



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

September 24, 2013

Ordinance 17669

Proposed No. 2013-0356.1

Sponsors Hague

1 AN ORDINANCE approving and adopting the agreed
2 judgment and decree of appropriation negotiated between
3 King County and the city of Bellevue in that certain eminent
4 domain proceeding captioned as City of Bellevue v. Port of
5 Seattle et al., King County Superior Court Cause No. 12-2-
6 17740-6 SEA, authorizing the executive to implement the
7 terms of the agreed judgment and decree of appropriation
8 upon entry by the superior court and other appropriate
9 measures.

10 **STATEMENT OF FACTS:**

11 1. On April 16, 2012, the city council of the city of Bellevue ("the city")
12 adopted Ordinance No. 6051 which authorized the acquisition of certain
13 property and property rights ("the Take property") necessary for
14 construction of phase 1 of the city's NE 4th Street extension project,
15 specifically to extend a new arterial public street between 116th Avenue
16 NE and the eastern boundary of the former Burlington Northern Santa Fe
17 ("BNSF") Railway Company railway corridor, including the improvement
18 or installation of bike lanes, and the related construction or addition of
19 curb, gutter and sidewalk, retaining walls, traffic signals, illumination,

20 landscaping, irrigation, storm drainage and detention and other utility
21 infrastructure as needed ("the city project").

22 2. As of April 16, 2012, the Port of Seattle owned fee title to that portion
23 of the Woodinville subdivision that contains the Take property and King
24 County had utility easements and a trail easement in the Take property.
25 Effective as of February 13, 2013, by deed filed under King County
26 Recording No. 20130213001645, King County acquired fee title to the
27 Take property from the Port of Seattle. King County and the city
28 subsequently negotiated an agreed judgment and decree of appropriation
29 substantially in the form of Attachment A to this ordinance.

30 3. After negotiations between King County and the city, the Take
31 property described in the petition filed in the city's eminent domain case
32 and in city Ordinance 6051 has been modified. The Take property subject
33 to the agreed judgment and decree of appropriation is comprised only of:
34 a nonexclusive roadway easement in the form of Exhibit A to Attachment
35 A to this ordinance ("the city project easement"), as to that portion of the
36 Take property legally described in that Exhibit A; and a temporary
37 construction easement in the form of Exhibit B to Attachment A to this
38 ordinance ("the temporary construction easement"), as to that portion of
39 the Take property legally described in that Exhibit B. The city project
40 easement and the temporary construction easement are depicted in Exhibit
41 C to Attachment A to this ordinance ("the project easement area"). The
42 legal description of the Take property appropriated to the city by and

43 through Attachment A to this ordinance supersedes and controls over the
44 legal description of the Take property in the city's eminent domain petition
45 and city of Bellevue Ordinance 6051.

46 4. The city project will cross over the county's Eastside Sewer Interceptor.
47 The city and King County agree that the city's project could potentially
48 cause the eastside sewer interceptor to settle up to three-quarters of one
49 inch, which could potentially result in an incremental loss of sewer
50 capacity. An analysis performed by the engineering firm Parsons
51 Brinkerhoff and reviewed by the wastewater treatment division of the
52 King County department of natural resources and parks indicates that if
53 the interceptor settles and the incremental loss of capacity occurs, then it
54 could be restored by slip-lining the interceptor. The Parsons Brinkerhoff
55 analysis estimates that the direct cost to slip-line the interceptor would be
56 approximately two hundred thirty-four thousand two hundred fifty-three
57 dollars.

58 5. King County granted the city possession and use of the Take property
59 under the terms of an agreed order for immediate possession and use and
60 order of disbursement entered by King County superior court on March 8,
61 2013 ("the possession and use order"). Pursuant to the possession and use
62 order, the city of Bellevue deposited into the court's registry as its offer to
63 acquire the Take property, the sum of two hundred two thousand thirty
64 dollars, which amount has been disbursed to King County. Further,
65 pursuant to the possession and use order, the city of Bellevue also

66 deposited into the court's registry the sum of two hundred thirty-four
67 thousand two hundred fifty-three dollars as an agreed sewer impact fee,
68 which amount has also been disbursed to King County. King County has
69 acknowledged receipt of the same.

70 6. Under Section 4 of the agreed judgment and decree of appropriation set
71 forth in Attachment A to this ordinance, the city acknowledges that the
72 Take property, together with the remainder of the subject property and
73 certain other property commonly referred to as the south rail line portion
74 of the Woodinville subdivision formerly owned by BNSF Railway
75 Company, has been railbanked under 16 U.S.C. Sec. 1247(d) and its
76 implementing regulations, including but not limited to 49 C.F.R. Sec.
77 1152.29 ("the railbanking legislation"). The city further acknowledges
78 that pursuant to that certain trail use agreement between BNSF Railway
79 Company and King County, dated December 18, 2009, and pursuant to
80 that certain notice of interim trail use issued by the Surface Transportation
81 Board in STB Docket No. AB-6 (Sub-No. 456X) (service date November
82 28, 2008), the county is the designated interim trail sponsor for the
83 railbanked portions of the Woodinville subdivision, which status subjects
84 King County to certain legal obligations under the railbanking legislation
85 and related to the Take property, including but not limited to trail-related
86 obligations.

87 7. Section 5.A. of the agreed judgment and decree of appropriation
88 attached as Attachment A to this ordinance states that as an exercise of the

89 city of Bellevue's business or proprietary powers, the city's contractual
90 duties and obligations under the agreed judgment and decree are binding
91 on future city councils. Section 5.A. of the agreed judgment and decree
92 also recites that the city of Bellevue has the authority to enter into this
93 contractual relationship pursuant to RCW 35A.11.010, and that King
94 County has specifically relied on that authority in negotiating and agreeing
95 to the agreed judgment and decree of appropriation set forth in Attachment
96 A to this ordinance.

97 8. Section 5.B. of the agreed judgment and decree of appropriation states
98 that the city of Bellevue has paid and King County has received full and
99 final just compensation for the appropriation of the Take property
100 described in Exhibits A and B to Attachment A to this ordinance. Section
101 5.A. further states that no further amounts shall be due from the city of
102 Bellevue, except as provided under paragraphs 6 and 9 of Attachment A to
103 this ordinance.

104 9. Upon entry of the agreed judgment and decree of appropriation, the
105 Take property comprised of the easement rights described in Exhibits A
106 and B to Attachment A to this ordinance will be granted to and
107 appropriated by the city of Bellevue through documents to be recorded
108 substantially in the form of Exhibits A and B attached to Attachment A to
109 this ordinance.

110 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

111 SECTION 1. The agreed judgment and decree of appropriation negotiated
112 between King County and the city of Bellevue in City of Bellevue v. Port of Seattle et. al,
113 King County Superior Court Cause No. 12-2-17740-6 SEA, which judgment and decree
114 is Attachment A to this ordinance⁰ and by this reference made a part of this ordinance, is
115 hereby approved and adopted.

116 SECTION 2. The executive is authorized to instruct the prosecuting attorney to
117 execute the agreed judgment and decree of appropriation substantially in the form of
118 Attachment A to this ordinance and to file the executed judgment and decree with the
119 superior court.

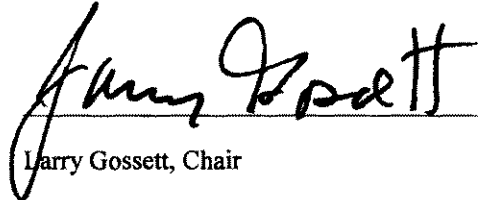
120 SECTION 3. Upon final approval of the agreed judgment and decree of
121 appropriation by the superior court in and for King County, Washington, the executive is
122 authorized to implement the terms of the agreed judgment and decree through grant of a
123 permanent easement and a temporary construction easement to the city substantially in
124 the form of Exhibits A and B to Attachment A to this ordinance and through other

125 measures necessary to implement the terms of the agreed judgment and decree of
126 appropriation.
127


Ordinance 17669 was introduced on 8/19/2013 and passed by the Metropolitan King County Council on 9/23/2013, by the following vote:

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

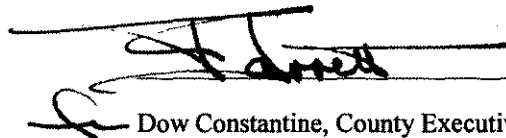
KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Gossett, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 26th day of September 2013.


Dow Constantine, County Executive

RECEIVED
2013 SEP 27 PM 3:56
CLERK
KING COUNTY COUNCIL

Attachments: A. Agreed Judgment and Decree of Appropriation

Honorable Monica J. Benton

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

CITY OF BELLEVUE, a municipal
corporation,

Petitioner,

vs.

PORT OF SEATTLE, a municipal
corporation; CITY OF SEATTLE, a
municipal corporation; PUGET SOUND
ENERGY, INC., a Washington corporation;
CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY, otherwise known
as "SOUND TRANSIT", a regional transit
authority; and KING COUNTY, a home
rule charter county,

Respondents.

NO. 12-2-17740-6 SEA

AGREED JUDGMENT AND
DECREE OF APPROPRIATION**[CLERK'S ACTION
REQUIRED]**I. JUDGMENT SUMMARY

- | | |
|-------------------------------------|--|
| 1. Judgment Creditor: | King County |
| 2. Judgment Debtor: | City of Bellevue |
| 3. Total Judgment: | \$202,030.00 (which has been fully satisfied) |
| 4. Attorneys for Judgment Creditor: | Daniel T. Satterberg, King County
Prosecuting Attorney, and Andrew Marcuse
and Verna Bromley |
| 5. Attorneys for Judgment Debtor: | Michael R. Kenyon
and Kenyon Disend, PLLC |

II. AGREED JUDGMENT AND DECREE OF APPROPRIATION

1
2 The undersigned parties, by and through their counsel of record, stipulate to the
3 entry of this Judgment and Decree of Appropriation ("Judgment and Decree"). Now,
4 therefore, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

5 1. On April 16, 2012, the City Council of the City of Bellevue adopted
6 Ordinance No. 6051 which authorized the acquisition of certain property and property
7 rights ("Take Property") necessary for construction of Phase 1 of the NE 4th Extension
8 Project, specifically to extend a new arterial public street between 116th Avenue NE and
9 the eastern boundary of the former BNSF railway corridor, including the improvement or
10 installation of bike lanes, and the related construction or addition of curb, gutter and
11 sidewalk, retaining walls, traffic signals, illumination, landscaping, irrigation, storm
12 drainage and detention, and other utility infrastructure as needed ("City Project"). As of
13 April 16, 2012, the Port of Seattle owned fee title to that portion of the Woodinville
14 Subdivision that contains the Take Property (the "Subject Property") and King County
15 had utility easements and a trail easement in the Subject Property. Effective as of
16 February 13, 2013, by deed filed under King County Recording No. 20130213001645,
17 King County acquired fee title to the Subject Property from the Port of Seattle.
18

19 2. After negotiations between King County and the City, the Take Property
20 described in the Petition filed in this case and in City Ordinance 6051 has been modified.
21 The Take Property subject to this Judgment and Decree is comprised only of (A) a non-
22 exclusive Roadway Easement in the form of Exhibit A hereto ("City Project Easement"),
23 as to that portion of the Subject Property legally described on Exhibit A, page 4 and (B) a
24 Temporary Construction Easement in the form of Exhibit B hereto (the "Temporary
25

1 Construction Easement”), as to that portion of the Subject Property legally described on
2 Exhibit B, page 5. The City Project Easement and the Temporary Construction Easement
3 are depicted in Exhibit C hereto (the “Project Easement Area”). Exhibits A, B and C are
4 incorporated herein by this reference. If there is any conflict or ambiguity between
5 Exhibit A and Exhibit C, or between Exhibit B and Exhibit C, then Exhibits A and B
6 shall control. The legal description of the Take Property appropriated to the City by and
7 through this Judgment and Decree supersedes and shall control over the legal description
8 of the Take Property in the Petition and City Ordinance 6051.

9 3. King County granted possession and use of the Take Property as described in
10 Exhibits A and B attached hereto under the terms of an Agreed Order for Immediate
11 Possession and Use and Order of Disbursement entered herein on March 8, 2013 (the
12 “Possession and Use Order”). Pursuant to the Possession and Use Order, the City of
13 Bellevue deposited into the Court’s registry as its offer to acquire the Take Property the
14 sum of Two Hundred Two Thousand Thirty and 00/100 Dollars (\$202,030.00), which
15 amount has been disbursed to King County in full satisfaction of the Judgment entered
16 herein. Further, pursuant to the Possession and Use Order, the City of Bellevue also
17 deposited into the Court’s registry the sum of Two Hundred Thirty-Four Thousand Two
18 Hundred Fifty Three and 00/100 Dollars (\$234,253.00) as an agreed Sewer Impact Fee,
19 which amount has also been disbursed to King County. King County acknowledges
20 receipt of the same.
21

22 4. The City acknowledges that the Take Property, together with the remainder
23 of the Subject Property and certain other property commonly referred to as the South Rail
24 Line portion of the Woodinville Subdivision formerly owned by BNSF Railway
25



1 Company, has been "Railbanked" under 16 U.S.C. §1247(d) and its implementing
2 regulations, including but not limited to 49 C.F.R. §1152.29 (collectively, the
3 "Railbanking Legislation"). The City further acknowledges that pursuant to that certain
4 Trail Use Agreement between BNSF Railway Company and King County, dated
5 December 18, 2009, and pursuant to that certain Notice of Interim Trail Use ("NITU")
6 issued by the Surface Transportation Board in STB Docket No. AB-6 (Sub-No. 456X)
7 (Service Date November 28, 2008), the County is the designated Interim Trail Sponsor
8 for the Railbanked portions of the Woodinville Subdivision, which status subjects the
9 County to certain legal obligations under the Railbanking Legislation and related to the
10 Take Property (the "Railbanking Obligations"), including but not limited to trail-related
11 obligations.

12
13 5. A. As an exercise of the City of Bellevue's business or proprietary powers,
14 the City's contractual duties and obligations under this Stipulated Judgment and Decree
15 of Appropriation are binding on future City Councils. The City of Bellevue has the
16 authority to enter into this contractual relationship pursuant to RCW 35A.11.010, and
17 King County has specifically relied on that authority in stipulating to this Judgment and
18 Decree.

19 B. The City of Bellevue has paid and King County has received full and final
20 Just Compensation for the appropriation of the Take Property described in Exhibits A and
21 B attached hereto. No further amounts shall be due from the City of Bellevue, except as
22 provided under Paragraphs 6 and 9, below.

23 C. Upon entry of this Judgment and Decree, the Take Property comprised of the
24 easement rights described in Paragraph 2, above, shall be granted to and appropriated by
25

AGREED JUDGMENT AND DECREE OF
APPROPRIATION - 4

**KENYON
DISEND**

Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

1 the City of Bellevue through documents to be recorded substantially in the form of
2 Exhibits A and B attached hereto.

3 6. As contemplated in the Possession and Use Order, this Judgment and Decree
4 also includes the following terms:

5 A. The City acknowledges that but for the City Project, the County could
6 have constructed a trail on the Subject Property at grade without any street crossing. The
7 City hereby agrees to indemnify the County from any and all additional trail development
8 costs that are directly related to the County's design, permitting, and construction of a
9 trail crossing of the City Project (the "Trail Crossing"). For purposes of this Judgment
10 and Decree, the Trail Crossing shall be developed and designed in the manner set forth in
11 Section 6.B., below, and the additional trail development costs shall be the net additional
12 costs reasonably necessary to design, permit, and construct the Trail Crossing that the
13 County would not have incurred but for construction of the City's Project on the Take
14 Property (the "Additional Costs"). Additional Costs include, but are not limited to, the
15 cost for time spent by County staff, consultants, and contractors in consultation with the
16 City as contemplated in Section 6.B., below. King County acknowledges that it would
17 incur these same types of costs (including County staff, consultant and contractor time on
18 design, development and permitting issues) on its trail without the City's Project.
19 Payment of "Additional Costs" by Bellevue to King County under this Section 6 shall be
20 limited to only those incremental costs in excess of such costs that King County would
21 have incurred for its trail in the absence of the City's Project.
22

23 B. The City and the County acknowledge that the location and design of the
24 trail and the Trail Crossing, including the nature and number of users anticipated for the
25

AGREED JUDGMENT AND DECREE OF
APPROPRIATION - 5



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1 trail, have yet to be determined. The City acknowledges the County's working
2 presumption that a grade-separated Trail Crossing will be required. The County
3 acknowledges the City's interest in considering the feasibility of a Trail Crossing at
4 grade. The City and the County will cooperate to develop a Trail Crossing that allows for
5 the safe and reasonable operation and maintenance of both the future trail and the City
6 Project, considering all relevant standards, guidelines, rules and regulations applicable to
7 the trail at the time of design of that portion of the trail that includes the Trail Crossing.
8 The County agrees that it will consider the feasibility of a Trail Crossing at grade. The
9 County will select a Trail Crossing design after consultation with the City, and will take
10 into account the nature and number of anticipated future trail users, the necessary
11 integration of the Trail Crossing into the trail system developed by the County for the
12 entire corridor, and the City's needs for safe operation and consistent and efficient traffic
13 flow on NE 4th Street. The City agrees that the final decision as to feasibility and
14 selection of a Trail Crossing design will lie with the County in its sole discretion and
15 judgment, in light of the factors described herein, and the City further agrees that if the
16 County determines that an at-grade Trail Crossing is infeasible, then the City will pay the
17 Additional Costs for a grade-separated Trail Crossing, as such additional costs are
18 defined and limited in Section 6.A., above. If the County agrees that more than one Trail
19 Crossing design is feasible and would meet the criteria described in this Section 6, then
20 the City shall be obligated only to pay for the feasible Trail Crossing design with the
21 lowest Additional Costs.
22

23 C. Reactivation of Freight Rail.

24 1. The City acknowledges that the City Project will modify the grade of
25

1 the existing rail bed on the Take Property. The City acknowledges that such modification
2 could, potentially, result in King County (as the Interim Trail Sponsor) being obligated to
3 bear costs or expenses to restore or improve the Take Property for reactivated freight rail
4 service ("Reactivation Costs").

5 2. Therefore, in consideration of these potential future impacts of the
6 City Project, the City hereby agrees that if the County has complied with all material
7 terms and conditions related to shifting the costs of reactivation to the reactivating person
8 or entity as such cost shifting is addressed in the Trail Use Agreement, the PSE Easement
9 and the Sound Transit Easement (as those three terms are described in the Possession and
10 Use Order), and the County is thereafter required as a result of its Railbanking
11 Obligations to bear costs or expenses to restore or improve the Take Property for
12 reactivated freight rail service, then the City shall indemnify King County for the
13 minimum net additional County costs or expenses reasonably necessary to satisfy the
14 County's Railbanking Obligations and that the County would not have incurred but for
15 construction of the City's Project on the Take Property; provided, however, that the City
16 is not required to indemnify the County to the extent that such minimum net additional
17 costs or expenses are paid or required to be paid, in whole or in part, by the person or
18 entity requesting reactivation of freight rail service or by another third party.

19
20 3. The City further understands, acknowledges, and agrees that
21 reactivation of freight rail service may require the City, at the City's sole cost and
22 expense, to modify, relocate, or remove any improvements or betterments that the City or
23 its successors, assigns, or franchisees may make in, on, or to the Subject Property.
24 Alternatively, the City may negotiate with the person or entity that reactivates freight rail
25

1 service to accommodate the City's continued exercise of its easement rights in the Subject
2 Property.

3 4. The City's promises, duties, and obligations under this Section 6.C. are
4 in addition to, and separate from the City's promises, duties, and obligations to King
5 County under Sections 6.A and 6.B. Nothing in this Judgment and Decree shall prevent
6 King County from seeking additional compensation from the City for new, different, or
7 additional City Project-related impacts as contemplated in Paragraph 8.A.(iv.) of the
8 Possession and Use Order.

9 7. Except as may be required by reactivation of interstate freight rail service,
10 any further easements granted by King County within the City Project Easement area
11 shall not interfere with the purposes and uses granted to the City in the City Project
12 Easement.

13 8. The City Project Easement shall automatically terminate upon the City's
14 abandonment or vacation of the public street contemplated in the Petition.

15 9. The terms and conditions of this Judgment and Decree shall not merge in
16 and shall survive the execution, delivery, and recording of easements substantially in the
17 form of Exhibits A and B attached hereto, and shall bind the parties, their successors,
18 assigns, and franchisees.

19 10. King County shall record a certified copy of this Stipulated Judgment and
20 Decree of Appropriation with the Office of the King County Recorder prior to executing
21 the easements substantially in the form of Exhibits A and B attached hereto.
22

23
24
25 DONE IN OPEN COURT this ____ day of _____, 2013.

AGREED JUDGMENT AND DECREE OF
APPROPRIATION - 8



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Judge Monica J. Benton

Presented by:

KENYON DISEND, PLLC

By _____
Michael R. Kenyon
WSBA No. 15802
Kari L. Sand
WSBA No. 27355
Attorneys for Petitioner City of Bellevue

Copy Received; Agreed and Approved for Entry:

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By _____
Verna Bromley
WSBA No. 24703
Andrew Marcuse
WSBA No. 27552
Senior Deputy Prosecuting Attorneys

AGREED JUDGMENT AND DECREE OF
APPROPRIATION - 9



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City of Bellevue Civic Services Attn: Patti Ebert P.O. Box 90012 Bellevue, WA98009-9012

CR# _____ Date _____ Loc _____

Document Title: EASEMENT FOR PUBLIC ROADWAY & UTILITIES**Grantor:**King County**Grantee:**City of Bellevue**Abbreviated Legal:** Ptn. NW ¼, Sec. 33; Twsp: 25; Rng: 05**Additional Legal on Page:** Exhibit A**Assessors Tax Parcel ID#:** Ptn. Of 332505-9029 (former Railroad Right-of-Way)

IN THE MATTER OF: CIP PW-R-160; NE 4th Extension 116th Ave NE to 120th Ave NE
COB Parcel 6090; Railroad Mile Post 12.30-Woodinville Subdivision

1. Pursuant to the CITY OF BELLEVUE'S exercise of its power of eminent domain as authorized by Bellevue City Ordinance No. 6051, and in consideration of the just compensation paid and the duties and obligations undertaken by the City of Bellevue in that certain Stipulated Judgment and Decree of Appropriation ("Judgment and Decree") entered in King County Superior Court Cause No. 12-2-17740-6 SEA, captioned as City of Bellevue v. Port of Seattle et al., and subject to the further terms and conditions set forth herein, GRANTOR, KING COUNTY, a political subdivision of the State of Washington, hereby grants to GRANTEE, the CITY OF BELLEVUE, a Washington municipal corporation, a perpetual easement for public road right of way, utility and franchise utility purposes over, under, along and through the real property described in Exhibit A, attached hereto and by this reference made a part hereof (the "Easement Area"). Said Easement Area contains an area of 16,222 square feet, more or less.
2. Grantor makes no representations or warranties, express or implied, concerning the condition of the real property described in Exhibit A attached hereto, or its suitability for Grantee's intended use. Grantee acknowledges that Grantee (a) accepts the Easement Area in "AS-IS" condition, with all faults, (b) has been given the opportunity to fully inspect the Easement Area, and (c) assumes all responsibility for and risks of defects and conditions of the Easement Area that may affect Grantee's construction and use of the Easement Area.
3. Without limiting Paragraph 2 above, Grantee acknowledges that the real property described in Exhibit A attached hereto has been "railbanked" under the National Trails System Act, 16 U.S.C. 1247(d) and 49. C.F.R. §1152.29, and is subject to reactivation of

CIP-PW-R-160; COB Parcel 6090

Page 1 of 4

interstate freight rail service.

4. Other than with respect to Grantor's costs and expenses of any kind incurred as a result of the potential reactivation of interstate freight rail service Grantee agrees to defend, indemnify and hold harmless Grantor and its successors and assigns from all claims, actions, administrative proceedings, costs, damages, demands, or expenses of any nature whatsoever (collectively, "Claims") arising out of or in connection with Grantee's acts or omissions in connection with Grantee's exercise of its rights under this Easement. Grantee will defend, with counsel of its sole reasonable choice, Grantor and its successors and assigns, in any litigation arising out of or in connection with Grantee's acts or omissions in connection with Grantee's exercise of its rights under this Easement. Provided, that if any Claims are caused by the concurrent negligence of (a) Grantor or its agents, successors, or assigns, and (b) Grantee or its agents, successors, or assigns, and if such concurrent negligence involves those actions covered by RCW 4.24.115, then this Paragraph 4 shall be valid and enforceable only to the extent of the negligence of Grantee, its agents, successors, or assigns. Grantee's obligation to defend, indemnify, and hold harmless under this Paragraph 4 shall not include any Claims which may be caused by the sole negligence of Grantor or its agents, successors, or assigns.
5. Grantee's undertakings, duties, and obligations under Paragraphs 2, 3, and 4 of this Deed are in addition to, and do not supersede, Grantee's duties and obligations under the Judgment and Decree, all of which duties and obligations remain in force as set forth therein. A true and correct copy of the Judgment and Decree has been recorded as King County Recording No. _____.
6. This Easement shall automatically terminate upon the City's abandonment or vacation of the public street contemplated in the City of Bellevue Ordinance 6051.

Dated this day of , 2013.

GRANTOR:
King County, a political subdivision of the State of Washington

By: _____

Title: _____

Accepted and Approved:

GRANTEE
CITY OF BELLEVUE

Approved as to Form:

By: _____
Ron Kessack
Assistant Transportation Director

By: _____
Monica Buck
Assistant City Attorney

STATE OF WASHINGTON
COUNTY OF KING

I certify that I know or have satisfactory evidence that signed this instrument and, on oath, stated that he was authorized to execute the instrument and acknowledged it as the of to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this day of , 2013.

(SEAL)

Notary Public in and for the State of Washington
My appointment expires

STATE OF WASHINGTON
COUNTY OF KING

I certify that I know or have satisfactory evidence that signed this instrument and, on oath, stated that he was authorized to execute the instrument and acknowledged it as the of to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this day of , 2013.

(SEAL)

Notary Public in and for the State of Washington
My appointment expires

Exhibit A
Parcel 6090
Roadway Easement

That portion of the of the Northwest Quarter of Section 33, Township 25 North, Range 5 East, Willamette Meridian, King County, Washington, described as follows:

Commencing at the northwest corner of said Northwest Quarter;
 thence South $00^{\circ}17'06''$ West along the west line thereof 1363.01 feet;
 thence South $89^{\circ}26'52''$ East along the south line of the north 1363.00 feet of said subdivision, 547.77 feet to the westerly margin of the Burlington-Northern Railroad Right-of-Way and the True Point of Beginning;
 thence northerly along said margin, being a non-tangent curve to the left, the center of which bears North $88^{\circ}12'39''$ West 1859.86 feet, through a central angle of $00^{\circ}15'36''$, a distance of 8.44 feet;
 thence North $65^{\circ}03'57''$ East 35.63 feet to the beginning of a tangent curve to the right, with a radius of 582.00 feet;
 thence northeasterly along said curve, through a central angle of $07^{\circ}13'30''$, a distance of 73.39 feet to a point on the east margin of said Burlington-Northern Railroad Right-of-Way, being a non-tangent curve to the right, the center of which bears North $89^{\circ}45'57''$ West 1959.86 feet;
 thence southerly along said curve and margin, through a central angle of $04^{\circ}35'37''$, a distance of 157.13 feet to a point on a non-tangent curve to the left, the center of which bears South $24^{\circ}50'11''$ East 438.00 feet;
 thence southwesterly along said curve, through a central angle of $00^{\circ}05'52''$, a distance of 0.75 feet to a point of tangency;
 thence South $65^{\circ}03'57''$ West 115.46 feet to a point on a non-tangent curve to the left, the center of which bears North $83^{\circ}23'49''$ West 1859.86 feet;
 thence northerly along said curve, being the west margin of said Burlington-Northern Railroad Right-of-Way, through a central angle of $04^{\circ}48'50''$, a distance of 156.26 feet to the True Point of Beginning.

Containing 16,222 square feet.



City of Bellevue Civic Services Attn: Patti Ebert P.O. Box 90012 Bellevue, WA 98009-9012
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CR# _____ Date _____ Loc _____

Document Title: TEMPORARY CONSTRUCTION EASEMENT**Grantor:** King County**Grantee:** City of Bellevue**Abbreviated Legal:** Ptn. NW ¼, Sec. 33; Twsp: 25; Rng: 05**Additional Legal on Page:** Exhibit A**Assessors Tax Parcel ID#:** Ptn. Of 332505-9029 (former Railroad Right-of-Way)

IN THE MATTER OF: CIP PW-R-160; NE 4th Extension 116th Ave NE to 120th Ave NE
COB Parcel 6090; Railroad Mile Post 12.30-Woodinville Subdivision

1. Pursuant to the CITY OF BELLEVUE'S exercise of its power of eminent domain as authorized by Bellevue City Ordinance No. 6051, and in consideration of the just compensation paid and the duties and obligations undertaken by the City of Bellevue in that certain Stipulated Judgment and Decree of Appropriation ("Judgment and Decree") entered in King County Superior Court Cause No. 12-2-17740-6 SEA, captioned as City of Bellevue v. Port of Seattle et al., and subject to the further terms and conditions set forth herein, GRANTOR, KING COUNTY, a political subdivision of the State of Washington, hereby grants to GRANTEE, the CITY OF BELLEVUE, a Washington municipal corporation, a temporary easement (the "Easement") to use and occupy that portion of the real property identified as King County Tax Parcel No. 332505-9029, (the "Property"), legally described on the attached Exhibit A (the "Easement Area"), which Exhibit is incorporated here by this reference, from the date hereof until November 1, 2014, or until the completion of the construction of Stage 1 of Grantee's NE 4th Street Extension Project (including restoration) (the "Project"), whichever is earlier, for any and all purposes incidental to the construction of the Project. The Easement Area contains a total of 11,258 square feet, more or less.
2. Grantor makes no representations or warranties, express or implied, concerning the condition of the Easement Area or its suitability for Grantee's intended use. Grantee acknowledges that Grantee (a) accepts the Easement Area in "AS-IS" condition, with all faults, (b) has been given the opportunity to fully inspect the Easement Area, and (c) assumes responsibility for and risks of all defects and conditions of the Easement Area that may affect Grantee's construction and use of the Easement Area.
3. Without limiting Paragraph 2 above, Grantee acknowledges that the real property

CIP-PW-R-160; COB Parcel 6090

Page 1 of 5

described in Exhibit A attached hereto has been "railbanked" under the National Trails System Act, 16 U.S.C. 1247(d) and 49. C.F.R. §1152.29, and is subject to reactivation of interstate freight rail service.

4. Other than with respect to Grantor's costs and expenses of any kind incurred as a result of the potential reactivation of interstate freight rail service, Grantee will defend, indemnify, and hold harmless Grantor, and its successors and assigns, from all claims, actions, administrative proceedings, costs, damages, demands, or expenses of any nature whatsoever (collectively, "Claims") arising out of or in connection with Grantee's acts or omissions in connection with Grantee's exercise of its rights under this Easement. Grantee will defend, with counsel of its sole reasonable choice, Grantor and its successors and assigns, in any litigation arising out of or in connection with Grantee's acts or omissions in connection with Grantee's exercise of its rights under this Easement. Provided, that if such Claims are caused by or result from the concurrent negligence of (a) Grantor or its agents, successors, or assigns and (b) Grantee, or its agents, successors, or assigns, and such concurrent negligence involves those actions covered by RCW.4.24.115, then this Paragraph 4 shall be valid and enforceable only to the extent of the negligence of Grantee, or its agents, successors, or assigns. Grantee's obligation to defend, indemnify, and hold harmless under this Paragraph 4 shall not include any Claims which may be caused by the sole negligence of Grantor or its agents, successors, or assigns.
5. Upon completion of construction of the Project, Grantee or its agents shall restore the Easement Area as closely as reasonably possible to its original grade, condition and utility.
6. Grantee's undertakings, duties, and obligations under Paragraphs 2, 3, 4, and 5 of this Deed are in addition to, and do not supersede, Grantee's duties and obligations under the Judgment and Decree, all of which duties and obligations remain in force as set forth therein. A true and correct copy of the Judgment and Decree has been recorded as King County Recording No. _____.

Dated this _____ day of _____, 2013.

GRANTOR:

King County, a political subdivision of the State of Washington

By: _____

Title: _____

Accepted and Approved:

CIP-PW-R-160; COB Parcel 6090

Page 2 of 5

GRANTEE:
CITY OF BELLEVUE

Approved as to Form:

By: _____
Ron Kessack
Assistant Transportation Director

By: _____
Monica Buck
Assistant City Attorney

STATE OF WASHINGTON
COUNTY OF KING

I certify that I know or have satisfactory evidence that _____ signed this instrument and, on oath, stated that he was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2013.

(SEAL)

Notary Public in and for the State of Washington
My appointment expires

STATE OF WASHINGTON
COUNTY OF KING

I certify that I know or have satisfactory evidence that _____ signed this instrument and, on oath, stated that he was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2013.

(SEAL)

Notary Public in and for the State of Washington
My appointment expires

**Exhibit A
Parcel 6090
Temporary Construction Easement**

That portion of the of the Northwest Quarter of Section 33, Township 25 North, Range 5 East, Willamette Meridian, King County, Washington, described as follows:

Commencing at the northwest corner of said Northwest Quarter;
 thence South 00°17'06" West along the west line thereof 1363.01 feet;
 thence South 89°26'52" East along the south line of the north 1363.00 feet of said subdivision 547.77 feet to the westerly margin of the Burlington- Northern Railroad Right-of-Way, hereinafter referred to as "Point A";
 thence northerly along said margin, being a non-tangent curve to the left, the center of which bears North 88°12'39" West 1859.86 feet, through a central angle of 00°15'36", a distance of 8.44 feet to the True Point of Beginning;
 thence continuing along said curve, through a central angle of 01°42'29", a distance of 55.44 feet;
 thence North 65°03'57" East 11.67 feet to the beginning of a tangent curve to the right, with a radius of 632.00 feet;
 thence northeasterly along said curve, through a central angle of 08°37'17", a distance of 95.10 feet to the east margin of said Burlington Northern Railroad Right-of-Way;
 thence southerly along said east margin, being a non-tangent curve to the right, the center of which bears South 88°42'36" West 1959.86 feet, through a central angle of 01°31'27", a distance of 52.14 feet to a point on a non-tangent curve to the left, the center of which bears South 17°42'33" East 582.00 feet;
 thence southwesterly along said curve, through a central angle of 07°13'30", a distance of 73.39 feet;
 thence South 65°03'57" West 35.63 feet to the **True Point of Beginning**.

Also, commencing at the aforementioned "Point A";
 thence southerly along said west margin of the Burlington-Northern Railroad Right of Way, through a central angle of 04°48'49", a distance of 156.26 feet to the **True Point of Beginning**;
 thence North 65°03'57" East 115.46 feet to the beginning of a tangent curve to the right, with a radius of 438.00 feet;
 thence northeasterly along said curve, through a central angle of 00°05'52", a distance of 0.75 feet to the east margin of said Burlington-Northern Railroad Right of Way being a non-tangent curve to the right, the center of which bears North 85°10'20" West 1959.86 feet;
 thence southerly along said curve through a central angle of 01°41'54", a distance of 58.09 feet;
 thence South 65°03'57" West 118.41 feet to the west margin of said Burlington Northern Railroad Right of Way;
 thence northerly along said west margin, being a spiral curve and curve to the left, with a radius of 1859.86 feet, a distance of 59.25 feet more or less, to the True Point of Beginning.

Containing 11,258 square feet more or less



