus Brugger's Bog facility to the city of Shoreline

13 D. In accordance with K.C.C. 4.56.070, the facilities management division has
14 circulated surplus notices to King County agencies and none expressed interest. The
15 facilities management division declared the property surplus on September 7, 2011.

16 E. Brugger's Bog was purchased with funds from the King County road fund.
17 The road fund is a separate fund established under chapter 36.82 RCW. According to
18 RCW 43.09.210, when property is sold or transferred that was purchased with funds from
19 the roads fund, the county must receive "full value" in return so that the road fund may be

20 fully reimbursed. The affordable housing requirement is a King County Code provision,
21 while the necessity of the road fund receiving full value from a sale of the Bruggers Bog
22 under RCW 43.09.210 is a state law requirement. Given the higher value of the property
23 the county will receive if sold for an industrial use, which is \$2,896,622, versus a use of
24 the property that would allow affordable housing, which is \$2,300,322, it is important
25 under state law to sell the property for the higher industrial value. As a result, although
26 the road services division's Bruggers Bog property may be suitable for affordable
27 housing, it is not appropriate in this instance to sell it at the lower value that would be
28 associated with affordable housing.

29 F. The proposed sale to the city of Shoreline is consistent with K.C.C. 4.56.100
30 and 4.56.140 providing for a direct negotiated sale to a government agency. K.C.C.
31 4.56.080 provides that council approval is required for the sale of county-owned property
32 valued in excess of ten thousand dollars.

33 G. The executive's transmittal letter dated March 19, 2013, indicated that
34 additional benefits from selling the property to the city of Shoreline would include
35 continued county use of fueling facilities of the site and continued operation of the vector
36 waste decant facility by the city.

37 H. In accordance with the King County council's budget and fiscal management
38 committee's request, the executive and the city of Shoreline developed a joint use
39 agreement formalizing the agreement between the county and city to allow for continued
40 county use of fueling facilities on the site and continued vector waste decant facility
41 operations.

42 SECTION 2. The King County council, having determined that the sale of the
43 subject property is in the best interest of the public, hereby authorizes the executive to
44 execute the sale in substantially similar form as provided in Attachment A to this
45 ordinance and to execute any other documents necessary to convey and deliver the
46 property to the buyer. This authorization is contingent upon the prior execution by both
47 parties of the Joint Use Agreement for Fueling Services and Vector Decanting between
48 the city of Shoreline and King County as provided in Attachment B to this ordinance. All
49 actions up to now taken by county officials, agent and employees consistent with the
50 terms and purposes of the sale agreement are hereby ratified, confirmed and approved.

51 SECTION 3. If any one or more of the covenants or agreements provided in this
52 ordinance to be performed on the part of the county is declared by any court of competent
53 jurisdiction to be contrary to law, then such a covenant or covenants, agreement or
54 agreements, are null and void and shall be deemed separable from the remaining

55 covenants and agreements of this ordinance and in no way affect the validity of the other
56 provisions of this ordinance or of the sale.
57

Ordinance 17609 was introduced on 3/25/2013 and passed as amended by the Metropolitan King County Council on 6/24/2013, by the following vote:

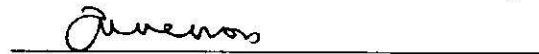
Yes: 8 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Patterson,
Ms. Lambert, Mr. Dunn, Mr. McDermott and Mr. Dembowski
No: 0
Excused: 1 - Ms. Hague

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Larry Gossett, Chair

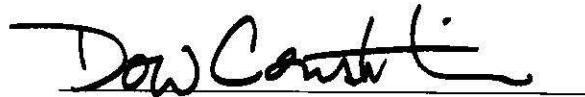
ATTEST:



Anne Noris, Clerk of the Council

RECEIVED
2013 JUN 27 PM 3:25
CLERK
KING COUNTY COUNCIL

APPROVED this 27 day of JUNE, 2013.



Dow Constantine, County Executive

Attachments: A. Real Estate Purchase and Sale Agreement - Brugger's Bog Roads Maintenance Site, B. Joint Use Agreement

ATTACHMENT A to ORDINANCE

Real Estate Purchase and Sale Agreement

Brugger's Bog Roads Maintenance Site



REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of _____, 2012, for reference purposes only, by and between **KING COUNTY**, a political subdivision of the State of Washington (the "Seller") and the **CITY OF SHORELINE**, a municipal corporation (the "Buyer").

RECITALS

A. Seller is the owner of that certain real property located in the City of Shoreline, King County, State of Washington, the legal description of which is attached hereto as **EXHIBIT A** (the "Property").

B. Seller is desirous of selling the Property and Buyer is desirous of purchasing the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE 1. PURCHASE AND TRANSFER OF ASSETS

1.1. PROPERTY TO BE SOLD. Subject to and upon the terms and conditions set forth in this Agreement, Seller shall sell and convey to Buyer on the Closing Date (as hereinafter defined) and Buyer shall buy and accept from Seller on the Closing Date the following assets and properties:

(a) all the Seller's right, title and interest in the parcel identified as the Property, as described in **EXHIBIT A**;

(b) all of Seller's right, title and interest in improvements and structures located on the Property, if any;

(c) all of Seller's right, title and interest in and to tangible personal property, if any, owned by the Seller and attached, appurtenant to or used in connection with the Property ("Personal Property");

(d) all of Seller's tenements, easements and rights appurtenant to the Property including but not limited to, all of the Seller's right, title, and interest in and to streets, alleys or other public ways adjacent to the Property, easements for public utilities, all sewers and service drainage easements, all rights of connection to the sewers, and all rights of ingress and egress, and all leases, licenses, government approvals and permits affecting the Property;

Hereinafter, the items listed in Section 1.1 are collectively referred to as the "Purchased Assets."

ARTICLE 2. PURCHASE PRICE

2.1. PURCHASE PRICE AND PAYMENT. In consideration of the conveyance of the Purchased Assets, Buyer shall, in full payment therefore, pay to Seller on the Closing Date a total purchase price of **Two Million Eight Hundred Ninety-Eight Thousand Six Hundred Twenty-Two Dollars and No Cents (\$2,898,622.00)** (the "Purchase Price").

2.2. ALLOCATION OF PURCHASE PRICE. Seller and Buyer agree that the entire Purchase Price is allocable to real property and that the value of the Personal Property, if any, is *de minimis*.

2.3 DEPOSIT. Within two (2) business days after the execution of this Agreement, Buyer shall deliver to First American Title Insurance Company (the "**Escrow Holder**"), in its capacity as Escrow Holder, immediately available cash funds in the amount of **Fifty Thousand Dollars and No Cents (\$50,000.00)** (the "**Deposit**"). The Deposit shall be invested by the Escrow Holder in a money market account, a federally insured investment or such other investment as may be approved by Seller and Buyer in writing. Upon deposit with Escrow Holder, the Deposit shall be non-refundable except as otherwise provided in this Agreement. The Deposit shall be applied as a credit against the Purchase Price at the Closing.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

3.1. WARRANTIES AND REPRESENTATIONS OF SELLER. As of the Closing Date, Seller represents and warrants as follows:

3.1.1. ORGANIZATION. The Seller is a political subdivision of the State of Washington duly organized, validly existing and in good standing under the laws of the State of Washington.

3.1.2. EXECUTION, DELIVERY AND PERFORMANCE OF AGREEMENT, AUTHORITY. The execution, delivery and performance of this Agreement by Seller (i) is within the powers of Seller as a political subdivision and charter county of the State of Washington, (ii) has been or will be on or before the Closing Date, duly authorized by all necessary action of the Seller's legislative authority, and (iii) does not and will not violate any provision of any law, rule, regulation, order, writ, judgment, decree or award to which the Seller is a party or which is presently in effect and applicable to Seller. This Agreement constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with the terms thereof.

3.1.3. LITIGATION. There is no pending, or to the best of Seller's knowledge, threatened lawsuit or material claim against or relating to Seller with respect to the Property,

which shall impede or materially affect Seller's ability to perform the terms of this Agreement. There is no pending or, to the best of Seller's knowledge, contemplated condemnation or similar proceeding with respect to the Property or any part thereof.

3.1.4. ASSESSMENTS. There is no pending, or to the best of Seller's knowledge, contemplated local improvement district or other special assessment or charge with respect to the Property, except as may be disclosed in the Title Commitment described below.

3.1.5. FULL DISCLOSURE. To the extent of Seller's knowledge as defined herein, no representation or warranty by Seller in this Agreement or in any instrument, certificate or statement furnished to Buyer pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or fails to state a material fact which is necessary to make the statements set forth therein not false or misleading. As used in this Agreement, the phrase "Seller's knowledge" or any derivation or variation thereof shall mean the actual knowledge of the following persons, based on their reasonable inquiry in the file locations where the relevant information would normally be filed:

- (a) Steve Salyer, Manager, Real Estate Services Section, Facilities Management Division, King County Department of Executive Services; and
- (b) Jon Cassidy, P.E., Maintenance Engineering Manager, Road Services Division, King County Department of Transportation.

3.1.6. NO BROKER. No broker, finder, agent or similar intermediary has acted for or on behalf of Seller in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent or similar intermediary is entitled to any broker's, finder's or similar fee or commission in connection with this Agreement based on an agreement, arrangement or understanding with Buyer or any action taken by Buyer.

3.1.7. CONTRACTS. There are no contracts or other obligations outstanding for the sale, exchange, transfer, lease, rental or use of the Property or any portion thereof.

3.1.8. FUTURE AGREEMENTS. From and after the date hereof unless this Agreement is terminated in accordance with its terms, Seller shall not without the prior written consent of Buyer:

- (i) enter into any agreement, contract, commitment, lease or other transaction that affects the Property in any way; or
- (ii) sell, dispose of or encumber any portion of the Property;

3.1.9. MAINTENANCE OF THE PROPERTY. Seller shall continue to maintain the Property in compliance with all applicable laws and pay all costs of the Property with respect to the period prior to Closing.

3.1.10. CONDITION OF THE PROPERTY. (a) Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises,

covenants, contracts or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning, or with respect to the value, nature, quality, or condition of the Property, including, without limitation:

- (i) The water, soil and geology;
- (ii) The income to be derived from the Property;
- (iii) The suitability of the Property for any and all activities and uses that Buyer or anyone else may conduct thereon;
- (iv) The compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body;
- (v) The habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property;
- (vi) The manner or quality of the construction or materials, if any, incorporated into the Property; or
- (vii) Any other matter with respect to the Property.

(b) Seller has not made, does not make, and specifically disclaims any representations regarding compliance with any environmental protection, pollution, zoning or land use laws, rules, regulations, orders, or requirements, including the existence in or on the Property of hazardous materials or substances.

(c) Without limitation, Seller does not make and specifically disclaims any warranties, express or implied, any warranties or representations with respect to the structural condition of the Purchased Assets, the area of land being purchased, the existence or non-existence of any Hazardous Substances or underground storage tanks, or the actual or threatened release, deposit, seepage, migration or escape of Hazardous Substances, from or into the Purchased Assets, and the compliance or noncompliance of the Purchased Assets with applicable federal, state, county and local laws and regulations, including, without limitation, environmental laws and regulations and seismic/building codes, laws and regulations. For purposes of this Agreement, the term "Hazardous Substances" shall mean: "hazardous substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 ("RCRA") as amended; hazardous wastes, hazardous materials, hazardous substances, toxic waste, toxic materials, or toxic substances as defined in state or federal statutes or regulations; asbestos-containing materials, polychlorinated biphenyls; radioactive materials, chemicals known to cause cancer or reproductive toxicity; petroleum products, distillates or fractions; any substance the presence of which is prohibited by statute or regulation; and any substance for which any statute or regulation requires a permit or special handling in its use, collection, storage, treatment or disposal.

(d) All provisions of this Section 3.1.10 shall survive Closing and the expiration or earlier termination of this Agreement.

3.1.11. RISK OF LOSS. Until the Closing Date, the risk of loss relating to the Property shall rest with the Seller. Risk of Loss shall be deemed to include any property damage occurring as a result of an “Act of God,” including, but not limited to, earthquakes, tremors, wind, rain or other natural occurrence.

3.1.12. FOREIGN PERSON. Seller is not a foreign person and is a “United States Person” as such term is defined in Section 7701 (a) (30) of the Internal Revenue Code of 1986, as amended and shall deliver to Purchaser prior to the Closing an affidavit, as set forth in **Exhibit D**, evidencing such fact, and such other documents as may be required under the Code.

3.2. REPRESENTATIONS AND WARRANTIES OF BUYER. As of the Closing Date, Buyer represents and warrants as follows:

3.2.1. ORGANIZATION. Buyer is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Washington. Buyer has all requisite corporate power and authority to carry on its business as it is now being conducted in the place where such businesses are now conducted.

3.2.2. EXECUTION, DELIVERY AND PERFORMANCE OF AGREEMENT, AUTHORITY. The execution, delivery and performance of this Agreement by Buyer (i) is within the powers of Buyer as a municipal corporation, (ii) has been or will be on or before the Closing Date, duly authorized by all necessary action of the Buyer’s legislative authority, and (iii) does not and will not violate any provision of any law, rule, regulation, order, writ, judgment, decree or award to which the Buyer is a party or which is presently in effect and applicable to Buyer. This agreement constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with the terms hereof.

3.2.3. LITIGATION. There is no pending or, to the best of Buyer’s knowledge, threatened lawsuit or material claim against or relating to Buyer that shall impede or materially affect Buyer’s ability to perform the terms of this Agreement.

3.2.4. FULL DISCLOSURE. No representation or warranty by Buyer in this Agreement or in any instrument, document, certificate or statement furnished to Seller pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact.

3.2.5. CONDITION OF PROPERTY.

(a) Buyer acknowledges and accepts Seller’s disclaimer of the Property condition in Section 3.1.10 of this Agreement.

(b) Buyer further acknowledges and agrees that, having been given the opportunity to inspect the Property, Buyer is relying solely on its own investigation of the Property and not on any information provided or to be provided by Seller. Buyer further acknowledges and agrees that any information provided or to be provided with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy

or completeness of such information and no employee or agent of Seller is authorized otherwise. Buyer further acknowledges and agrees that Seller is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person, and, to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "AS-IS" condition and basis with all faults. It is understood and agreed that the sale price reflects that the Property is sold by Seller to Buyer subject to the foregoing.

(c) Buyer acknowledges that, within the Due Diligence Period as defined in Section 4.1.2 of this Agreement, Buyer will have conducted a physical inspection and made all investigations that Buyer deems necessary in connection with its purchase of the Purchased Assets, and that, as of the Effective Date hereof, Seller has provided Buyer with copies of all reports in Seller's possession that have been requested by Buyer. Upon waiver or satisfaction by Buyer of its contingencies pursuant to Article 5, Buyer will be deemed to have approved the physical condition of the Property and agrees to accept and purchase the same "AS IS, WHERE IS", including, without limitation, the existence or non-existence of any pollutants, contaminants, hazardous waste, dangerous waste, toxic waste, underground storage tanks or contaminated soil, or the actual or threatened release, deposit seepage, migration or escape of such substances at, from or into the Property and the compliance or noncompliance of the Property with applicable federal, state, county and local laws and regulations including, without limitation, environmental laws and regulations. Buyer acknowledges and agrees that, except to the extent of Seller's representations and warranties in Section 3.1 of this Agreement, and to the extent of any fraud or deliberate misrepresentation by Seller, Seller shall have no liability for, and that Buyer shall have no recourse against the Seller for, any defect or deficiency of any kind whatsoever in the Property including without limitation those relating to Hazardous Substances, without regard to whether such defect or deficiency was discovered or discoverable by the Buyer or Seller.

3.2.6 NO BROKER. No broker, finder, agent or similar intermediary has acted for or on behalf of Buyer in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent, or similar intermediary is entitled to any broker's, finder's or similar fee or commission in connection with this Agreement based on an agreement, arrangement, or understanding with the Buyer or any action taken by the Buyer.

3.2.7. INDEMNIFICATION. From and after the Closing Date, Buyer shall indemnify, defend and hold Seller, its officers, agents and employees harmless from and against any and all claims and agency orders or requirements relating to or arising out of, directly or indirectly, the Purchased Assets.

ARTICLE 4. TITLE MATTERS

4.1. TITLE. Seller shall deliver to Buyer good and marketable title, free and clear of all liens, defects and encumbrances except the Permitted Exceptions. The title, right of possession and interest in the Purchased Assets shall pass to Buyer upon the Closing Date and thereafter the risk of loss thereof shall be the responsibility of Buyer.

4.1.1. TITLE COMMITMENT. Buyer shall obtain a current ALTA form of

commitment for an owner's extended policy of title insurance (the "Title Commitment") issued by First American Title Insurance Company. (the "Title Company"), describing the Property, listing Buyer as the prospective named insured and showing as the policy amount the total Purchase Price for the Property. At such time as the Title Company causes the Title Commitment to be furnished to Buyer, the Title Company shall further cause to be furnished to Buyer legible copies of all instruments referred to in the Title Commitment as restrictions or exceptions to title to the Property.

4.1.2. SURVEY. Prior to the expiration of the Due Diligence Period (as defined in Section 5.2), Buyer shall the option, at its expense, to have prepared and furnished to the Title Company and Buyer a survey (the "Survey") of the Property prepared by a licensed public surveyor. The Survey shall be certified to Buyer and the Title Company, shall be satisfactory to the Title Company so as to permit it to issue an owner's extended coverage title policy, identify the Property by legal description and shall set forth the number of square feet contained within the Property, show all natural monuments, existing fences, drainage ditches and/or courses, flood plain limits, any building or other site improvements and/or objects, any rights-of-way for streets, existing driveways, alleys or highways, easements and other restriction lines existing and/or proposed which shall affect any portion of the Property, and such other items as required by Buyer.

4.1.3. REVIEW OF TITLE COMMITMENT AND SURVEY. Buyer shall have until fourteen (14) days after receipt of the last of the Title Commitment and the Survey (the "Review Period") in which to notify Seller of any objections Buyer has to any matters shown or referred to in the Title Commitment or Survey and of any title insurance endorsements required by Buyer. Any exceptions or other items that are set forth in the Title Commitment or the Survey and to which Buyer does not object within the Review Period shall be deemed to be permitted exceptions ("Permitted Exceptions"). With regard to items to which Buyer does object within the Review Period, Seller shall notify Buyer within ten (10) days after Seller receives Buyer's notice of objections of any exceptions to title or items on the survey which Seller is not able to remove or otherwise resolve and any endorsements that Seller is not able to provide following Buyer's request within the Review Period, and Buyer may, at Buyer's option, either waive the objections not cured or Buyer may terminate this Agreement by notice to Seller. Notwithstanding the foregoing, all monetary liens or encumbrances on the Property at Closing shall be paid by Seller at Closing.

4.2. OWNER'S TITLE INSURANCE POLICY. At the Closing, Buyer shall cause an owner's policy of title insurance to be issued by the Title Company in the full amount of the purchase price, effective as of the Closing Date, insuring Buyer that the fee simple title to the Property is vested in Buyer, subject only to the usual printed exceptions contained in such title insurance policy, to the matters approved by Buyer as provided herein, and to any other matters approved in writing by Buyer. The obligation of Buyer to provide the title policy called for herein shall be satisfied if, at the Closing, the Title Company has given a binding commitment, in a form reasonably satisfactory to Buyer, to issue the policies in the form required by this section. Buyer shall pay any sum owing to the Title Company for the preparation of the preliminary and binding commitments generated by the Title Company.

4.3. CONVEYANCE. Seller shall convey to Buyer the title to the Property by bargain

and sale deed in the form attached hereto as **Exhibit B**, subject only to the Permitted Exceptions, and appropriate covenants reserved in federal patents or state deeds, building or use restrictions general to the district, and building or zoning regulations or provisions shall be deemed Permitted Exceptions.

ARTICLE 5. CONTINGENCIES

5.1. DUE DILIGENCE INSPECTION AND FEASIBILITY. Buyer shall satisfy itself by investigation and inspection, at its cost and expense in its sole and absolute discretion, that the condition of the Property for Buyer's contemplated use meets with its approval. If Buyer approves of the condition of the Property, Buyer agrees to notify Seller, in writing, thereby removing the contingency. Buyer shall make such determination within forty-five (45) days following the date of mutual execution of this Agreement ("Due Diligence Period"). In the event that Buyer notifies Seller in writing no later than 5:00 p.m. (Seattle time) following the expiration of the Due Diligence Period, approving the condition of the Property and thereby waiving the contingency, then Buyer shall be deemed to have waived its right to terminate this Agreement under this paragraph 5.1 and the Deposit shall become nonrefundable to Buyer except as otherwise provided in this Agreement. In the event this contingency is not satisfied or waived within the Due Diligence Period, Buyer may terminate this Agreement upon written notice to Seller and to Escrow Holder on or before the expiration of the Due Diligence Period, and neither Party shall have any further rights or obligations to the other hereunder. In the event such written notice of termination of this Agreement is received by Seller, as provided herein, Seller shall instruct the Escrow Holder to return the Deposit to Buyer.

5.1.1. INSPECTIONS. During the Due Diligence Period, Buyer, its designated representatives or agents shall have the right at its own expense to (i) perform any and all tests, inspections, studies, surveys or appraisals of the Property deemed necessary, on any subject, by the Buyer (subject to the limitations set forth below and Paragraph 5.1.2 Right of Entry); (ii) obtain a Phase I or Phase II Environmental Assessment on the Property and perform any and all tests, inspections and studies deemed necessary therewith; and (iii) examine all Due Diligence materials that Buyer may reasonably request from Seller that are not subject to attorney-client privilege or that the County is not otherwise prohibited from disclosing by law; (IV) determine to its satisfaction whether approvals, permits and variances can be obtained under applicable land use and zoning codes for Buyer's proposed development of the property, (V) determine whether Buyer's proposed development of the property is economically feasible.

5.1.2. RIGHT OF ENTRY. Buyer and Buyer's designated representatives or agents shall have the right and Seller hereby grants to Buyer and Buyer's designated representatives the right to enter the Property and conduct tests, investigations and studies set forth in this Article 5 upon three (3) days advance written notice; provided that such right of entry will be limited to those times and dates that will not disrupt Seller's use of, or Seller's operations and activities on the Property. Invasive tests of the Property, such as drilling or excavation shall be subject to Seller's prior written approval. The Buyer will not be permitted to undertake activities that damage County property. In connection with any such inspections and tests, Buyer agrees to hold harmless, indemnify and defend Seller, its officers, agents and employees, from and against all claims, losses, or liability for injuries, sickness or death of

persons, including employees of Buyer caused by or arising out of any act, error or omission of Buyer, its officers, agents, contractors, subcontractors or employees in entering the Property for the above purposes, to the extent not caused by or arising out of any act, error or omission of Seller, its officers, agents and employees.

ARTICLE 6. COVENANTS OF SELLER PENDING CLOSING

6.1 CONDUCT, NOTICE OF CHANGE. Seller covenants that between the date hereof and the Closing, Seller shall take all such actions as may be necessary to assure that the representations and warranties set forth in Article 3 hereof will be true and complete as of the Closing Date (except such representations, warranties and matters which relate solely to an earlier date), and all covenants of Seller set forth in this Agreement which are required to be performed by it at or prior to the Closing shall have been performed at or prior to the Closing as provided for in this Agreement. Seller shall give Buyer prompt written notice of any material change in any of the information contained in the representations and warranties made in Article 3 or elsewhere in this Agreement which occurs prior to the Closing Date.

ARTICLE 7. COVENANTS OF BUYER PENDING CLOSING

7.1 CONDUCT, NOTICE OF CHANGE. Buyer covenants that between the date hereof and the Closing, Buyer shall take all such actions as may be necessary to assure that the representations and warranties set forth in Article 3 hereof will be true and complete as of the Closing Date (except such representations, warranties and matters which relate solely to an earlier date), and that all covenants of Buyer set forth in this Agreement which are required to be performed by it at or prior to the Closing shall have been performed at or prior to the Closing as provided in this Agreement. Buyer shall give Seller prompt written notice of any material change in any of the information contained in the representations and warranties made in Article 3 or elsewhere in this Agreement which occurs prior to the Closing Date.

ARTICLE 8. CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS

All obligations of Buyer hereunder are subject to the fulfillment of each of the following conditions at or prior to the Closing, and Seller shall exert its best efforts to cause each such condition to be fulfilled:

8.1. DELIVERY OF DOCUMENTS. Seller shall have delivered to Buyer at or prior to the Closing all documents required by the terms of this agreement to be delivered to Buyer.

8.2. REPRESENTATIONS, WARRANTIES AND COVENANTS. All representations, warranties and covenants of Seller contained herein or in any document delivered pursuant hereto shall be true and correct in all material respects when made and as of the Closing Date.

8.3. OBLIGATIONS. All obligations required by the terms of this Agreement to be performed by Seller at or before the Closing shall have been properly performed in all material

respects.

8.4. TITLE. Any and all matters shown or referred to in the Title Commitment to which Buyer has objected within the time specified in Section 4.1, shall have been cured by Seller, unless such objections have been waived by Buyer.

8.5 APPROVAL OF COUNSEL. Seller's counsel shall have approved this document as to form as evidenced by such counsel's signature on this Agreement.

8.6. APPROVAL OF CITY OF SHORELINE COUNCIL. This Agreement is subject to the approval by ordinance of the City of Shoreline Council, which must take place prior to Closing.

8.7. CONDEMNATION. No portion of the Purchased Assets shall have been taken or damaged by any public or quasi-public body, and Seller shall not have transferred any portion of the Purchased Assets to any such body in lieu of condemnation.

ARTICLE 9. CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS

All obligations of Seller to close on the Closing Date are subject to the fulfillment of each of the following conditions at or prior to the Closing, and Buyer shall exert its best efforts to cause each such condition to be so fulfilled:

9.1. REPRESENTATIONS, WARRANTIES AND COVENANTS. All representations, warranties and covenants of Buyer contained herein or in any document delivered pursuant hereto shall be true and correct in all material respects when made and as of the Closing Date.

9.2. OBLIGATIONS. All obligations required by the terms of this Agreement to be performed by Buyer at or before the Closing shall have been properly performed in all material respects.

9.4. APPROVAL OF COUNSEL. Buyer's counsel shall have approved this document as to form as evidenced by such counsel's signature on this Agreement.

9.5. APPROVAL OF KING COUNTY COUNCIL. This Agreement is subject to the approval by ordinance of the King County Council, which must take place prior to Closing.

9.6. DELIVERY OF DOCUMENTS. Buyer shall have delivered to Seller at or prior to Closing all documents required by the terms of this Agreement to be delivered to Seller.

9.7. TITLE. Buyer shall have caused the Title Company to be irrevocably committed to issue an owner's policy of title insurance for the full amount of the Purchase Price, effective as of the Closing Date, containing no exceptions other than the Permitted Exceptions.

ARTICLE 10. CLOSING

10.1. CLOSING/CLOSING DATE. The Closing shall take place within seventy-five (75) days following the latest approval of this Agreement by the City of Shoreline and King County Councils or such other date as may be mutually agreed upon by the Parties, unless extended pursuant to a written agreement executed by Buyer and Seller. Upon execution of this Agreement, the Parties shall set up an escrow account with First American Title Insurance Company (the "Escrow Agent"). The Escrow Agent shall serve as closing agent for the transaction contemplated herein and Closing shall occur in the offices of Escrow Agent in Seattle, Washington.

10.2. PRORATIONS. All prorations, unless otherwise specifically provided for herein, shall be made as of the Closing Date.

10.2.1. Closing Costs. Seller shall pay the cost of one-half (½) of the escrow fee charged by the Escrow Agent, any real estate excise or other transfer tax due, and its own attorneys' fees. Buyer shall pay one-half (½) of the escrow fee charged by the Escrow Agent, the cost of the preliminary and binding title commitments from the Title Company, the recording fees for the deed and its own attorneys' fees. Except as otherwise provided in this Section 10.2, and Section 9.4 above, all other expenses hereunder shall be paid by the Party incurring such expenses.

10.3. SELLER'S DELIVERY OF DOCUMENTS AT CLOSING. At the Closing, Seller will deliver to Buyer the following properly executed documents:

(a) A Bargain and Sale Deed conveying the Property in the form of **EXHIBIT B** attached hereto;

(b) A Bill of Sale and Assignment duly executed by the Seller in the form of **EXHIBIT C**, attached hereto for the Personal Property, if any;

(c) Seller's Certificate of Non-Foreign status substantially in the form of **EXHIBIT D**, attached hereto

10.4. BUYER'S DELIVERY OF DOCUMENTS AND PURCHASE PRICE AT CLOSING. At the Closing, Buyer will deliver to Seller the following properly executed documents:

(a) Cash or immediately available funds in the amount of the Purchase Price.

ARTICLE 11. TERMINATION

11.1. TERMINATION BY EITHER PARTY. Either Party may terminate this Agreement if a condition to its obligation to consummate the transactions contemplated by this Agreement as set forth in Articles 8 or 9 has not been satisfied by the Closing Date. In that event, if neither Party is in default of any material term under this Agreement, the Parties shall have no further obligations or liabilities to one another and all documents delivered into escrow shall be returned to the appropriate Party.

ARTICLE 12.
MISCELLANEOUS PROVISIONS

12.1. NATURE AND SURVIVAL OF REPRESENTATIONS AND WARRANTIES. Each statement, representation, warranty, indemnity, covenant, and agreement made by Seller or Buyer in this Agreement or in any document, certificate or other instrument delivered by or on behalf of Seller or Buyer pursuant to this Agreement or in connection herewith shall be deemed the representation, warranty, indemnity, covenant and agreement of Seller and Buyer and shall survive the Closing Date unless a different time period is expressly provided for in this Agreement and all such statements are made only to and for the benefit of the parties hereto, and shall not create any rights in any other persons or entity.

12.2. DEFAULT AND ATTORNEYS' FEES. In the event of default of any material term by either Party to this Agreement, and unless otherwise terminated pursuant to Section 11.1, the non-defaulting Party shall have the right to bring an action for specific performance and/or actual damages. Each Party shall bear its own attorney's fees and costs. In the event of any litigation hereunder, the Superior Court of King County, Washington shall have exclusive jurisdiction and venue.

12.3. TIME IS OF THE ESSENCE. Time is of the essence in the performance of this Agreement.

12.4. NOTICES. Any and all notices or other communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given upon receipt when personally delivered or sent by overnight courier or two days after deposit in the United States mail if by first class, certified or registered mail, return receipt requested. All notices shall be addressed to the Parties at the addresses set forth below or at such other addresses as any parties may specify by notice to all other parties and given as provided herein:

If to Buyer: City of Shoreline
17500 Midvale Avenue N
Shoreline, WA 98133-4905

If to Seller: King County
Real Estate Services
ADM-ES-0830
500 Fourth Avenue, Room 830
Seattle, WA 98104-2337

12.5. ENTIRE AGREEMENT AND AMENDMENT. This writing (including the Exhibits attached hereto) constitutes the entire agreement of the Parties with respect to the subject matter hereof and may not be modified or amended except by a written agreement specifically referring to this Agreement and signed by all parties hereto.

12.6 SEVERABILITY. In the event any portion of this Agreement shall be found to be invalid by any court of competent jurisdiction, then such holding shall not impact or affect the

remaining provisions of this Agreement unless that court of competent jurisdiction rules that the principal purpose and intent of this contract should and/or must be defeated, invalidated or voided.

12.7 WAIVER. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the Party giving such waiver and no such waiver shall be deemed a waiver of any prior or subsequent breach or default.

12.8 BINDING EFFECT. Subject to Section 12.12 below, this Agreement shall be binding upon and inure to the benefit of each Party hereto, its successors and assigns.

12.9 LEGAL RELATIONSHIP. The Parties to this Agreement execute and implement this Agreement solely as Seller and Buyer. No partnership, joint venture or joint undertaking shall be construed from this Agreement.

12.10 CAPTIONS. The captions of any articles, paragraphs or sections contained herein are for purposes of convenience only and are not intended to define or limit the contents of said articles, paragraphs or sections.

12.11 COOPERATION. Prior to and after Closing the Parties shall cooperate, shall take such further action and shall execute and deliver further documents as may be reasonably requested by the other Party in order to carry out the provisions and purposes of this Agreement.

12.12 GOVERNING LAW. This Agreement and all amendments thereof shall be governed by and construed in accordance with the laws of the State of Washington applicable to contracts made and to be performed therein, without giving effect to its conflicts of law rules or choice of law provisions.

12.13 NON-MERGER. The terms and provisions of this Agreement shall not merge in, but shall survive, the Closing of the transaction contemplated under this Agreement.

12.14 ASSIGNMENT. Buyer shall not assign this Agreement or any rights hereunder without Seller's prior written consent.

12.15 NEGOTIATION AND CONSTRUCTION. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the Parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either Party. The Parties acknowledge and represent, as an express term of this Agreement, that they have had the opportunity to obtain and utilize legal review of the terms and conditions outlined in this Agreement, although each Party must determine if they wish to obtain and pay for such legal review. Each Party shall be and is separately responsible for payment of any legal services rendered on their behalf regarding legal review of the terms found in this Agreement.

12.16 EXHIBITS. The following Exhibits described herein and attached hereto are fully incorporated into this Agreement by this reference:

EXHIBIT A
EXHIBIT B
EXHIBIT C
EXHIBIT D

Legal Description
Bargain and Sale Deed
Bill of Sale and Assignment
Certificate of Non-Foreign Status

EXECUTED as of the date and year first above written:

SELLER: KING COUNTY

BUYER: CITY OF SHORELINE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Senior Deputy Prosecuting Attorney

By: _____
City Attorney

STATE OF WASHINGTON
COUNTY OF KING

} ss.

On this day personally appeared before me _____, to me known to be the _____ of KING COUNTY, the municipal corporation and political subdivision of the State of Washington that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such municipal corporation and political subdivision, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 2012.

Printed Name _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____

STATE OF WASHINGTON
COUNTY OF KING

} ss.

On this day personally appeared before me _____, the _____ of _____, known to me to be the Buyer that executed the foregoing instrument, and acknowledged such instrument to be [his/her] free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that [he/she] was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 2012.

Printed Name _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____

EXHIBIT A.

LEGAL DESCRIPTION

Real property in the County of King, State of Washington, described as follows:

That portion of the southeast quarter of the northwest quarter of Section 4, Township 26 North, Range 4 East, W.M., in King County, Washington, described as follows:

Beginning at a point on the north-south center line of said Section, which is north 1°05'00" west 362.40 feet from the iron monument at the center of said Section, and the true point of beginning of the tract herein described; thence north 83°16'00" west 169.25 feet; thence north 45°10'13" west 183.12 feet; thence north 83°13'50" west 178.43 feet, more or less, to a point on the northeasterly right-of-way line of secondary State Road No. 2 - B (Lake Ballinger No. 3 Revision Road); thence northwesterly, along said northeasterly right-of-way line, 265 feet, more or less to the north-south center line of the southeast quarter of the northwest quarter of said Section 4;

thence northerly, along said center line 30.5 feet, more or less, to a point which bears north 1°05'00" west 671.96 feet and north 83°16'00" west 654.91 feet, more or less, from the center of said Section 4; thence south 83°16'00" east 654.91 feet, more or less, to the north-south center line of said Section 4; thence south 1°05'00" east, along said center line, 309.14 feet to the true point of beginning; Except the east 30 feet (measured at right angles to said north-south center line) thereof.

Tax Parcel Number: 042604-9043-02

Situs Address: 19547 25th Avenue Northeast, Shoreline, WA 98155

EXHIBIT B.

BARGAIN AND SALE DEED

AFTER RECORDING RETURN TO:
CITY OF SHORELINE
17500 MIDVALE AVENUE NORTH
SHORELINE, WA 98133-4905
ATTN:

BARGAIN AND SALE DEED

Grantor - - King County, Washington

Grantee - - City of Shoreline

Legal - - - -

Tax Acct. - -

The Grantor, KING COUNTY, a political subdivision of the State of Washington, for and in consideration of mutual benefits, pursuant to King County Ordinance No. _____, does hereby bargain, sell and convey unto the Grantee, the CITY OF SHORELINE, a municipal corporation of the State of Washington, the following described lands, situate in King County, Washington and referred to herein as the "Property":

Legal description of which is attached hereto as "Exhibit 1" and incorporated herein by this reference.

**GRANTOR
KING COUNTY**

**GRANTEE
CITY OF SHORELINE**

BY _____

BY _____

TITLE _____

TITLE _____

DATE _____

DATE _____

Approved as to Form:

By _____

NOTARY BLOCKS APPEAR ON PAGE 3

NOTARY BLOCK FOR KING COUNTY

STATE OF WASHINGTON)

COUNTY OF KING) SS
)

On this _____ day of _____, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared STEVE SALYER, to me known to be the Manager of the Real Estate Services Section in the Facilities Management Division of the King County Department of Executive Services, and who executed the foregoing instrument and acknowledged to me that HE was authorized to execute said instrument on behalf of KING COUNTY for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the
State of Washington, residing
at _____
City and State
My appointment expires _____

NOTARY BLOCK FOR CITY OF SHORELINE

STATE OF WASHINGTON)

COUNTY OF KING) SS
)

On this _____ day of _____, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____, who executed the foregoing instrument and acknowledged to me that SHE or HE was authorized to execute said instrument on behalf of the CITY OF SHORELINE for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the
State of Washington, residing
at _____
City and State
My appointment expires _____

EXHIBIT C.

BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE is made as of this _____ day of _____, 200__, by KING COUNTY (“**Seller**”), in favor of _____, a political subdivision of the State of Washington (“**Buyer**”), with reference to the following facts.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Seller does hereby absolutely and unconditionally give, grant, bargain, sell, transfer, set over, assign, convey, release, confirm and deliver to Buyer all of Seller’s right, title and interest in and to any and all equipment, furniture, furnishings, fixtures and other tangible personal property owned by Seller that is attached, appurtenant to or used in connection with the real property legally described on the attached Exhibit A.

Seller represents and warrants that it is the sole owner of, and has good title to, such personal property, and has full right and authority to transfer and deliver the same, and will defend the sale hereby against each and every person claiming otherwise.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the date first above written.

SELLER:

By: _____

Its: _____

EXHIBIT D.

CERTIFICATE OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a United States real property interest by **KING COUNTY** ("Transferor"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations); and
2. Transferor's United States employer identification number is 91-6001327; and
3. Transferor's office address is King County Facilities Management Division, Asset Development and Management Section, Room 500 King County Administration Building, 500 Fourth Avenue, Seattle, WA 98104

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

DATED this _____ day of _____, 2004.

TRANSFEROR:

KING COUNTY

By _____

Title _____

JOINT USE AGREEMENT
for
FUELING SERVICES AND VACTOR DECANTING
between
THE CITY OF SHORELINE
and
KING COUNTY

THIS INTERAGENCY AGREEMENT FOR SHARED FUELING SERVICES AND VACTOR DECANTING (the "Agreement") is made and entered into this _____ day of May, 2013, by and between the City of Shoreline, an optional municipal code city and municipal corporation of the State of Washington ("Shoreline" or the "City") and King County, a home rule charter county of the State of Washington, through its Department of Transportation, Fleet Administration Division (the "County"), either of which entity may be referred to hereinafter individually as "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the County owns certain real property located at 19547 25th Ave. NE in Shoreline that previously served as the County's North Maintenance Roads Services facility, commonly referred to as Brugger's Bog ("Brugger's Bog"); and

WHEREAS, following the City of Kirkland's June, 2011 annexation of the Juanita, Finn Hill and Kingsgate areas formerly served by Brugger's Bog, the facility was closed, decommissioned and recommended for surplus; and

WHEREAS, having determined that the Brugger's Bog property is not suitable for affordable housing, the County declared the property surplus to its needs and listed the property for sale; and

WHEREAS, the County and Shoreline have negotiated a purchase and sale agreement for the Brugger's Bog property that has been approved by the Shoreline City Council and is currently pending review and approval by the King County Council ("County Council"); and

WHEREAS, if the proposed sale of the Brugger's Bog property to Shoreline is approved by the County Council, Shoreline plans to continue to use the property for street maintenance and other industrial purposes; and

WHEREAS, the Brugger's Bog facility has a fueling station that has been used to support King County Sheriff's Office operations as well as other County functions; and

WHEREAS, the County has continuing need for access to vector truck decanting facilities; and

WHEREAS, if the proposed sale of the Brugger's Bog property to Shoreline is approved by the County Council, Shoreline is willing to allow the County to continue to make use of the facility for fueling and decanting capacity that is available after transfer; and

WHEREAS, with shrinking road fund resources the County is seeking to establish mutually beneficial arrangements with local jurisdictions to efficiently and effectively provide road and street maintenance services; and

WHEREAS, the King County Strategic Plan calls for the building of strategic partnerships; and

WHEREAS, the Parties desire to collaborate on a mutually beneficial shared fueling services arrangement at the Brugger's Bog property that would allow County vehicles deployed in the Shoreline area to obtain fuel at the re-opened facility and would also allow Shoreline to transition into the ownership of the fueling facility without added administrative costs and staffing; and

WHEREAS, since incorporation Shoreline has contracted with the County for police services through the King County Sheriff's Department and the reopening of the fueling station to County vehicles would help the City and County to keep fueling costs down by having vehicles refuel at the Brugger's Bog facility rather than traveling to outlying, contract fueling stations or paying local, retail gas pump rates; and

WHEREAS, County use of the Brugger's Bog fuel station for fueling its police vehicles would also benefit the City by reallocating the 30-45 minutes spent on travel for refueling at distant locations to additional law enforcement in Shoreline; and

WHEREAS, paying the County to continue tracking and billing fueling for County and City vehicles will allow the City to delay acquisition of its own software for necessary segregation of fueling charges between its utility and general fund vehicles until operations make it cost effective; and

WHEREAS, to realize the mutual benefits of shared use of the Brugger's Bog facility, the Parties desire to enter into an agreement governing their respective use of the facility; and

NOW, THEREFORE, in consideration of the terms, conditions, and mutual promises, covenants and agreements set forth herein, the Parties agree as follows:

AGREEMENT

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to memorialize the respective roles and responsibilities of the Parties as related to shared fueling services and vector truck decanting at the Brugger's Bog facility.

2. EFFECTIVE DATE AND DURATION OF AGREEMENT

This Agreement is contingent upon the County Council's adoption of an ordinance authorizing the County's sale, via a separate purchase and sale agreement, of the Brugger's Bog property to the City. If the County Council authorizes the sale of Brugger's Bog to the City, this Agreement will take effect when fully executed by duly authorized representatives of both Parties but not sooner than the date the transfer of the Brugger's Bog property to Shoreline is closed (the "Effective Date"), and will remain in effect for three (3) years from the effective date. The Agreement will automatically renew for additional one (1) year terms unless terminated pursuant to the provisions hereof.

3. FUELING SERVICES AND VECTOR DECANTING

3.1 County Responsibilities

- 3.1.1 Fueling Services. Once the City obtains a security code reader from the County as provided for in Section 3.2.1, the County will restore the security code reader for fuel dispensing equipment at Brugger's Bog within thirty (30) days of the Effective Date at the City's expense and assure the operability of the reader and data delivery to the County's Fuel Force system; procure fuel and have it delivered to the Brugger's Bog facility under existing County fueling contracts; track and manage the fueling data for both Shoreline and County vehicles by tracking vehicles, employees and all on-site fuel transactions; and bill the City for its share of fuel dispensed at the facility.
- 3.1.2 Vector Decanting. It is the City's intent to restore the vector decanting facility. If vector decanting is utilized by the County at the Brugger's Bog facility, the County will follow the same policies for disposal and schedule of rates or charges as apply to City operations.
- 3.1.3 The County will be responsible for training its personnel on proper use of the fueling station or decant facility, site access and safety protocols. The County will inform the City if it is aware of faulty or damaged equipment.

- 3.1.4 The County shall be responsible for repairing or replacing any Brugger's Bog fuel station property that is damaged by a County vehicle, including but not limited to vehicles owned by the City, equipment owned by the City or for which the City is responsible, the fueling station itself, fencing, gate, landscaping, or any other property owned by the City, but only to the extent such damage is proven to have been caused by the County as a direct result of its use of the fueling station and, further, only to the extent the damage is not normal wear and tear or otherwise *de minimus*.
- 3.1.5 In the event the County's negligent use of the City's fueling station is proved to have caused a significant hazardous fuel spill, the County shall reimburse the City's reasonable costs associated with mitigation of the spill.

3.2 City Responsibilities

- 3.2.1 Fueling Services. The City shall promptly obtain a security code reader from the County and assume financial and operational responsibility therefor. The City will reimburse the County for its costs of installing and testing the security code reader; own, inspect and test the fuel tanks; provide access to the site for designated County employees and vehicles; and reimburse the County for the City's share of fuel dispensed at the facility.
- 3.2.2 Vactor Decanting. Subject to completion of any necessary planning and permitting requirements, the City will open a vactor decanting facility at the Brugger's Bog facility that will be of sufficient size to accommodate the County's shared use of the facility. Upon the City's restoration of a decanting facility at the Brugger's Bog yard during the term of this Agreement, the County will have priority use of capacity that is available after City use of the facility for purposes of decanting vactor trucks and disposing of stormwater liquids and associated solids collected by such trucks.
- 3.2.3 The City will be responsible for improper use or fraud from fueling non-City owned vehicles.

3.3 Fuel Availability

The County shall have access to the City fueling station at all times, unless unforeseen circumstances affect the availability of the fueling station such as a supplier's inability to furnish fuel, and fueling station repairs or maintenance. The City will provide at least fourteen (14) days' notice to the County for anticipated disruptions in access, or as soon as possible in the event of unforeseen disruptions. In the event of a disruption in fuel availability, the City will take all necessary and reasonable actions to restore access to the County as soon as possible.

4. PAYMENT

For the duration of this Agreement, the City will pay the County for all fuel purchased by City employees at the Brugger's Bog fueling station for use in City vehicles and any fuel dispensed other than to County vehicles as provided for in Subsection 3.2.3 of this Agreement. The cost of the fuel to the City will include the County's actual fuel cost plus a mark-up fee in the same amount as that applicable to County users. Payment for the fuel purchased by the City shall be made according to the Payment Procedures set forth in Section 5 of this Agreement.

5. PAYMENT PROCEDURES

- 5.1 Invoices and Billing. All invoices submitted by the County to the City will be supported by appropriate documentation showing fueling transactions by date, equipment number, quantity of fuel, and fuel type. The County will submit invoices to the City using the current fuel-billing cycle. The City shall remit payment to the County within thirty (30) days of receiving an invoice.
- 5.2 Invoicing Contact Information. Invoices and associated documentation from the County to the City shall be submitted to the address and contact person identified in Section 6 of this Agreement.

6. ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS

All notices under this Agreement shall be delivered to the following addresses (or such other addresses as either Party may designate in writing):

If to the County:

King County, Department of Transportation, Fleet Administration Division
Attention: Jennifer Lindwall, Director
KSC-TR-0822
201 S. Jackson St
Seattle, WA 98104

If to the City:

Billing Invoices:
City of Shoreline
Attention: Nan Peterson
17500 Midvale Avenue North
Shoreline, WA 98133-4905

Contract Notices:

City of Shoreline
 Attention: Mark Relph, Public Works Director
 17500 Midvale Avenue North
 Shoreline, WA 98133-4905

7. COMPLIANCE WITH LAWS

- 7.1 General Requirement. The Parties, at no expense to the other, shall comply with all applicable federal, state and local laws, rules, regulations, orders, and directives of their administrative agencies and the officers thereof.
- 7.2 Equal Employment Opportunity and Outreach. In the performance of this Agreement, the County and City shall comply with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 UC 200d), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), and Chapter 49.60 RCW as now or hereafter amended.
- 7.3 During the performance of this Contract, neither the City nor any party subcontracting under the authority of this Agreement shall discriminate or tolerate harassment on the basis of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the administration or delivery of services or any other benefits under this Agreement. King County Code Chapter 12.16 and 12.17 are incorporated herein by reference, and such requirements shall apply to this Agreement.
- 7.4 Americans with Disabilities Act. The City and County shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 as amended (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Agreement.
- 7.5 Affirmative Efforts to Use Women and Minority Business Enterprises (WMBE). In the event the City subcontracts the City's fuel services to an outside firm, inclusion efforts shall be made including the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making useful schedule or requirement modifications that may assist WMBE businesses to compete, targeted recruitment, using consultant services or minority community organizations to strategize outreach, and selection strategies and criteria that result in greater subconsultant diversity. Outreach efforts may also include using the Vendor/Contractor Registration (VCR).

- 7.5.1 WMBE Record Keeping. The City and the County shall maintain, for at least 24 months after the expiration or earlier termination of this Agreement, relevant records and information necessary to document affirmative efforts to solicit women and minority business participation, including solicitations to subconsultants and suppliers, all subconsultant and supplier proposals received, and all subconsultants and suppliers actually utilized under this Agreement. The Parties shall have the right to monitor the affirmative efforts of the other Party and to inspect and copy such records as are necessary to ensure compliance with the requirements of this Section.
- 7.5.2 Non-discrimination. The Parties shall not create barriers to open and fair opportunities for WMBEs to participate in any subcontract and to obtain or compete for subcontracts as sources of supplies, equipment, construction and services. The Parties shall ensure that their employees are aware of, and adhere to the obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.

8. OTHER LEGAL REQUIREMENTS

- 8.1 Licenses and Similar Authorizations. The City and County, at no expense to the other, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- 8.2 Use of Recycled Content Paper. Whenever practicable, the Parties shall both use reusable products including recycled-content paper on all documents submitted to the other under this Agreement. The Parties are to duplex all documents that are prepared for each other under this Agreement, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. The Parties are to use 100% post-consumer recycled content, chlorine-free paper in any documents that are produced for each other, whenever practicable, and to use other paper-saving and recycling measures in the performance of this Agreement.

9. LIABILITY

The Parties to this Agreement shall be responsible for their own acts and/or omissions and those of their officers, employees and agents. Except as specifically provided for herein, neither Party to this Agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this Agreement.

10. INDEMNIFICATION

Each Party shall protect, defend, indemnify and save harmless the other Party, its officers, officials, employees and agents while acting within the scope of their employment as such, from any and all suits, costs, claims, actions, losses, penalties, judgments, and/or awards of damages, of whatsoever kind arising out of, or in connection with, or incident to the services associated with this Agreement to the extent caused by or resulting from each party's own negligent acts or omissions. Each Party agrees that it is fully responsible for the acts and omissions of its own subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them. The provisions of this Section 10 (Indemnification) shall survive the expiration or earlier termination of this Agreement.

11. AUDIT

Upon request, the City and County shall permit each other and any other governmental agency involved in the funding of the Project ("Agency"), to inspect and audit all pertinent books and records of the City and County, any subconsultant, or any other person or entity that performed work in connection with or related to the Project, at any and all times deemed necessary by the City or County, including up to six (6) years after the final payment has been made under this Agreement. Such inspection and audit shall occur in King County, Washington or other such reasonable location as the City or County selects. The City or County shall supply the other with, or shall permit each other to make, a copy of any books and records and any portion thereof. The City or County shall ensure that such inspection, audit and copying right of the City or County is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Agreement.

12. CONTRACTUAL RELATIONSHIP

The relationship of the City and the County to each other by reason of this Agreement shall be that of independent contractors and both agree that neither entity nor any employee of the City or County shall be deemed to be an employee of the other for any purpose. This Agreement does not authorize the City or the County to act as the agent or legal representative of the other for any purpose whatsoever unless expressly provided for by the terms of this Agreement. The City and the County are not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the other or to bind the other in any manner whatsoever unless expressly provided for by the terms of this Agreement.

13. ASSIGNMENT AND SUBCONTRACTING

- 13.1 Consent Required. Neither Party shall assign or subcontract any of its obligations under this Agreement without the other's prior written consent, which may be granted or withheld in the City or County's discretion. Any subcontract made by the City or County shall incorporate by reference all the terms of this Agreement, except as otherwise provided. The Parties shall ensure that all subconsultants comply with the obligations and requirements of the subcontract. The City or County's consent to any assignment or subcontract shall not release the City or County from liability under this Agreement, or from any obligation to be performed under this Agreement, whether occurring before or after such consent, assignment, or subcontract.
- 13.2 WMBE Roster. If the County intends to subcontract any part of the Project, the County shall utilize the City's Roster lists to solicit qualified sub/consultants, including WMBE and Small Business firms when applicable. The City shall make the Roster lists available to the County throughout the term of this Agreement. Roster lists include the Consultant Roster, Small Construction Projects Roster (SCPR) and the Vendor/Contractor Registration (VCR). Please also refer to Section 7.4 of this Agreement.

14. DISPUTES

Any dispute or misunderstanding that may arise under this Agreement concerning the City or County's performance shall first be resolved through negotiations, if possible, between the County's Fleet Division Director, or designee, and Shoreline's Public Works Director, or designee, or if necessary shall be referred to the senior executive(s) for both the City and County. If such officials do not agree upon a decision within a reasonable period of time, the Parties may pursue other legal means to resolve such disputes, including but not limited to alternate dispute resolution processes.

15. TERMINATION

- 15.1 For Cause. The City or County may terminate this Agreement if either is in material breach of any of the terms of this Agreement, and such breach has not been corrected to the other's reasonable satisfaction in a timely manner.
- 15.2 For Reasons Beyond Control of Parties. Either Party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as but not limited to an act of nature; war or warlike operation; civil commotion; riot; labor dispute including strike, walkout, or lockout, except labor disputes involving the Party's own employees; sabotage; or superior governmental regulation or control.

- 15.3 For Convenience. The City or County may terminate this Agreement at any time after the initial three year term without cause and for any reason including convenience, upon at least thirty (30) days written notice to the other prior to the effective date of termination.
- 15.4 Termination for Non-Appropriation or Lack of Funds. The County may terminate this Agreement at any time during the term of the Agreement in the event that sufficient funds are not appropriated to cover performance of the County's obligations under this Agreement by giving not less than thirty (30) days' written notice to the City.
- 15.5 Actions Upon Termination. In the event of termination with or without fault the County shall be paid for the fuel remaining at the Brugger's Bog fueling station at its cost of acquisition. In the event of termination not the fault of the City or County, the other shall be paid for the services properly performed prior to termination, together with any reimbursable expenses then due. The City and County agree that this payment shall fully and adequately compensate the other and all subconsultants for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Agreement.
- 16. LEGAL RELATIONS**
- 16.1 Amendments. No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of the Parties hereto.
- 16.2 Binding Agreement. This Agreement shall not be binding until signed by both Parties. The provisions, covenants and conditions in this Agreement shall bind the Parties, their legal heirs, representatives, successors, and assigns.
- 16.3 Applicable Law/Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County situated in Seattle, Washington.
- 16.4 Remedies Cumulative. Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.
- 16.5 Captions. The titles of sections or subsections are for convenience only and do not define or limit the contents.
- 16.6 Severability. If any term or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

- 16.7 Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by the City or County of any performance by the City or County after the time the same shall have become due nor payment to the City or County under this Agreement shall constitute a waiver by the City or County of the breach or default of any covenant, term or condition of this Agreement unless otherwise expressly agreed to by the City or County, in writing.

- 16.8 Entire Agreement. This Agreement, along with any exhibits and attachments, constitutes the entire agreement between the Parties with respect to the Project. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, agent, associate or employee of the County prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.

- 16.9 Negotiated Agreement. The Parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against either Party on the basis of such Party's draftsmanship thereof.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the Parties have executed this Agreement by having their duly authorized representatives affix their signatures below.

KING COUNTY

THE CITY OF SHORELINE

By: _____
Jennifer Lindwall, Director
Department of Transportation,
Fleet Administration Division

By: _____
Julie T. Underwood, City Manager

Dated: _____

Dated: _____

Approved as to form:

Approved as to form:

King County Prosecuting Attorney

Ian R. Sievers, Shoreline City Attorney