



CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Dave Snider, P.E., Capital Projects Manager
Marilynne Beard, Interim Public Works Director

Date: May 22, 2014

Subject: Cross-Kirkland Corridor Interim Trail - Award Contract

RECOMMENDATION:

It is recommended that City Council award the contract for construction of the Cross-Kirkland Corridor (CKC) Interim Trail to Rodarte Construction, Inc., of Auburn, WA, in the amount of \$2,099,175.00.

BACKGROUND DISCUSSION:

The current development strategy for the CKC, as approved by Council, is two-phased. The initial phase was the rail removal together with the design and construction of an interim trail to allow broad public use of the CKC. The second phase is for the completion of the CKC Master Plan to determine the ultimate vision and development of the Corridor for both trail and transit. This memo is for the award of a construction contract for the Interim Trail. Implementation of the Master Plan will follow the Plan's adoption as funding allows.

The removal of the rails, together with the construction of an Interim Trail and the completion of the Master Plan, will support the City Council's goals of Balanced Transportation, Sustainable Infrastructure and Parks Open Space & Recreational Services. The development of the CKC will: 1) serve transportation needs of Kirkland, 2) provide active use of the corridor in the near future, and 3) facilitate maintenance of the corridor. These actions also help meet the Goals of the City's Active Transportation Plan, specifically Goal G1 which calls for development of the Cross Kirkland Corridor.

At their regular meeting of April 15, 2014, City Council accepted the work on the Rail Removal contract and approved an overall project budget increase due to the receipt of the salvage value from the rail materials that were removed and marketed for re-use by the Rail Removal contractor. The currently approved total budget for the Rail Removal and the Interim Trail work is \$4,141,400 with \$1,970,000 in State funds, \$1,071,000 in Federal dollars and \$1,100,400 in City matching funds including the added revenue from the salvage operation (Attachment A).

With an engineer's estimate of \$2,183,945 for construction of the Interim Trail Project, the first advertisement occurred on May 1 for a three week bid period with a Supplemental Bidder Responsibility Criteria added to the contract documents. Bids were opened on May 20, 2014. A total of 5 bids were received with Rodarte Construction Inc. being the lowest responsive bidder, as shown below:

Contractor	Amount
Rodarte Const. Inc.	\$2,099,175.00
<i>Engineer's Estimate</i>	<i>\$2,183,945.00</i>
Road Construction Northwest	\$2,370,005.50
Santana Trucking & Excavating	\$2,386,906.00
Award Construction Inc.	\$2,457,081.00
SRV Construction Inc.	\$2,917,343.50

With a City Council award of the construction contract at the June 3 meeting, staff will begin the pre-construction public outreach process by notifying adjacent property owners (within 500 feet of the corridor) with post cards describing the upcoming work. Project information, along with a regularly updated construction schedule and corresponding map (similar to what was used with rail removal), will also be posted on the City's web site. The Neighborhood and CKC List Serv subscribers will receive regular updates on the progress of construction and alerts about trail closures and pedestrian detours. The existing CKC Facebook site will be used as well as the City's twitter account to reach more residents. The June City Update will also have construction information and direct people to social media sites for information.

Since the Project includes a significant amount of sidewalk and ramp reconstruction, staff did include specific contract language related to signage for sidewalk closures and the requirement to provide clearly delineated detour routes for pedestrians. The construction management and inspection team will ensure the contractor maintains safe travel routes for pedestrians at all times.

The contract documents provide for a 100 working day schedule which puts the anticipated completion date near the first of December 2014.

Sound Transit and the Interim Trail

As the City Manager highlighted briefly in the April and May Council meetings, a dispute arose between Kirkland and Sound Transit regarding the Interim Trail. Kirkland asked for Sound Transit's review of the Interim Trail project as part of the collaborative partnership the two entities have over issues on the Eastside Rail Corridor and the Cross Kirkland Corridor.

Sound Transit's responses to the review request were unexpectedly formal and detailed. While Sound Transit did "approve" the City moving forward with the Interim Trail, in the opinion of City staff, the Sound Transit responses impacted Kirkland's ownership rights and potentially created financial risk to the City if the City proceeded with the Interim Trail. The City of Kirkland received two letters from Sound Transit. The first was dated April 3, 2014 and contained a "Notice of Planned Easement Area" and the second was dated April 4, 2014 and

contained formal comments regarding the City's planned interim trail on the CKC. The two letters are included as Attachments B and C, respectively.

Particular concern over financial liability is raised in the "Approval Conditions" of the April 4 letter where Sound Transit states "to the extent that the Trail location is inconsistent with the location of a future HCT project, the trail **must** be relocated" and also "The proposed Trail **will** need to be relocated off the bridges and underpasses as necessary to accommodate HCT."

Kirkland never intended for the Interim Trail to remain if Sound Transit implements HCT in the CKC. However the letter used the terms "must" and "will" relocate as conditions of approval for the Interim Trail which created the potential financial requirement that Kirkland relocate the Trail. The City Manager and City Attorney therefore felt it necessary to provide a detailed response letter to Sound Transit that made it clear the City was not accepting that financial liability and also rejecting the conditions included in Sound Transit's letter. The City Manager's May 13 letter to Sound Transit is included as Attachment D.

In several discussions with Sound Transit staff over this period, Sound Transit has assured Kirkland, both verbally and through email that Sound Transit did not in any way intend to create financial liability for the City. Sound Transit staff have also indicated that while they do not agree with Kirkland on several of the issues in our response letter, Sound Transit intends to formally clarify that there is no expectation from Sound Transit that Kirkland will have to move the Interim Trail at Kirkland's expense. This may happen either through another letter or from testimony at the June 3rd City Council meeting.

Based on Kirkland's communications with Sound Transit, the City Manager and the City Attorney now believe there is no potential financial risk to the City in proceeding with awarding the bid and completing construction on the Interim Trail. The other issues identified in Sound Transit's letters will be part of future discussions between the two organizations and don't preclude the City Council from accepting the bid and proceeding with the project.

Attachment A – Project Budget Report

Attachment B – Ilgenfritz letter to Triplett

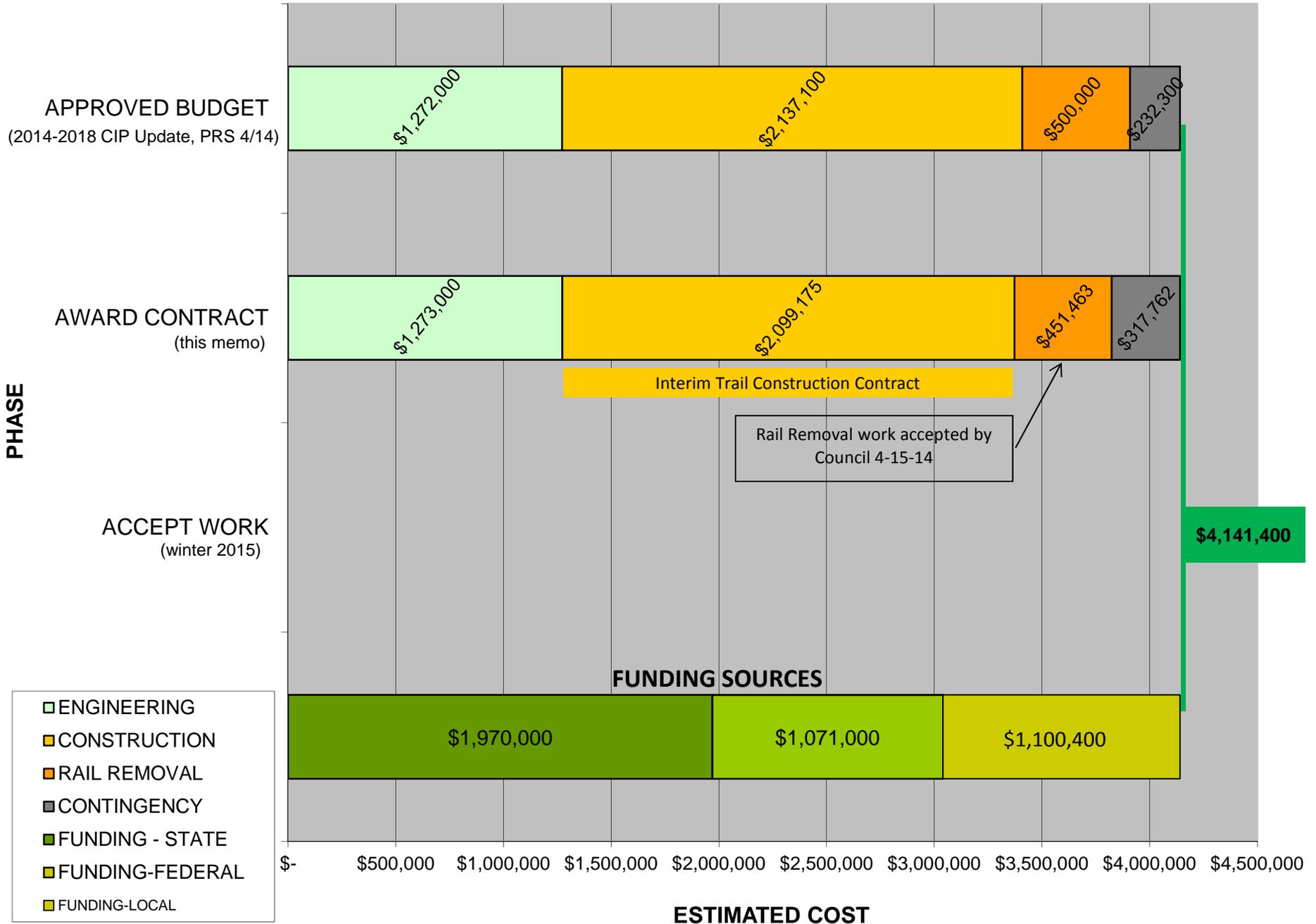
Attachment C – Ilgenfritz letter to Page

Attachment D – Triplett letter to Ilgenfritz

CROSS-KIRKLAND CORRIDOR SALVAGE/INTERIM TRAIL
NM-0024

Attachment A

Project Budget Report





April 3, 2014

Kurt Triplett, City Manager
City of Kirkland
123 5th Avenue
Kirkland, WA 98033

RE: Eastside Rail Corridor: Notice of ST Planned Easement Area

Dear Kurt:

As you know, Sound Transit is in the process of preparing a Supplemental Environmental Impact Statement in connection with the update of the Sound Transit Regional Transit Long Range Plan adopted July, 2005. This constitutes a formal environmental review process and a planning process for possible high capacity transit facilities such as rails, paving and stations within the Eastside Rail Corridor located in the City of Kirkland. Accordingly, pursuant to Paragraph 7B(1) of Sound Transit's High Capacity Transportation Easement (Woodinville Subdivision), we are notifying you that the Eastside Rail Corridor located within the City of Kirkland is within a Sound Transit Planned Easement Area.

Please contact me at (206) 398-5239 if you have questions about this.

Sincerely,

Ric Ilgenfritz
Executive Director
Department of Planning, Environment,
and Project Development

cc: Oskar Rey, Assistant City Attorney

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Joni Earl



April 4, 2014

Kari Page, Neighborhood Outreach Coordinator
 City of Kirkland
 City Manager's Office
 Public Works Department
 123 5th Avenue
 Kirkland, WA 98033

RE: Interim Trail

Dear Ms. Page:

Sound Transit has reviewed Kirkland's interim trail (the "Trail" or "proposed Trail") proposed to be constructed within Sound Transit's High Capacity Transportation Easement (the "Easement") area. Specifically, we reviewed the "90% Review Submittal, City of Kirkland, CIP NO. CNM-0024, Cross Kirkland Corridor Interim Trail, October 2013". Based on our review, we approve the implementation of the proposed Trail, with conditions that are detailed in this letter.

ST Review--Summary. The area of the Easement affected by the proposed Trail is within a "Planned Easement Area" as defined in Section 7B(1) of the Easement (See letter dated April 3, 2014). Accordingly, we conducted our review and prepared our comments pursuant to Sections 8 and 9 of the Easement. In addition, we considered the terms and conditions of the Public Multipurpose Easement dated December 18, 2009, King County recording number 20091218001538 (the "Multipurpose Easement"), which are incorporated by reference into the Easement in Section 5B of the Easement and are applicable to this review.

We first determined that the proposed Trail is a "Major Improvement" as defined in Section 9A of the Easement, and that if the trail were to remain within the existing railbed, it likely would not be "reasonably practicable" for Sound Transit to implement high capacity transportation facilities ("HCT") within the corridor. There are numerous reasons why this is the case, primarily related to the sloping land outside of the existing railbed and also the locations of King County's regional sewer pipe in the area where the Trail is proposed. The sewer line crosses over to the east and west side of the existing rail bed numerous times. Locating HCT on the existing railbed would have minimal impact on the sewer line because the railbed has sufficient protections for the weight and impact of freight travel. If HCT were located on one side or the other of the existing railbed, it would likely

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Joni Earl

involve greater protection efforts and possibly require relocation of the sewer line. In addition, because a rail transit project is inflexible with regard to grade changes (it requires small incremental grade changes), the sloping topography outside of the rail bed poses significant challenges for the location of rail transit. The infrastructure required to create the necessary grade stability – if possible at all—could also affect the County sewer line, requiring additional protections and relocations.

Given the likely impracticalities of constructing HCT outside of the existing railbed, it is a condition of ST's approval of the Trail proposal, that the Trail relocate if its location is in conflict with a future HCT project. This condition is consistent with Section 9A of the Easement, which contemplates that some Major Improvements, such as a Trail, may pose such challenges to the construction of HCT that the transportation facilities should not be obligated to share space with them, nor should ST be obliged to relocate them. It also is consistent with the provisions of the Multipurpose Easement, Section 2.2, which contemplates that a trail use will relocate in the event of a conflict with a future transportation use. Note, however, that consistent with the Multipurpose Easement, and our prior correspondence with you, in the event of such future conflicts between the Trail location and HCT, Sound Transit will work with Kirkland to identify an appropriate area to relocate the trail. It appears that the corridor is sufficiently wide that Kirkland will be able to substantially rebuild it within the corridor.

Using the criteria for reviewing a proposal to be located with a Planned Easement area, Sound Transit also specifically considered the factors in paragraph 9B(2) of the Easement. Under these criteria, we note that for safety reasons, some of proposed at-grade trail access points and junctions will not be permitted to remain if HCT is built at-grade on the rail bed.

Finally, given that Sound Transit has acquired its Easement in order to develop portions of the corridor for transportation purposes such as a transit or rail facility, we wish to confirm that by developing the proposed Trail Kirkland does not intend to create, and upon request will inform relevant government agencies that Kirkland does not believe that the proposed Trail will create a recreational trail, public park, recreation area, or wildlife and waterfowl refuge within the meaning of 23 USC 138 and 49 USC 1653(f). Sound Transit's future use of its Easement area for any transportation purposes, regardless of the actual use or the use to which Kirkland has put, or is putting, the Easement area, will not be considered to be the use of a resource protected by Section 4(f), as defined in 23 USC 138 and 49 USC 1653(f) and the regulations issued thereunder.

Approval Conditions:

1. To the extent the Trail location is inconsistent with the location of a future HCT project, the Trail must be relocated. The corridor appears to have sufficient width for the Trail to be relocated within the corridor.
2. In some areas the corridor crosses existing roads on bridges or through underpasses. The proposed Trail will need to relocate off the bridges and underpasses as necessary to accommodate HCT.

3. The Trail proposal includes many at-grade trail access points and junctions. For safety reasons, some or all of the at-grade trail access points and junctions included within the Trail project may need to be permanently removed when HCT is implemented.
4. Upon request, Kirkland will inform relevant government agencies that Kirkland does not believe that the proposed Trail will create a recreational trail, public park, recreation area, or wildlife and waterfowl refuge within the meaning of 23 USC 138 and 49 USC 1653(f).

Referenced Documents:

1. 90% Review Submittal, City of Kirkland, CIP NO. CNM-0024, Cross Kirkland Corridor Interim Trail, October 2013;
2. High Capacity Transportation Easement Agreement (Woodinville Subdivision Rail Corridor), King County recording number 20120411001174;
3. Public Multipurpose Easement dated December 18, 2009, King County recording number 20091218001538; and
4. Letter dated April 3, 2014 from Ric Ilgenfritz to Kurt Triplett

Sincerely,



Ric Ilgenfritz
Executive Director
Department of Planning, Environment,
and Project Development

cc: Kurt Triplett, Kirkland City Manager
Oskar Rey, Assistant City Attorney
Nanci Clark, Sound Transit Property Management
Jennifer Belk, Sound Transit Deputy General Counsel



May 13, 2014

Ric Ilgenfritz
Executive Director, Department of Planning, Environment and Project Development
Central Puget Sound Regional Transit Authority
401 South Jackson Street
Seattle, WA 98104-2826

Re: Response to Notice of Planned Easement Area and Interim Trail Comments

Dear Mr. Ilgenfritz:

This letter is in response to: (1) Sound Transit's April 3, 2014 Notice of Planned Easement Area; and (2) Sound Transit's April 4, 2014 comment letter regarding the City's planned interim trail on the Cross Kirkland Corridor ("CKC"). The CKC is the portion of the Eastside Rail Corridor ("ERC") purchased by the City of Kirkland ("City") from the Port of Seattle in April 2012. The contents of Sound Transit's communications were unexpected and impact Kirkland's legal rights on the CKC and create potential financial liability for the City if Kirkland proceeds with the Interim Trail.

Particular concern over financial liability is raised in the "Approval Conditions" of the April 4 letter where Sound Transit states "to the extent that the Trail location is inconsistent with the location of a future HCT project, the trail must be relocated" and also "The proposed Trail will need to be relocated off the bridges and underpasses as necessary to accommodate HCT."

Kirkland does not intend for the Interim Trail to remain if Sound Transit implements HCT in the CKC. However the letter uses the terms "must" and "will" relocate as conditions of approval for the Interim Trail which potentially creates the financial requirement that Kirkland relocate the Trail. Kirkland cannot accept that financial liability and must reject the conditions included in Sound Transit's letter.

In subsequent discussions over the past few weeks with you and Sound Transit staff, you made clear that it was not the intention of Sound Transit to create any financial liability. The City of Kirkland appreciates that was not the intent and is looking forward to formal clarification of this point from Sound Transit. We also appreciate the collaborative and candid discussions that have transpired between Kirkland and Sound Transit over Kirkland's concerns with other aspects of the two letters. Kirkland had hoped that Sound Transit could consider suspending or amending the letters but in our

subsequent conversation you indicated that Sound Transit felt that the letters correctly outlined the merits of the issues from Sound Transit's perspective.

Therefore, Kirkland feels it is necessary to formally articulate the City's position on the issues that we have been expressing in our discussions since we received the Sound Transit letters. The purpose of this response is to communicate Kirkland's concerns and positions.

A. The CKC does not currently meet the Criteria of a "Planned Easement Area."

Please be advised that the City rejects Sound Transit's designation of the CKC as a "Planned Easement Area" at this time. The City has reviewed the current Sound Transit Long Range Plan, which Sound Transit adopted in 2005. The current Long Range Plan Map makes no mention of the ERC or the CKC. It shows "potential rail extensions" through Kirkland with the caveat that "the lines on the Long Range Plan map show general travel corridors and not specific streets or alignments." In addition, there are no funded Sound Transit projects involving the CKC between now and 2023. Accordingly, the CKC is not a Planned Easement Area under Sound Transit's current long range plan.

The City understands that Sound Transit is in the process of considering updates to its Long Range Plan. As part of environmental review, Sound Transit is considering a "No Action Alternative" (in which the current Long Range Plan is not updated or modified) and an "Action Alternative" (in which Sound Transit would make modifications and updates to the current Long Range Plan).

The City also understands that if Sound Transit chooses the "Action Alternative," then use of the CKC as part of Sound Transit's High Capacity Transit (HCT) System *might* become part of Sound Transit's Long Term Plan. As part of its planning process and environmental review, Sound Transit *may* decide to plan for extending high capacity transit service through Kirkland, utilizing the ERC, the I-405 Corridor or some other currently unspecified route. To be clear, the City of Kirkland supports HCT along the CKC and has sent Sound Transit a letter indicating that support. However, we have been told by Sound Transit staff that HCT cannot be guaranteed and that the determination of HCT through Kirkland remains to be seen until Sound Transit adopts updates to its current Long Range Plan.

The Sound Transit High Capacity Transportation Easement Agreement ("Easement") provides that: "To initiate development of High Capacity Transit Facilities, Sound Transit shall notify the [City] in writing ("Notice of Planned Easement Area") that it is evaluating or planning the placement of one or more High Capacity Transit Facilities within a Planned Easement Area." (Easement, Section 7B(1)). Sound Transit's current Long Range Plan does not even mention the CKC or the ERC. At present, Sound Transit is considering updates to its Long Range Plan that may or may not include the CKC or the ERC. That is not the same as "evaluating or planning the placement of one or more High Capacity Transit Facilities" on the CKC. It is our understanding from Sound Transit staff that the Sound Transit Board will be evaluating action in December of 2014 to

amend the Long Range Plan to possibly include the CKC. Until that action occurs and development of the CKC is an adopted option under the Long Range Plan, designation of the CKC as a Planned Easement Area is premature.

B. The Easement does not provide for Retroactive Designations.

The City also objects to the designation of the CKC as a "Planned Easement Area" *after* receipt of the City's request for Sound Transit's review of its Interim Trail design. The City has been planning the Interim Trail for several years. Detailed planning began in earnest when State Senator Andy Hill (LD 45) informed Kirkland in April of 2012 that he had secured \$2 million in state funding for the Interim Trail to spur economic development. On April 23, 2012 Governor Inslee signed the 2012 Capital Budget/Jobs Now Act (ESB 5127) which included the appropriation to the City of Kirkland of \$2 Million for the Cross Kirkland Corridor through the Department of Commerce's Main Street Improvement Grants. On May 10, 2012 the City of Kirkland was notified by the Washington State Public Works Board of being awarded a state grant in the 2012 Capital Budget, with the Public Works Board assigned to administer the grant funds. Further, in 2012 the PSRC and the State have awarded the City of Kirkland an additional \$1.5 million in grants specifically for development of the interim trail.

Kirkland has kept Sound Transit informed of the Interim Trail. In addition to several staff meetings between Sound Transit and Kirkland staff over this time frame, the Kirkland City Manager and Mayor made presentations to the Eastside Rail Corridor Advisory Committee (RAC) that included information on the Interim Trail on three separate occasions. These occurred on February 20, 2013, April 4, 2013 and February 12, 2014. Sound Transit RAC Board members and staff were in attendance at each presentation and not once indicated that Sound Transit was about to designate the CKC as a Planned Easement Area or that Sound Transit considered the Interim Trail a major project that could impact a Planned Easement Area.

On February 6, 2014, the City voluntarily requested Sound Transit's comments on the Interim Trail design pursuant to the Easement.

The City was attempting to be inclusive and proactive by submitting the Interim Trail plans to Sound Transit. Under the Easement, "[a]n Other Improvement that is a Minor Improvement may also, in the discretion of the [City], be submitted to Sound Transit for review and comment." Easement, Section 9B(1)(i). The City believes the Interim Trail is a Minor Improvement and the decision to submit its Interim Trail plans to Sound Transit was such a discretionary act.

The City is troubled by the fact that after all of the communication between the City and Sound Transit with respect to the Interim Trail, Sound Transit purported to issue a Notice of Planned Easement Area at the same time it provided comments on the Interim Trail. When the City sought comments from Sound Transit pursuant to Section 9(b)(1) of the Easement in February, there was no such designation. Designating a Planned Easement Area *after* a request for comments raises significant fairness and policy concerns. Whether a portion of the ERC is a Planned Easement Area should be based

on Sound Transit's planning process, not on whether there is a request by the City for review of "Other Improvements" under the Easement.

C. The Proposed Interim Trail is not a "Major Improvement."

The City also rejects Sound Transit's assertion that the proposed Interim Trail constitutes a "Major Improvement" under the Easement that, according to Sound Transit's letter makes it not "reasonably practicable" for Sound Transit to implement high capacity transportation facilities ("HCT") within the corridor." The Interim Trail is an interim facility which will be constructed simply by placing and compacting gravel over the existing rail bed. Construction of the Interim Trail will not adversely affect the suitability of the rail bed for future high capacity transit use. It simply creates a smoother surface for pedestrian and non-motorized vehicles in the interim. Sound Transit's letter would therefore imply the rail bed itself makes it not "reasonably practicable" for Sound Transit to locate HCT within the Corridor since it exists today even if Kirkland takes no action. This is nonsensical since Sound Transit is currently implementing HCT in the Bellevue portion of the Eastside Rail Corridor with the same rail bed.

It may be that construction of a permanent, paved trail on the CKC constitutes a Major Improvement under Section 9A of the Easement, but the Interim Trail does not. The impact of the CKC Master Plan paved trail on HCT is an issue the parties can negotiate in the future when and if the City proposes permanent trail improvements.

D. Easement Conditions should be treated as comments.

Under the Easement Section 9B(1), the conditions set forth in your April 4, 2014 letter should therefore be treated as comments and that is how the City intends to evaluate them. City staff will continue to work with Sound Transit staff to address its concerns about the Interim Trail. However, for the reasons previously stated, the City objects to Sound Transit's assertion that it is entitled to place conditions on the development of the Interim Trail. We believe any potential Sound Transit conditions are more appropriately directed to Kirkland's CKC Master Plan which would be a major improvement to the CKC.

The City also objects to condition 4 of your April 4, 2014 letter. In constructing an Interim Trail, the City is carrying out the provisions of the federal Rails to Trails Act (16 U.S.C. 1247) and preserving the railbanked status of the CKC. This is important for all parties with an interest in the ERC.

23 U.S.C. 138 and 49 U.S.C. 303 provide for the preservation of parks and recreational areas in connection with federal transportation projects. At this point, the City is unwilling to prospectively take a legal position on the applicability of this federal legislation to the CKC. Such a request is beyond the scope of the Easement and the Interim Trail improvements proposed by the City.

Ric Ilgenfritz
April 15, 2014
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We hope this response has clarified Kirkland's position on Sound Transit's letters. Kirkland is committed to resolve these issues in a positive manner through further conversation. Kirkland also looks forward to receiving clarification that Sound Transit does not intend to create financial liability for Kirkland nor require relocation of the Interim Trail by Kirkland if HCT is implemented along the corridor.

Please let me know if you have any questions.

Sincerely,


Kurt Triplett
City Manager

cc: Pam Bissonnette, Interim Public Works Director
Kari Page, Neighborhood Outreach Coordinator
Oskar Rey, Assistant City Attorney
Jennifer Belk, Sound Transit Deputy General Counsel