



CITY OF KIRKLAND

Department of Public Works

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MEMORANDUM

To: Kurt Triplett, City Manager

From: David Godfrey, P.E., Transportation Engineering Manager
Oskar Rey, Assistant City Attorney

Date: December 5, 2011

Subject: Eastside Rail Corridor Acquisition

RECOMMENDATION

It is recommended that the Council review information pertaining to purchase of a section of the former BNSF Eastside Rail Corridor as background prior to deciding whether to execute a Purchase and Sale Agreement with the Port of Seattle.

BACKGROUND

Summary

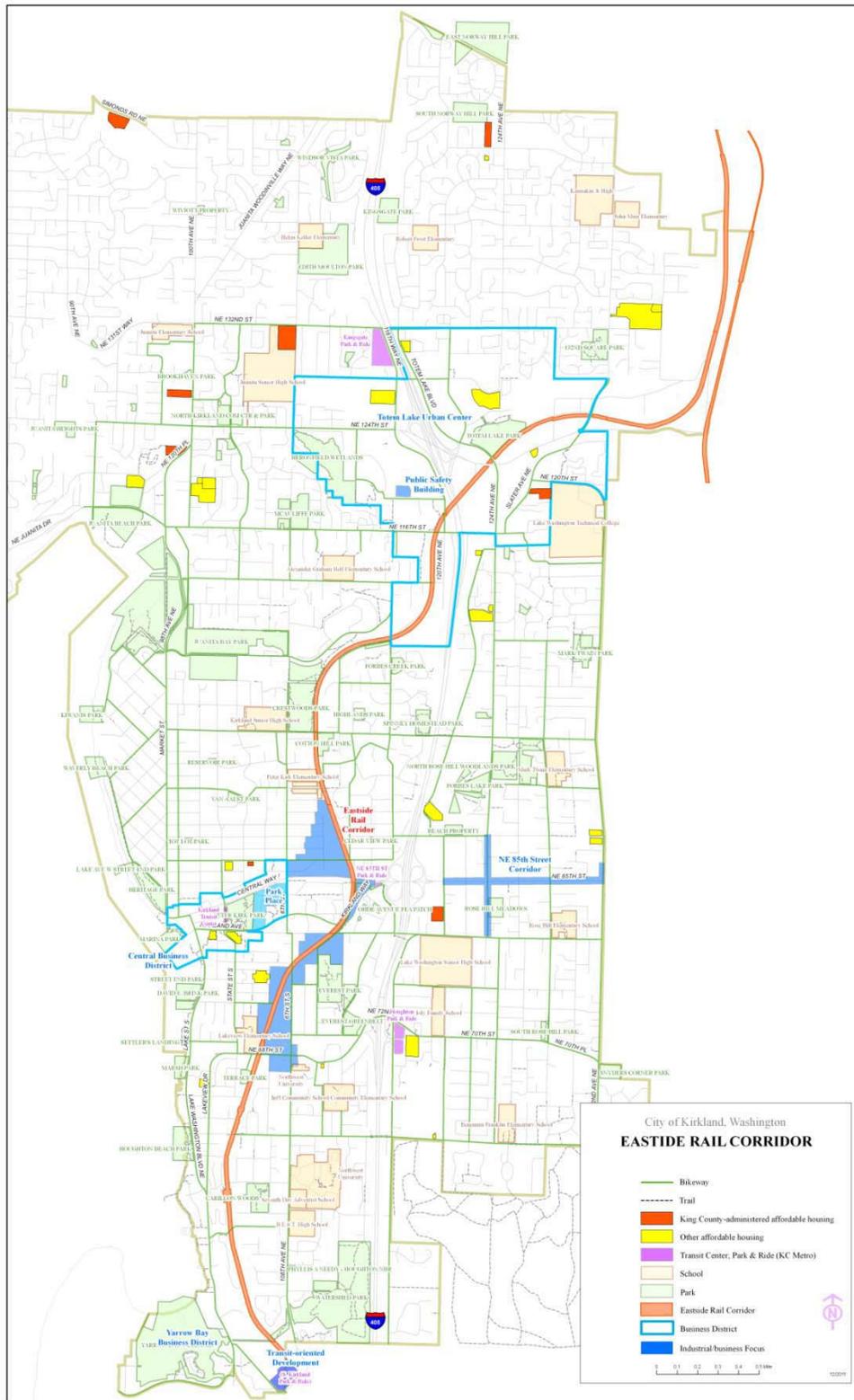
The Eastside Rail Corridor ("Corridor," shown on Figure 1 next page) is a transportation facility that represents enormous opportunity for the City of Kirkland and the region. City Staff have negotiated a Purchase and Sale Agreement (attachment 1) with the Port of Seattle ("Port") for purchase of the portion of the former BNSF corridor between 108th Avenue NE and Slater Avenue NE (132nd Place NE) for \$5 million. This portion of the Corridor is referred to as in this Memo as the "Kirkland Segment." Development of the Kirkland Segment is envisioned to include facilities for pedestrians and bicycles along with transit. Initial purchase of the Kirkland Segment would be through an interfund loan and would not require the expenditure of general fund monies.

History

Construction of a rail line from Renton to Snohomish was completed in the early portion of the 20th century and rail traffic used the Corridor until the line was purchased by the Port of Seattle in 2009. The Port obtained the Corridor on behalf of the region to keep the Corridor in public ownership, with the intent of selling portions to other agencies and maintaining freight operations on the northern part of the line between Woodinville and Snohomish.

Kirkland has long been interested in the Kirkland Segment as the site of a pathway for bicycle and pedestrian transportation. As early as 1986, it was shown in the Lakeview and Central Houghton neighborhood plans as a possible pedestrian and bicycle way. More than 15 years ago the City identified the Cross-Kirkland Trail project and began working on development of a trail that would parallel the existing active rail line. Complications with the railroad stalled that work. In response to potential sale of the Corridor by BNSF, the Puget Sound Regional Council completed a study that found benefit to keeping the Corridor in public ownership. In March of

Figure 1 Map of Corridor in Kirkland



2009, Council approved the City's Active Transportation Plan which identified development of a Cross-Kirkland Trail as the city's highest priority active transportation project.

In December 2009, the Port purchased the Corridor from BNSF. In response to that action and in preparation for a potential regional discussion on how the trail should be developed, the Kirkland City Council directed the Transportation Commission to develop an interest statement for use of the Kirkland Segment. Adopted by Council in April of 2011, the statement (Attachment 2) identifies 13 interests (see Figure 2), including planning for a multi-use facility. In February of 2011, Council adopted a 2011 work plan, one element of which directed staff to complete due diligence for purchase of the Kirkland Segment.

Vision

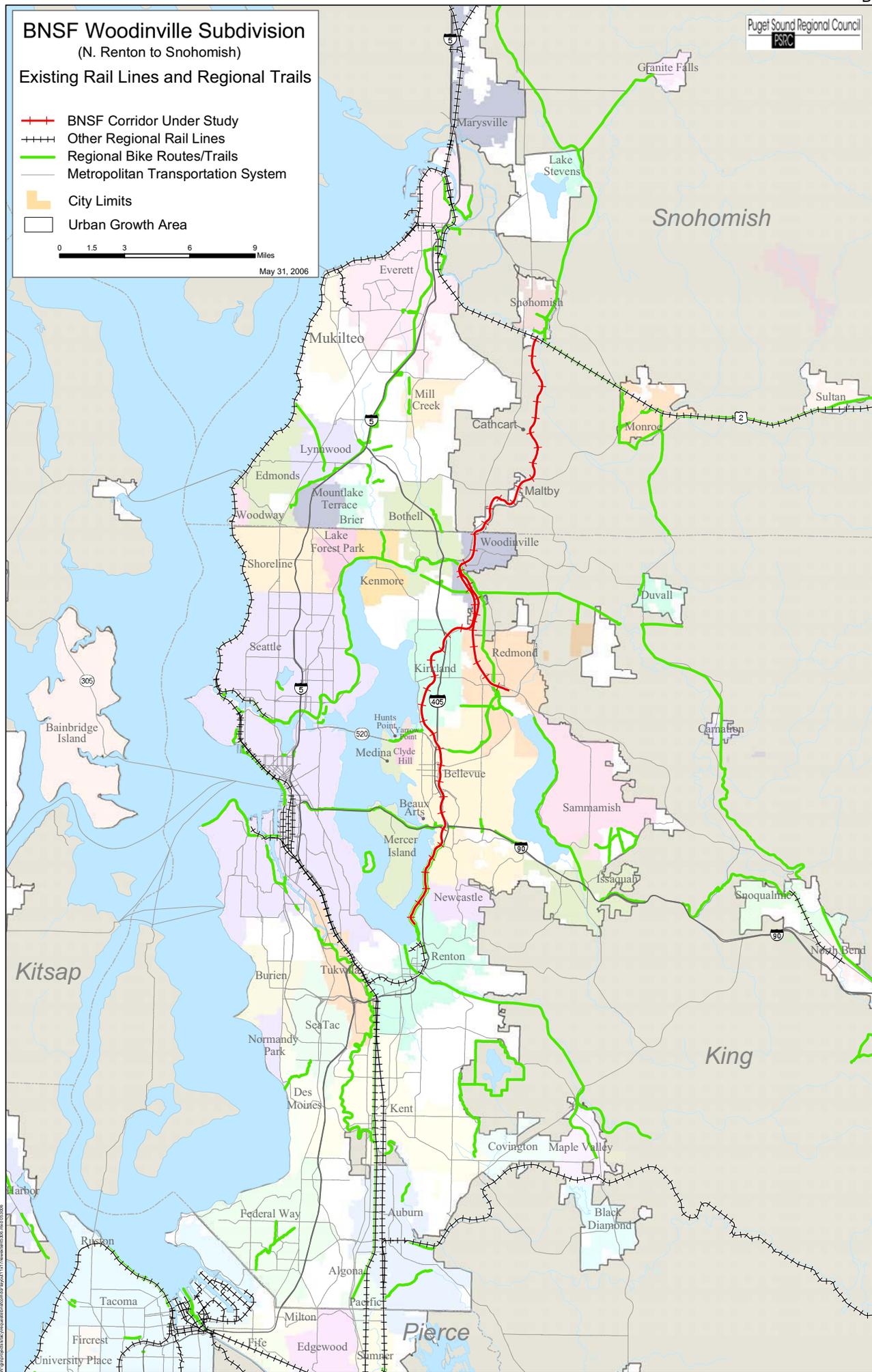
As noted above, the City of Kirkland and the region have long identified the Corridor as an unequaled facility for transportation, particularly bicycle and pedestrian transportation. In addition, some of the City's most striking views of water, land and mountains are available on the Kirkland Segment. The wooded stillness of other segments make users feel as though they are far from the urban setting while being a stone's throw from Kirkland's most compact neighborhoods. Natural beauty is only one element that makes the Kirkland Segment unique. Stretching almost the full length of the City, its physical location provides unmatched potential for connecting land uses important to Kirkland's residents. (Figure 1, previous page) With its 17 connections to existing streets and paths, the Kirkland Segment knits together many of Kirkland's major on-street bicycle facilities and walking paths. The South Kirkland Park & Ride, with its planned Transit Oriented Development, is at the south end and the Totem Lake business district is at the north end. Parks, elementary schools, office complexes and shopping centers are adjacent to the Kirkland Segment and several more schools, parks and key business areas are just a short walk from it. With the completion of the new SR 520 Bridge and its accompanying bicycle and pedestrian facilities, the Kirkland Segment will give Kirkland new connections with the rest of the region. While Kirkland's portion of the corridor makes a self-contained, logical segment, when links to the north and south of Kirkland are developed, tremendous regional value from the trail will be realized (see Figure 3 next page).

Figure 2 Summary of interests as approved by Council

- *Serve transportation needs of Kirkland*
- *Keep the corridor in public ownership*
- *Actively use the corridor in the near future*
- *Maintain the corridor in good condition*
- *Contribute to economic sustainability*
- *Connect Totem Lake*
- *Protect neighborhood feel and atmosphere*
- *Plan for a multi-use facility*
- *Serve the transportation needs of pedestrians and bicyclists*
- *Design transit service to efficiently move people*
- *Plan any transit use in close consultation with the City of Kirkland*
- *Consider grade crossing delay and safety*
- *Disclose and mitigate environmental impacts*

The prospect of transit in parallel with a trail adds to the future transportation value of the Kirkland Segment. Although a preferred alignment to connect Totem Lake and Bellevue is still to be studied, perhaps in the next 20 to 30 years, the Kirkland Segment may ultimately be part of light rail development by Sound Transit. Another more near-term transit option is buses operating on a paved way parallel to but separate from a trail for bicycles and pedestrians.

Figure 3 Map of Corridor in Regional Context.



In order to realize the potential of the Corridor, it must remain in public ownership and be controlled by an entity that intends to develop it for transportation purposes. A November 2009 Memorandum of Understanding between the BNSF Railroad, the City of Redmond, King County, Puget Sound Energy, Cascade Water Alliance and the Port of Seattle provided the opportunity for this to happen. The Port of Seattle purchased the Corridor from the BNSF with the intent of selling property and interests to the other partners. While some of the parties moved forward with initial purchases, the Port remains the owner of the Kirkland Segment. The Port is not interested in long-term ownership of the Kirkland Segment, which sets the stage for the City's purchase at this time.

What happens if Kirkland does not purchase the segment?

The Port of Seattle and King County are currently negotiating for King County to purchase all remaining elements of the Corridor. While those negotiations have not concluded, the likely result would be that at some point in 2012 King County would assume ownership of the Kirkland Segment. King County would also have control over granting any easements or permitting activities in the Kirkland Segment. This would retain the Corridor in public ownership and the long term vision of King County is to eventually develop the Corridor as both a trail and transit corridor. However King County has no immediate plans or funding for such development and it would likely be many years before the Kirkland Segment was developed.

The Purchase under consideration

The Port is willing to sell the Kirkland Segment to Kirkland prior to concluding negotiations with King County. The County has been kept informed of the agreement between Kirkland and the Port and has received copies of all documents exchanged between the parties. From a transportation and connectivity standpoint, the most important portion of the Corridor in Kirkland is the Kirkland Segment. The south end of the Kirkland Segment is the western edge of 108th Avenue NE. This allows for convenient access adjacent to the South Kirkland Park and Ride. The Kirkland/Bellevue city limits are north of intersection of the corridor and 108th. 132nd Place NE (a.k.a. Slater Avenue) is the northern end point of the Kirkland Segment, allowing for connections to the Totem Lake area. About 2.8 miles of mainline track are also inside the City of Kirkland but north of 132nd Avenue. Eventually the City would like to acquire this portion as well but at this time that is not financially feasible for the City. One hundred feet is the typical width of the corridor right-of-way. In addition to the mainline track, there are 5 sidings that were once used to serve rail customers. Automated crossing equipment is present at 10 of the 11 at grade street crossings. Bridges carry the railroad over NE 68th Street and Kirkland Way. Purchase of the Kirkland Segment includes purchase of numerous easements, permits and leases which are discussed elsewhere in this memo.

Figure 4 Views on the corridor
Top: Totem Lake business district
Middle: Highlands/Norkirk neighborhood
Bottom: At the Google Campus



Timing

If the City Council and the Port of Seattle Commissioners approve the Purchase and Sale Agreement, a 60 day due diligence period will begin. During this time the City will have the ability to gather whatever information might be necessary to confirm that it wishes to proceed with the purchase. At this time we are not aware of any significant issues that would prevent the purchase. The Purchase and Sale Agreement anticipates closing on March 15, 2012. City staff will provide an information update to the Council prior to closing. If City staff discovers specific issues during the due diligence period, it would report back to the Council prior to proceeding with the transaction. During the later spring and summer of 2012, options for repaying the inter-fund loan used to make the purchase (see Funding section below) will be developed for Council consideration.

Table 1 Timing of future actions

| Date | Action |
|----------------------------------------------------|----------------------------------------------------------------|
| December 12, 2011 | Council consideration/approval of Purchase and Sale agreement. |
| 60 days after Purchase and Sale agreement executed | Due diligence period ends |
| February, 2012, prior to close of due diligence. | Report to Council at Study Session |
| March 15, 2012 | Closing |
| Spring/Summer 2012 | Council considers options for repaying inter-fund loan |
| Ongoing | Secure outside funding for purchase and development. |

A process to identify the how the Kirkland Segment should be developed will also take place in 2012. This task is on the Transportation Commission work plan. Efforts to secure outside funding will be on-going through the next year.

Purchase and Sale agreement

The proposed Purchase and Sale Agreement ("Agreement") (See Attachment 1) sets forth the parameters under which the transaction would move forward. The purchase price is \$5,000,000 for the Kirkland Segment.

Upon entering into the Agreement, the City would have 60 days in which to conduct "due diligence," which would allow the City to review matters affecting title to and ownership of the Kirkland Segment. That review would include, among other things, physical inspections of the Kirkland Segment, review of title reports and other documents affecting title to the Kirkland Segment, and review of environmental reports.

If the City discovers any problems or issues regarding the condition of the Kirkland Segment during the due diligence period, it would try to address and resolve those issues with the Port. However, the City will have the ability to terminate the Agreement during the due diligence period if it discovers problems that cannot be resolved.

Liability

Upon taking ownership of the Kirkland Segment, the City would have certain legal responsibilities as the property owner. The City has notified its insurer, Washington Cities Insurance Authority ("WCIA"), of the pending transaction. It is anticipated that claims arising

from public use of the Kirkland Segment would be covered under the City's insurance with WCIA.

In addition, since the Kirkland Segment is available to the public for recreational use, the City would receive the benefits of RCW 4.24.210, the Recreational Use Statute. This statute provides partial immunity to landowners who allow the public to use their land for recreation without charge. City staff will continue to work with WCIA towards minimizing the possibility of claims for damages that may arise once the City owns the Kirkland Segment.

Easements, agreements, leases

The due diligence period is the time during which the City can review and evaluate easements, leases and other encumbrances against the Property. The City will obtain a title report to facilitate that process, but City staff has already begun review based on prior title reports obtained by King County. The review process will take some time due to the fact that BNSF entered into a substantial number of easements and agreements affecting the Kirkland Segment during the many years the Kirkland Segment was actively used for rail purposes.

The Port entered into three major easements affecting the Kirkland Segment since it acquired the Eastside Rail Corridor. The first easement is a Public Multipurpose Easement in favor of King County that was entered into in December 2009. The Multipurpose Easement authorizes King County to construct a trail in the Corridor for pedestrian, bicycle or other non-motorized uses.

It is anticipated that if the City purchases the Kirkland segment, the City and the County would negotiate the transfer of the County's interest in the Multipurpose Easement to the City. In return, the City would agree to utilize at least a portion of the width of the Kirkland Segment for public trail purposes. Kirkland would also agree to maintain the Kirkland Segment in compliance with federal railbanking requirements.

The second easement is a Puget Sound Energy (PSE) Utility Easement that was entered into in December 2010. The Utility Easement allows PSE to utilize the Corridor for gas and electrical transmission and distribution. There are some concerns about the scope of PSE's rights under the Utility Easement. King County is currently negotiating with PSE with respect to clarifying some of the easement language and eliminating potential uncertainty with respect to the scope of the Utility Easement. If the City moves forward with acquisition of the Kirkland Segment, it would work with the County and PSE on making appropriate clarifications to the Utility Easement language.

The third easement is with Central Puget Sound Regional Transit Authority ("Sound Transit"), and the Port's transaction with Sound Transit is scheduled to close later this month. The Sound Transit Easement is for a high capacity transit system. The precise location of the easement is not specified at this time. Rather, Sound Transit would specify the proposed alignment of its transit facilities at such time as it plans to develop its facilities. At that time, Sound Transit and the Corridor owner would work together on a development plan that takes into account the location and impact of existing facilities, including any public trail that may be located in the Corridor. From a practical standpoint, if the City acquires the Kirkland Segment, it would discuss trail location options with Sound Transit prior to trail construction in order to minimize the possibility of future conflicts regarding use of the Kirkland Segment.

Railbanking

The Corridor is railbanked pursuant to federal law (16 U.S.C. 1247(d)). The purpose of railbanking is to preserve rail transportation corridors for future reactivation of rail service and to allow interim public uses such as transportation and recreational trails. The Corridor was railbanked in connection with the transfer of the Corridor from BNSF to the Port. The federal Surface Transportation Board ("STB") approved King County as the Interim Trail User for the Corridor, which confers certain legal responsibilities on King County for planning and constructing a trail in the Corridor. It is anticipated that with respect to the Kirkland Segment, Interim Trail User status would be transferred from the County to the City.

One critical issue with respect to railbanked property is that it is subject to reactivation for freight rail use. This means that if the STB receives a viable request from a freight rail operator, the Corridor could be reactivated for freight use. The key issue becomes the definition of a "viable" request. It should be noted however that in this case, King County (and not BNSF) holds the right to reactivate the Corridor. In any event, the City and other entities acquiring property interests in the Corridor would seek compensation for the impacts to their property rights in the event a reactivation request is received.

Appraisal

The City has contracted with Allen Brackett Shedd to perform appraisal work with respect to this transaction. Murray Brackett has performed extensive appraisal work with respect to the Corridor and hopes to provide a preliminary range of value for the Kirkland Segment by December 9, 2011. Staff anticipates that it may be able to provide that information to the Council at the Study Session. Mr. Brackett intends to complete an appraisal of the Kirkland Segment by the end of January 2012, prior to the expiration of the City's inspection contingency.

Funding

The purchase of the Kirkland Segment is proposed to be funded initially from two sources:

- Use of \$1.0 million in Surface Water Utility funding designated for surface water projects along the Corridor in the adopted 2011-16 CIP (resulting in a surface water easement to be recorded against the Corridor): Totem Lake Surface Water Opportunity Program (SD 0072) – \$500,000 and Forbes Creek Surface Water Opportunity Program (SD 0073) – \$500,000; and
- Use of a \$4.0 million short-term interfund loan from utility capital reserves, while the long-term funding sources are secured.

The State provides the minimum acceptable procedures for making and accounting for interfund loans as follows:

- The legislative body of a municipality must, by ordinance or resolution, approve all interfund loans, and provide in the authorization a planned schedule of repayment of the loan principal as well as setting a reasonable rate of interest (based on the external rate available to the municipality) to be paid to the lending fund.
- Interest should be charged in all cases, unless:

- The borrowing fund has no other source of revenue other than the lending fund;
or
- The borrowing fund is normally funded by the lending fund.
- The borrowing fund must anticipate sufficient revenues to be in a position over the period of the loan to make the specified principal and interest payments as required in the authorizing ordinance or resolution.
- The term of the loan may continue over a period of more than one year, but must be “temporary” in the sense that no permanent diversion of the lending fund results from the failure to repay by the borrowing fund. A loan that continues longer than three years will be scrutinized for a “permanent diversion” of moneys. (Note: these restrictions and limitations do not apply to those funds which are legally permitted to support one another through appropriations, transfers, advances, etc.)
- Appropriate accounting records should be maintained to reflect the balances of loans in every fund affected by such transactions.

Staff has analyzed the cash flow needs of the water/sewer utility fund and finds that there are sufficient funds available to make this loan for the three year period. The estimated interfund loan terms will be:

- \$2.0 million from the water/sewer utility fund and \$2.0 million from the surface water fund,
- The term will be three years, but the loan can be repaid any time during that period,
- The interest rate paid on these loans will be 0.50%, based on the interest that those funds would be expected to earn during the loan term.
- Interest will accrue during the period and will be paid to the loaning funds at the point the long-term funding is put in place.

An ordinance authorizing the interfund loan is presented for Council consideration and approval on the regular agenda. While the loan amount is estimated at \$4.0 million, the ordinance is written with a “not to exceed” limit of \$5.0 million in the event that there are other transaction costs to be funded from the loan. It is important to recognize that the interfund loan represents short-term funding only and needs to be repaid in full with interest at that end of the term, once a long-term funding source is secured.

The potential long-term sources of funding for the **acquisition** include some combination of the following:

- Reprioritizing existing CIP resources:
 - Repurposing of \$1.54 million from previously funded Parks projects as follows:
 - Forbes Lake Park Development (PK 0056) – \$200,000
 - South Juanita Park Site Development (PK 0083) – \$212,349
 - Waverly Beach Park Renovation (PK 0087) – \$505,000

- Skate Park (PK 0111) – \$200,000
- Spinney Homestead Park Renovation (PK 0113) – \$350,000
- Community Recreation Facility Planning (PK 0122) – \$71,980

The proposed Parks CIP repurposing was developed by the Parks Department and was reviewed and approved by the Park Board at their March 9, 2011 meeting.

- Repurposing Transportation project funding for \$1 million, using \$250,000 per year of the Annual Non-Motorized project (NM 8888) funding for 4 years (leaving approximately \$250,000 per year for other non-motorized needs)
- Use of \$1 million in REET 2 reserves (primarily used for transportation projects), which may minimize the availability of grant match funding for a period of time if balances fall below target

The Transportation Commission is supportive of the purchase of the Corridor, but earlier this year they expressed opposition to using any transportation dollars from street maintenance or the street overlay program to pay for the acquisition. The Commission met on the evening of December 7 and unanimously endorsed both the purchase of the corridor and the proposed transportation funding allocations.

- Building and Property reserve balance funded from right-of-way vacations set aside for open space or transportation capital projects (potentially up to \$500,000)
- Seeking grants such as TIGER (Transportation Investment Generating Economic Recovery)
- Potential inclusion in a voted park bond under consideration by the Park Funding Exploratory Committee
- Use of existing General Fund revenue sources or future REET to support Councilmanic bonds, which would likely require re-prioritizing current uses and may result in reductions in other activities. The annual debt service on \$4 million for a 20-year bond at current interest rates is approximately \$285,000 per year.

Similarly, **development** of this asset could be funded using any of the sources defined above not used for acquisition, plus:

- Corporate sponsorships or contributions
- State and Federal grants. One possible State opportunity is any funds that may become available for the mitigation of impacts due to tolling.

Initial costs associated with the purchase have been funded using the King County parks levy acquisition funds. The City receives \$118,000 per year from the 2009-2014 Open Space, Regional Trails, and Woodland Park Zoo levy, which is set aside in the City's capital improvement program for parks, open space, and trail acquisition and development. The

balance in that project is over \$300,000. Any remaining funds and future levy receipts might also be a source toward financing acquisition or other Eastside Rail Corridor project costs.

Possible contamination from hazardous materials

In preparation for a potential purchase, an environmental screening report on the entire Corridor was prepared for King County. The 2007 report based its findings on a review of Department of Ecology databases, and a field review of the corridor. Five sites in Kirkland were identified as sites which posed medium or high potential hazards for contamination. (See Figure 5).

"High risk" sites:

- Former Sauder Door Site (currently the Google campus) located on the east side of the Kirkland Segment south of the 6th Street S. crossing
- Former Pace Chemical site, located on the west side of the Kirkland Segment also south of the 6th Street S. crossing

The report found these sites to be considered "high" risk sites meaning that "Contamination of soil and/or ground water underneath the Corridor from the site has been confirmed or is highly probable." Both of these sites are currently undergoing clean-up efforts.

Three other sites were identified as "medium" risk sites:

- Former Kelly Moore paint facility located on the east side of the corridor just south of NE 85th Street.
- McLeod Auto Body just south of 7th Avenue and on the west side of the Kirkland Segment.
- Western Pneumatic Tubing plant located on the east side of the Kirkland Segment about 500' north of the NE 68th Street crossing.

The screening report defines a medium rating as indicating "that there is a possibility that contamination from the site has impacted soil and/or groundwater underneath the rail corridor. A 'medium' risk rating was also given to areas identified during the rail reconnaissance where some cleanup or removal activity (such as drum disposal) may be necessary." The McLeod site was identified because vehicles awaiting repair were observed on the rail right-of-way during the field reconnaissance. The other two sites had information in the Department of Ecology databases.

It is possible that there is contaminated soil beneath the Kirkland Segment. This may result in increased construction costs for removal of contaminated soil if the soil is disturbed. The Agreement contains language that may allow the City, in some situations, to seek compensation from the BNSF, if contamination due to the railroad is found. It will be possible to further evaluate the nature of potential contamination during the due diligence period.

Figure 5 Sites Identified in Environmental Screening



Development of facilities

There are a number of options for development of the Kirkland Segment. These range from no action all the way to construction of a high quality paved trail with parallel transit facilities. (Table 1) Different options could be implemented on various sections of the Kirkland Segment over different time frames. Simultaneous use by transit and active transportation is the ultimate development vision for the Kirkland Segment. One transit option is buses operating on a paved way parallel to but separate from a trail for bicycles and pedestrians. Future rail transit may be a possibility on the Kirkland Segment. Sound Transit will not complete its current construction program for about 10 years and the entire Corridor or even portions of it will not necessarily be the preferred alignment for a Sound Transit light rail line. At the other end of the spectrum, the most basic trail development may only require removing the railroad facilities and smoothing out existing ballast. The East Lake Sammamish trail is an example of an interim gravel trail that is now being paved. Gravel was brought in and added to the ballast to provide a suitable base for wide tired bicycles. Through pavement milling operations the city generates ground asphalt. It may be possible to use these grindings to help improve a trail. The right-of-way could also provide a location to store such materials eliminating costs for hauling.

Removal costs for rails, ties and switches are thought to be greater than, but approximately equal to the cost of the rail salvage value. The value of salvaged material is volatile and depends upon factors such as the condition of the material to be salvaged and current market prices. A more certain estimate of value could be obtained by having the corridor appraised by a contractor specializing in the sale of salvaged railroad equipment. Costs to remove all equipment, including removal of crossing warning devices and associated equipment, removal of grade crossings and repaving of crossings would certainly exceed the estimated salvage value of the rails.

Table 1 Descriptions and costs of improvement types

| Facility type | Description | Estimated cost per mile (based on 5.75 miles) |
|------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Remove all rail equipment | Remove all rail, ties and associated equipment including crossings, etc. | Removal = \$190,000 Salvage = \$104,000 Net cost = \$86,000 |
| No action | Railroad equipment stays in place. Minimum signing and fencing | \$23,000 |
| Rough trail | Tracks and ties removed. Rough trail of graded ballast ~ 8' wide and dirt pathways that currently exist. Bollards at crossings. | \$37,000 improvements + rail removal = \$60,000 |
| Improved trail | Gravel material added to ballast. Trail suitable for bicycles with wide tires and strollers. 8'-10' width appropriate for slow speeds. Fencing installed to protect steep slopes and sensitive areas | \$360,000 improvements + rail removal = \$420,000. Based on estimate from E. Lake Sammamish Trail. |
| Paved trail | Smooth trail to accommodate all bicycle types and two way bicycle/pedestrian travel. 12' paved width with gravel shoulders. | \$4.35 million - \$6.5 million if over interim trail. Based on rough estimate of similar improvements elsewhere. If not over interim trail, \$9.5 million to \$14.3 million. Factor for extra cost due to realignment based on 2008 PSRC estimate, 2007 report. |
| Paved trail with transit way | Same as paved trail, but with additional paved way for transit that could be converted to future light rail right-of-way | \$20.0 million. Costs based on construction of new street. |



Figure 6 *Examples of trail styles. Left: Rails removed, no improvements in Redmond. Center: Improved trail E. Lake Sammamish Trail near Issaquah. Dark areas at edge of trail are fabric that retains gravel trail surface. Right: paved section of E. Lake Sammamish Trail in Redmond. Note retaining walls, gravel shoulders, fences, plantings.*

The estimated costs in Table 1 are based on generic costs for most items and are meant only to provide an order of magnitude for the actual costs. Costs for bridges, which sections are opened and how crossings are treated could make a substantial difference in how much any particular section might cost, particularly under the options where less development is taking place.

In order to get a more accurate and precise estimate of different improvement options costs, more detailed estimates should be made. These are typically done by first developing typical costs for cross-section costs under several different topological conditions (level, on fill, in cut, near sensitive areas, etc.). Next, the Kirkland Segment would be examined to determine the length over which each cross section is appropriate. A detailed estimate for several different options ranging from graded ballast through fully developed transit/trail options could be prepared by a consultant and would cost on the order of \$50,000 to \$80,000.

Certain activities will be necessary after the City takes ownership of the Kirkland Segment. It is expected that the City would improve safety for certain features above the level maintained by previous owners. Initial actions upon ownership of the corridor might include:

- Posting signs indicating that the corridor is now owned by the City of Kirkland and giving contact information.
- Fence off access at the NE 124th Street/Totem Lake Blvd intersection. The purpose of this action is to ensure that people who happen to be on the corridor are directed to cross at the nearby traffic signal rather than mid block.
- Making interim improvement to the bridges at 68th Street and Kirkland Way. These bridges are not currently designed for pedestrian traffic.



Figure 7 Left: Fencing on a bridge in Redmond to provide an interim railing on the existing narrow walkway. This treatment would be similar to the proposed treatment at the NE 68th Street Bridge in Kirkland. Center: Bollards at a crossing in Redmond. The center bollard can be removed to allow access for maintenance vehicles. Right: Fencing protects a steep slope near a bridge abutment in Redmond. Similar treatments would be needed at the bridges in Kirkland.

These actions assume that the rails remain in place. Upon removing of the rails, the Kirkland Segment could be "opened" with improvements as described in one of the options in table 1.

Table 2: Estimated Costs for initial actions

| Item | Description | Total cost |
|----------------------------|--------------------------------------------------------------------------------------------------|------------|
| Signing | 1 signs each direction at most trail and street crossings, 36 crossings, @ \$100/sign installed. | \$3,600 |
| Fencing at 124th Street | 2 fences @ \$5,000 | \$10,000 |
| Interim Fencing at bridges | NE 68th Street@ \$15,000 Kirkland Way @ \$25,000 | \$40,000 |
| | Total | \$53,600 |

Maintenance

Until railroad equipment is removed, maintenance is expected to be minimal, similar to that currently provided by the Port of Seattle with some minor upgrades. Some improvements to the current maintenance level of service could include:

- Limited mowing along the Kirkland Segment where existing public works equipment can be used.
- Limited debris pick up
- Trimming for sight distance at street crossings
- Minor restoration of street pavement at rail crossings

There is a set of surface water improvements that are needed to protect the integrity of the drainage facilities themselves and to minimize flooding on adjacent properties. These improvements may be needed soon after the Kirkland Segment is purchased. In particular this would include re-establishing the ditch lines and repairing and clearing the plugged culverts in the Totem Lake area. Until rails are removed, specialized equipment is needed to do this work efficiently. Neither the Port nor Kirkland owns such equipment, it would have to be rented or the work would have to be performed by others. Costs for surface water improvements needed in the short term could be developed during the due diligence period.



Figure 8 Example of drainage ditch obstructed by vegetation.

Basic maintenance for a graded ballast trail might include:

- Weed control to provide a safe walking/bicycling environment, to allow adequate sight distance at intersections and to help keep surface water ditches open for flow.
- Grading to keep the trail surface uniform
- General debris pickup and graffiti removal
- Maintenance of signing
- Surface water maintenance and inspection
- Management of trees on the right-of-way

A more developed trail would have likely have more complicated maintenance needs.

The City of Kirkland does not have direct experience in maintaining railroad right-of-way. Some operations, such as mowing and grading are similar to the operations performed on roadways, but there are likely to be important differences such as the slope of the embankments,

presence of sensitive areas, etc. Therefore it is difficult to estimate the cost of maintaining the right of way. Initial rough estimates indicate that costs for maintaining an interim trail are on the order of \$100,000/year. Like cost estimates for rail removal and trail improvements, maintenance costs could be more accurately estimated with further research during the due diligence period. Establishing maintenance levels of service will be an important first step for determining maintenance costs. Without additional maintenance resources for both labor and equipment, maintenance on the Kirkland Segment will come at the expense of current street or park maintenance operations.

Volunteers could be a useful asset for helping maintain or develop the Kirkland Segment. It is likely that such work would be an attractive volunteer opportunity for many groups and individuals in the community. Work on the corridor might also be an option for Kirkland's work release program.

Permitting and Environmental Considerations

Like work on any street right-of-way, construction on the Kirkland Segment will require permitting and environmental analysis. The extent and level of permitting and analysis will depend on the type of construction and its location. Sections of the right-of-way are directly adjacent to sensitive areas and may require study by environmental consultants, additional design work and mitigation for development of trails. In other areas environmental evaluation and design could be fairly simple. Once a preliminary plan is developed for the Kirkland Segment, the best approach to the permit and environmental processes can be determined.

Costs to date

Three professional services agreements have been entered in to recently as summarized below

Table 3. Recent Costs

| Contractor | Description | Amount |
|----------------------|------------------------------------------------------|------------------------|
| MCS Logistics | Examine corridor, provide estimate for rail removal. | \$3500 |
| TRIAD Associates | Provide legal description | Not to exceed \$2000 |
| Allen Brackett Shedd | Provide appraisal | Not to exceed \$16,800 |

These costs have been assigned to a CIP project for corridor acquisition.

Staff Recommendation

There are many challenges and costs associated with purchasing the Kirkland Segment. If the City Council authorizes the transaction the Kirkland Segment will eventually need significant resources and attention from both the Parks and Public Works departments. However City staff believes that the potential benefits significantly outweigh the costs. Obtaining control over the Kirkland Segment is central to some of the city's most significant economic development initiatives in our light industrial zones and in the Totem Lake Business District. The Corridor can link our parks, schools and neighborhoods in ways that will significantly enhance the quality of life for the entire community. Never before has the City had the opportunity to purchase the Corridor. It is not clear whether another opportunity to acquire it will emerge in the future. In addition the purchase price is not likely to ever be lower than \$5 million. For all these reasons, the staff recommendation is for the City Council to approve the Purchase and Sale Agreement with the Port.

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____ (“Effective Date”) by and between the Port of Seattle, a municipal corporation of the State of Washington (“Port”) and the City of Kirkland, a municipal corporation of the State of Washington (“City”). The Port and the City are hereinafter sometimes referred to collectively as the “Parties”.

RECITALS

A. The Port is the owner of real property developed as a rail corridor approximately 100 feet wide commonly known as the Woodinville Subdivision, portions of which are located between the City of Woodinville and the City of Renton (“South Segment”), and the City of Woodinville and the City of Redmond (“Redmond Spur”), in King County, Washington (collectively, the South Segment and the Redmond Spur are referred to as the “Woodinville Subdivision Rail Corridor”). The City desires to acquire a portion of the Port’s interest in the South Segment approximately 5.5 miles in length, located within the City of Kirkland and a small portion of which is located in the City of Bellevue (“the Kirkland Segment”), which is legally described in Exhibit A attached hereto and incorporated herein by this reference.

B. On November 5, 2009, the Port entered into a Memorandum of Understanding (the “MOU”) with King County, Central Puget Sound Regional Transit Authority (“Sound Transit”), Cascade Water Alliance, Puget Sound Energy and the City of Redmond (collectively, the “Regional Partners”) setting forth the mutual understanding of the parties for the completion of future transactions where the Regional Partners would purchase from the Port interests in the Woodinville Subdivision and thus share in the cost of acquiring it.

C. Consistent with the MOU, on June 30, 2010, the City of Redmond purchased from the Port the portions of the Redmond Spur located within the city limits of Redmond (the “City Segment”) and the City of Redmond agreed to convey to Sound Transit an easement for transportation purposes in the City Segment at the time Sound Transit closes on a purchase of interests in the remaining portions of the Woodinville Subdivision Rail Corridor owned by the Port.

D. Consistent with the MOU, Sound Transit and the Port entered into a Real Estate Purchase and Sale Agreement dated August 18, 2011 to purchase a portion of the corridor located in Bellevue (the “Bellevue Property”) along with a transportation easement for potential future development of high capacity transportation facilities as a protective acquisition throughout the South Segment (less the Bellevue Property) and the portions of the Redmond Spur owned by the Port.

E. The City and the Port are entering into this Agreement pursuant to the authority granted in Chapter 39.33 Revised Code of Washington (Intergovernmental Disposition of Property Act), which permits a political subdivision of the State of Washington to sell real property to the state or any municipality or any political subdivision thereof on such terms and

conditions as may be mutually agreed upon by the proper authority of the state and/or the subdivisions concerned.

F. The City and the Port have agreed upon the terms and conditions under which the Port will sell the Kirkland Segment to the City, all as set forth herein.

G. This Agreement was approved by Kirkland City Council on December 12, 2011 and by the Port Commission of the Port of Seattle on _____, 2011.

NOW, THEREFORE, in consideration of the agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. The Kirkland Segment. The Port agrees to sell to the City, and the City agrees to purchase from the Port, the Kirkland Segment. The Kirkland Segment includes the land described in Exhibit A attached hereto ("the Land"), together with all of the Port's right, title and interest in and to the buildings (if any) located on the Land ("the Buildings"), all of the Port's right, title, and interest in any tangible personal property and fixtures of any kind owned by the Port and attached to or used exclusively in connection with the ownership, maintenance or operation of the Land or the Buildings, if any ("the Personalty"); and all of the Port's right, title and interest in and to all Third Party Leases, Licenses and Contracts (defined in Paragraph 4.1 below) associated with the Kirkland Segment as of the Date of Closing.

The Land, the Buildings and the Personalty are referred to collectively herein as the "Kirkland Segment." The Woodinville Subdivision Rail Corridor less (a) the City Segment purchased in fee by the City of Redmond; (b) the Bellevue Property purchased in fee by Sound Transit; and (c) the Kirkland Segment purchased by the City pursuant to this Agreement is referred to herein as the "Port Property."

2. Purchase Price. The City shall pay to the Port a total purchase price of Five Million Dollars (\$5,000,000) for the Kirkland Segment ("Purchase Price") at the Closing described in Paragraph 10 below.

3. Inspection Contingency.

3.1 Inspection. The City may, at its sole cost and expense, conduct an acquisition due diligence investigation of the Kirkland Segment (the "Inspection"), including a physical inspection, to determine the condition of the Kirkland Segment, including the existence of any environmental hazards or conditions, during the period commencing on the Effective Date and ending at 5:00 p.m., Pacific Standard time sixty (60) calendar days thereafter (the "Inspection Period"). During the Inspection Period and subject to the limits set forth in this paragraph, the City and its employees, representatives, consultants and agents shall have the right and permission to enter upon the Kirkland Segment or any part thereof at all reasonable times and after reasonable prior notice, and from time to time, at the City's own risk, for purposes of analysis or other tests and inspections deemed necessary by the City for the Inspection. The Port

may have a representative present at any inspection or testing made by the City on the Kirkland Segment. The City shall not alter the physical condition of the Kirkland Segment without first providing the Port with detailed information of the City's intended activities on the Kirkland Segment and obtaining the prior written consent of Port to any physical alteration of the Kirkland Segment. The City shall provide the Port with a copy of any reports or data regarding the Kirkland Segment that the City possesses or obtains before, during or after the Inspection Period, including without limitation any environmental reviews of the Kirkland Segment or data regarding soil or groundwater quality at, on or under the Kirkland Segment. The City shall defend, indemnify and hold harmless the Port from and against all liability, cost, damage and expense (including, but not limited to, attorneys' fees) in connection with all claims, suits and actions of any kind made or brought against the Port, its officers, agents or employees by any person or entity as a result of or on account of actual or alleged injuries or damages to persons, entities or property received or sustained, in any way arising out of, in connection with, or as a result of the acts or omissions of the City, its officers, agents or employees, in exercising its rights under the right of entry granted herein. The City's obligations under this Paragraph 3.1 shall survive the termination of this Agreement.

3.2 Termination. If the City determines, in its sole judgment, that the Kirkland Segment is not suitable for any reason for the City's intended use or purpose, then City may terminate this Agreement by written notice to the Port before the expiration of the Inspection Period, in which case neither party shall have any further right or obligation under this Agreement except for those rights or obligations that expressly survive termination. In the event this Agreement is terminated pursuant to this Paragraph 3.2 and the City altered the physical condition of the Kirkland Segment in connection with its Inspection, the City shall return the Kirkland Segment to its pre-Inspection condition unless otherwise agreed to in writing by the Port. If this Agreement is not terminated on or before the expiration of the Inspection Period, the Inspection condition shall be deemed to have been waived by the City for all purposes.

4. Title; Railbanking Obligations.

4.1 Nature of Title. Subject to the City's satisfaction with or waiver of the Inspection Contingency under Paragraph 3 above, the Kirkland Segment shall be conveyed with no warranties of title (except that Port warrants it has the legal power and authority to execute and deliver the documents described in Paragraph 10.2 below) and shall be subject to all matters affecting the Kirkland Segment as of the Effective Date, whether of record or not, including but not limited to (i) matters which would be disclosed by a current, accurate survey of the Kirkland Segment; and (ii) the rights granted to third parties pursuant to any third party lease, license, permit, occupancy agreement or other agreement demising space in or providing for the use or occupancy of the Kirkland Segment ("Third Party Leases, Licenses and Contracts"). The Port represents and warrants that Schedule 1 attached to this Agreement and incorporated herein by this reference, contains a complete list of Third Party Leases, Licenses and Contracts of which the Port has knowledge. The City acknowledges and affirms that the Port may not hold fee simple title to the Kirkland Segment, that the Port's interest in all or part of the Kirkland Segment, if any, may rise only to the level of an easement for railroad purposes. The City is willing to accept the Kirkland Segment on this basis.

4.2 Railbanking Obligations. The Port and the City acknowledge that the Woodinville Subdivision Rail Corridor is railbanked pursuant to 16 U.S.C. 1247(d). The Port and

King County, a political subdivision of the State of Washington (“King County”) entered into that certain Public Multipurpose Easement recorded under King County Recording No. 20091218001538 (the “Multipurpose Easement”) which, among other things, grants King County certain rights to acquire develop, maintain and operate a public trail for public pedestrian, bicycle and other non-motorized uses (“Trail”) over portions of the Woodinville Subdivision Rail Corridor in its capacity as the Interim Trail User subject to the terms and conditions of the Multipurpose Easement so long as such Trail does not interfere with the use of the Woodinville Subdivision Rail Corridor for other Transportation Use as defined in the Multipurpose Easement.

5. Condition of the Kirkland Segment.

5.1 The City acknowledges that the Kirkland Segment may contain Hazardous Substances, and that Hazardous Substances released onto the Kirkland Segment may have migrated onto neighboring properties at times prior to the Effective Date. The City waives, releases and discharges forever the Port from any and all present or future claims or demands and any and all damages, losses, injuries, liabilities, causes of action (including without limitation, causes of action in tort), costs and expenses (including without limitation fines, penalties and judgments and attorneys fees) of any and every kind or character, known or unknown (collectively "Losses") that the City might have asserted against the Port arising from or in any way related to environmental conditions in, at, on, under or originating from the Kirkland Segment or the alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Kirkland Segment. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law (defined below), that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) Losses for injury or death of any person, and (c) Losses arising under any Environmental Law enacted after the Effective Date. The City further agrees to indemnify and defend the Port against any and all Losses that the Port sustains as a result of claims by third parties, including but not limited to BNSF Railway Company (“BNSF”) and federal, state and local regulatory agencies for damages or remediation costs related to environmental conditions in, at, on under or originating from the Kirkland Segment. Nothing in this Agreement shall be construed to waive or discharge any rights or claims the City may hold under the Environmental Laws, agreements or deeds to seek indemnity or contribution from BNSF or other parties other than the Port for Losses arising from or in any way related to environmental conditions on the Kirkland Segment. The term “Environmental Law” means any federal, state or local statute, regulation, code, rule ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term “Hazardous Substance” means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

5.2 Subject to the Port’s express representations, warranties and obligations under this Agreement, **THE CITY IS NOT RELYING ON, AND HEREBY WAIVES**

WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE PORT WITH RESPECT TO ANY MATTERS CONCERNING THE KIRKLAND SEGMENT including, but not limited to the physical condition of the Kirkland Segment; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Kirkland Segment with Environmental Laws (defined above) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Kirkland Segment; the presence of any Hazardous Substances (defined above), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, or under the Kirkland Segment; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Kirkland Segment; the condition of title to the Kirkland Segment, and the Third Party Leases, Licenses, Contracts, permits, orders, or other agreements, affecting the Kirkland Segment (collectively, the “Condition of the Kirkland Segment”).

5.3 The City represents and warrants to the Port that except for the Port’s express representations, warranties and obligations under this Agreement, the City has not relied and will not rely on, and the Port is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Kirkland Segment or relating thereto made or furnished by the Port, any agent or contractor of the Port, or any real estate broker or agent representing or purporting to represent the Port, to whomever made or given, directly or indirectly, orally or in writing.

5.4 Notwithstanding any provision of this Agreement to the contrary, the provisions of this Paragraph 5 shall survive the Closing (defined in Paragraph 10 of this Agreement) of the transaction contemplated herein and the delivery of the Deed (defined in Paragraph 10 of this Agreement) to the City. The City and the Port acknowledge that their willingness to enter into this Agreement reflects that the Kirkland Segment is being conveyed subject to the provisions of this Paragraph 5.

6. Closing Conditions.

6.1 The City’s obligation to purchase the Kirkland Segment shall be subject to the following conditions that must be satisfied as of Closing or such earlier date as specified below:

6.1.1 All representations and warranties of the Port contained herein shall be true, accurate and complete in all material respects at the time of Closing as if made again at such time; and

6.1.2 The Port shall have performed all obligations to be performed by the Port under this Agreement on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance);

6.1.3 The City's satisfaction with or waiver of the Inspection Contingency under Paragraph 3 of this Agreement.

6.1.4 The Port shall have provided the City with an updated Schedule 1 reflecting any Third Party Leases, Licenses and Contracts of which the Port has become aware or has entered into since the date of this Agreement.

If the conditions set forth in this Paragraph 6.1 are not satisfied as of Closing and the City does not waive the same, the City may terminate this Agreement by giving written notice to the Port and thereafter neither party shall have any further liability to the other under this Agreement.

6.2 The Port's obligation to sell the Kirkland Segment shall be subject to the following conditions that must be satisfied as of Closing:

6.2.1 All representations and warranties of the City contained herein shall be true, accurate and complete in all material respects at the time of Closing as if made again at such time; and

6.2.2 The City shall have performed all obligations to be performed by it hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance).

If the conditions set forth in this Paragraph 6.2 are not satisfied as of Closing and the Port does not waive the same, the Port may terminate this Agreement by giving written notice to the City, and thereafter neither party shall have any further liability to the other under this Agreement.

7. Covenants, Representations and Warranties of the Port. The Port hereby makes the following representations and warranties, which representations and warranties shall be deemed made by the Port to the City as of the Date of Closing:

7.1 From the date of this Agreement to the Date of Closing, the Port will notify the City of each event of which the Port becomes aware is affecting the Kirkland Segment or any part thereof, promptly upon learning of the occurrence of such event.

7.2 The Port is a municipal corporation of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby.

7.3 The Port 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 ("Code") and shall deliver to the City on the Date of Closing an affidavit evidencing such fact and such other documents as may be required under the Code.

7.4 There is no litigation pending against the Port that pertains to the Port Property or the Port's ownership thereof, other than as disclosed in Paragraph 11.2.

7.5 The Port has not received any written notice of, and the Port has no knowledge of, any written notice from any governmental authority alleging any uncured existing violation of any applicable governmental laws, statutes, ordinances, rules, codes, regulations or orders, including Environmental Laws, affecting the Kirkland Segment.

7.6 From the date of this Agreement to the Date of Closing, the Port will not grant or create any easement, right-of-way, encumbrance, restriction, covenant, lease, license, option to purchase or other right which would affect the Kirkland Segment after Closing without the City's written consent first having been obtained.

8. Covenants, Representations and Warranties of the City. The City hereby makes the following representations and warranties, which representations and warranties shall be deemed made by the City to the Port as of the Date of Closing:

8.1 From the date of this Agreement to the Date of Closing, the City will timely perform all of its monetary and non-monetary obligations required by the terms of this Agreement to be performed by the City.

8.2 The City is a municipal corporation of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby.

8.3 There is no litigation pending against the City which could prevent or impair the City's obligations hereunder.

9. Hazardous Substances. The Port acquired the Woodinville Subdivision Rail Corridor from BNSF Railway Company ("BNSF") pursuant to a Purchase and Sale Agreement and Donation Agreement both dated May 12, 2008 (collectively, referred to as "PSA"). The PSA obligates BNSF, in specified situations, to investigate, remediate, respond to or otherwise cure (collectively, "Remediate" or "Remediation") certain environmental conditions related to releases of Hazardous Substances or the violation of any Environmental Law. As between the City and the Port, the City will be responsible for all costs of Remediation of Hazardous Substances released on or from the Kirkland Segment or violations of any Environmental Law relating to the Kirkland Segment except to the extent caused by or resulting from the acts of Port or its officers, employees, agents or contractors. The Port and the City agree that in the event the City is required to Remediate Hazardous Substances released on or from the Kirkland Segment, the Port shall cooperate with the City to obtain reimbursement of costs of Remediation from BNSF as provided in the deed from BNSF to the Port.

9.1 Survival. Notwithstanding any provision of this Agreement or the Easement to the contrary, the provisions of this Paragraph 9 shall survive the Closing of the transaction contemplated herein and the delivery of the Deed to the City.

10. Closing.

10.1 Time and Place. The closing of this sale (“Closing”) shall take place at the offices of Escrow Agent, located at Pacific Northwest Title, 215 Columbia Street, Seattle, Washington, escrow agent for the closing of this transaction (“Escrow Agent”), on March 15, 2012 (“Date of Closing”); provided, however that either party may extend the Date of Closing for up to thirty (30) days by giving written notice of such extension to the other party at least fifteen (15) days in advance of the Date of Closing.

10.2 Port Obligations. At or before Closing, the Port shall deliver to Escrow Agent, for delivery to the City, the following:

10.2.1 Quit Claim Deed. A fully executed Quit Claim Deed in substantially the form attached hereto as Exhibit B (“Deed”);

10.2.2 Excise Tax Affidavit. An appropriate excise tax affidavit, signed by the responsible and authorized officials of the Port;

10.2.3 Third Party Leases. A fully executed assignment to the City, in the form attached hereto as Exhibit C, of all of the Port’s right, title and interest in and to the Third Party Leases, Licenses or Contracts listed in Schedule 1 hereto that affect the Kirkland Segment, and of any other Third Party Leases, Licenses or Contracts that pertain to the Kirkland Segment and of which the Port acquires knowledge prior to Closing (collectively, the “Kirkland Leases”); and

10.2.4 Bill of Sale. A Bill of Sale in substantially the form attached hereto as Exhibit D; and

10.2.5 Other Documents. Such other documents and funds as may be required to close this transaction, including a Foreign Investment in Real Property Tax Act (“FIRPTA”) certificate.

10.3 The City’s Obligations. At or before Closing, the City shall deliver to Escrow Agent, for delivery to the Port, the following:

10.3.1. Purchase Price. The Purchase Price;

10.3.2 Excise Tax Affidavit. An appropriate excise tax affidavit, signed by the responsible and authorized officials of the City; and

10.3.3 Other Documents. Such other documents and funds as may be required to close this transaction.

10.4 Proration. All taxes, assessments, interest and other income and expenses associated with the Kirkland Segment, shall be prorated as of Closing.

10.5 Closing Costs. The Port and the City shall share equally the escrow fees with respect to the sale of the Kirkland Segment. To the extent the City is able to obtain title insurance for the Kirkland Segment, the City shall be solely responsible for the cost of title insurance premiums, title endorsements, extended coverage or other title coverage requested by the City.

10.6 Kirkland Lease Payments. No later than ten (10) days before Closing, the Port and the City shall jointly review the list of Kirkland Leases and agree in writing as to which Kirkland Leases will require proration under Paragraph 10.4. The Port shall be entitled to all sums due from any Kirkland Leases (collectively “Kirkland Rents”) owing for the month in which the Closing occurs (regardless of when the Kirkland Rents are paid) for the portion of the Kirkland Segment to which such Kirkland Leases relate prorated to the Date of Closing. The Port shall not receive a credit for any such Kirkland Rents that are due but unpaid as of the Date of Closing but the City shall remit to the Port the Port’s prorated portion of any such Kirkland Rents received by it after such Closing. The City shall be entitled to any Kirkland Rents owing for time periods after the month in which the Closing occurs (regardless of when the Kirkland Rents are paid) for the portion of the Kirkland Segment to which such Kirkland Leases relate prorated to the Date of Closing and the Port shall pay to the City the City’s prorated portion of any such Kirkland Rents received by the Port, if any, after the Date of Closing. On the day after the Date of Closing (or the next business day, if it should fall on a weekend or holiday), the Port and the City shall deliver to the tenants and other obligated persons under the Third Party Leases, Licenses or Contracts, a letter in a form mutually acceptable to the Port and the City advising of the sale of the Kirkland Segment and instructing such tenants or obligated persons to make all future payments due under the Third Party Leases, Licenses or Contracts to the City or the City’s designated agents (“New Owner Letter”). The New Owner Letter shall also advise such tenants or obligated persons that may be in arrears as of the Date of Closing that all Kirkland Rents due for the month in which the Closing occurred shall be remitted to the Port. All Kirkland Rents received by the City after the Date of Closing shall be applied first to current rents and then to rents in arrears. In the event the City receives any rents in arrears due to the Port, the City shall remit them to the Port within thirty (30) days of receipt. The City shall have no obligation to collect any sums in arrears owed to the Port. Within ninety (90) days after Closing, the Port shall pay to the City the amount, if any, of all prepaid Kirkland Rents owed to the City and all security or other deposits held by the Port under the Kirkland Leases. The City shall not be entitled to receive any sums due or security deposits held by the Port related to Third Party Leases, Licenses or Contracts that do not affect the Kirkland Segment. This Paragraph 10.6 shall survive the Closing of the transaction contemplated under this Agreement and delivery of the Deed and Easement to the City.

11. Possession; Post Closing Obligations.

11.1 The City shall be entitled to possession of the Kirkland Segment immediately following Closing.

11.2 The Parties acknowledge that a lawsuit has been filed in King County Superior Court under Cause No. 10-2-25591-5 SEA challenging the authority of the Port to purchase portions of the Woodinville Subdivision and seeking various remedies including

rescission of the purchase of the Redmond Spur by the Port in that certain case captioned Lane, et al v. the Port of Seattle et. al. If, at any time subsequent to Closing, a final judicial decree nullifies, changes, or alters all or any portion of the City's or Port's acquisition of the Kirkland Segment (1) such action shall not be a breach of the Covenants, Representations and Warranties of either the Port or the City, and (2) upon thirty (30) days written notice from the City, the Port shall deliver to the City the full amount of the Purchase Price (the "Full Reimbursement"); provided, however, if such action nullifies only a portion of the Port's or the City's acquisition of the Kirkland Segment, the City shall cause its appraiser to value the portion of the property rights affected by such action as of the Date of Closing (the "Appraised Value") and the City shall reduce the Full Reimbursement by an amount equal to the Appraised Value (the "Adjusted Reimbursement"). The Port and the City shall share equally in the cost of the appraisal to determine the Appraised Value. This paragraph 11.2 shall survive the Closing.

12. Indemnification.

12.1 By Port. Subject to and without in any way limiting the provisions of Paragraphs 5 and 9 of this Agreement, the Port shall pay, protect, pay the defense costs of, indemnify and hold the City and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of the Port set forth in this Agreement; (b) the failure of the Port to perform any obligation required by this Agreement to be performed by the Port; (c) liabilities arising out of the ownership, maintenance and/or operation of the Kirkland Segment by the Port prior to Closing; or (d) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of the Port, its agents or employees, that occurred prior to Closing. The Port upon notice from the City shall defend any such claim at its expense and with counsel reasonably satisfactory to the City. This indemnification shall survive the Closing of the transaction contemplated by this Agreement and the delivery of the Deed to the City. This indemnification is intended for the sole benefit of the City and shall not inure to the benefit of any third party.

12.2 By the City. Subject to and without in any way limiting the provisions of Paragraphs 5 and 9 of this Agreement, the City shall pay, protect, pay the defense costs of, indemnify and hold the Port and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of the City set forth in this Agreement; (b) failure of the City to perform any obligation required by this Agreement to be performed by the City; (c) liabilities arising out of the ownership, maintenance and/or operation of the Kirkland Segment by the City after Closing; or (d) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of the City, its agents or employees, that occurred after Closing. The City upon notice from the Port shall defend any such claim at its expense and with counsel reasonably satisfactory to the Port. This indemnification shall survive the Closing of the transaction contemplated by this Agreement and the delivery of the Deed to the City. This indemnification is intended for the sole benefit of the Port and shall not inure to the benefit of any third party.

12.3 Additional Indemnification Provisions. Solely to give full force and effect to the indemnification provisions contained herein and not for the benefit of any person, each party specifically and expressly waives any immunity it may have under the Washington State Industrial Act, RCW Title 51 or any other industrial insurance, workers' compensation or similar laws of the State of Washington and acknowledge that this waiver was mutually negotiated by the parties hereto as part of the consideration for this Agreement. This provision shall not be interpreted or construed as a waiver of any party's right to assert such immunity, defense or protection directly against any of its own employees. In no event shall either party's indemnification obligations under this Agreement be limited to the extent of any insurance available to or provided by the obligated party.

13. Default.

13.1 By Port. If there is an event of default under this Agreement by the Port, the City will be entitled (a) to seek specific performance of the Port's obligations under this Agreement or (b) to terminate this Agreement by written notice to the Port and Escrow Agent. If the City terminates this Agreement, all documents will be immediately returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, other than that the Port shall pay any costs of terminating the escrow.

13.2 By the City. If there is an event of default under this Agreement by the City, the Port will be entitled (a) to seek specific performance of the City's obligations under this Agreement or (b) to terminate this Agreement by written notice to the City and Escrow Agent. If the Port terminates this Agreement, all documents will be immediately returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, other than that the City shall pay any costs of terminating the escrow.

14. Notices. All notices to be given by each party to the other pursuant to this Agreement shall be delivered in person, by facsimile or deposited in the United States mail, properly addressed, postage fully prepaid, for delivery by certified or registered mail, return receipt requested. Notices given by personal delivery or facsimile shall be deemed effective upon receipt (provided notice by facsimile is on a business day and receipt is acknowledged); notices given by mail shall be deemed effective on the third business day after deposit. Notices may be given at the following addresses and facsimile numbers, until further notice by either party:

| | |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| If to Port: | Port of Seattle Real Estate Division P. O. Box 1209 Seattle, WA 98111 Attn: Managing Director Real Estate Division Facsimile: (206) 787-3280 |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|

| | |
|-----------------|------------------------------------------------------|
| With a copy to: | Port of Seattle Legal Department P.O. Box 1209 |
|-----------------|------------------------------------------------------|

Seattle, WA 98111
Attn: General Counsel
Facsimile: (206) 787-3205

If to City: City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033
Attn: Public Works Director
Facsimile: (425) 587-3807

With a copy to: City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033
Attn: City Attorney
Facsimile: (425) 587-3025

15. Miscellaneous:

15.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

15.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the sale of the real property interests in the Kirkland Segment and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the parties.

15.3 Modification or Amendment. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the parties hereto.

15.4 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

15.5 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties. The City or the Port shall not assign this Agreement, or any part thereof, without the other party's prior written consent, which consent may be withheld in the other party's sole and absolute discretion.

15.6 Event Date. If any event date falls on a Saturday, Sunday or legal holiday, then the time for performance shall be extended until the next business day.

15.7 Non-Waiver. No term or condition of this Agreement will be deemed to have been waived or amended unless expressed in writing, and the waiver of any condition or the

breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition.

15.8 Exhibits and Schedules. This Agreement contains the following Exhibits and Schedules which are attached and made a part of this Agreement: Exhibits A, B, C, D and Schedule 1.

15.9 Brokers. Neither party has had any contact or dealings regarding the Kirkland Segment, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee based on the purchase and sale contemplated by this Agreement.

15.10 Time. Time is of the essence of this Agreement.

15.11 Attorneys Fees/Litigation Expenses. Each party shall pay their respective attorneys fees with respect to this Agreement and Closing. In any controversy, claim or dispute arising out of, or relating to, this Agreement, the prevailing party shall be entitled to recover its costs and expenses of suit, including reasonable attorneys' fees.

15.12 Recitals; Construction; Definitions. Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein. Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. Except as otherwise expressly provided herein, all references in this Agreement to the Port, King County or the City shall mean the Port, King County or the City, each solely in its capacity as owners of fee or easement interests in the Port Property and with reference to King County, its status as the Interim Trail User.

15.13 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

15.14 Survival. The covenants and indemnifications made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof. The representations and warranties made in this Agreement shall not merge into the Deed but shall survive the Closing.

Signatures appear on following page

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first set forth above.

CITY OF KIRKLAND:

By: _____

Its: _____

PORT OF SEATTLE:

By: _____

Its: _____

City of Kirkland

Eastside Rail Corridor Interest Statement

Adopted by the Kirkland City Council April 19, 2011

Introduction

In December 2009, the Port of Seattle purchased the Woodinville subdivision from the BNSF Railroad. The Eastside Rail Corridor, stretching between Snohomish and Renton via Kirkland, thereby became a publicly-owned corridor. The City of Kirkland has long been interested in the corridor as a potential facility for bicycle and pedestrian transportation, having identified the Cross Kirkland Trail¹ project more than 15 years ago.

With the corridor coming into public ownership, the City Council directed the Transportation Commission to conduct public outreach, then identify and document the City's interests in the corridor. This Interest Statement is the product of that work.

Outreach elements included gathering comments at the Wednesday Market, fielding three on-line surveys, meeting with Boards, Commissions and neighborhood groups, walking the corridor, and receiving testimony at Transportation Commission meetings. The 2009 Final Eastside Commuter Rail Feasibility Study² prepared by Sound Transit and PSRC also served as a reference.

This Interest Statement is not a proposal or a recommendation per se. Rather, it is intended to guide evaluation of proposals for corridor development. Proposals that satisfy more of the interests would rank more highly than proposals that satisfy fewer of the interests. The conclusions at the end of this document describe the type of corridor development that is likely to be practical and meet the City's interests given current information.

Interests

Serve Transportation needs of Kirkland

Transportation on the corridor should be integrated with and support the City's transportation goals³ to provide travel options within Kirkland and to points outside Kirkland. This implies an interest in how and when the corridor is developed in other cities as well.

Keep the corridor in public ownership

The region has determined⁴ that the public interest is served by public ownership of the corridor, and the City of Kirkland supports this position. Keeping the corridor in public ownership may require the City to purchase its portion of the right-of-way, and Kirkland's ownership may help the City meet other interests as well.

The Eastside Rail Corridor (black line) touches many neighborhoods and parks in Kirkland



A section of the right-of-way in the Highlands neighborhood



Source: City of Kirkland

Council Goal concerning Balanced Transportation:

Kirkland values an integrated multi-modal system of transportation choices.

Council Goal: To reduce reliance on single occupancy vehicles. (September 2009)

Actively use the corridor in the near future

Because the corridor is a valuable asset that could be used to transport people, allowing it to remain unused or undeveloped has a high opportunity cost. The longer it is not used, the more resistance may be encountered toward any particular use.

Maintain the corridor in good condition

The corridor should be maintained to protect its value and the value of adjacent properties. Proper operation of drainage facilities, prevention of encroachment, and the preservation of structures and crossings are examples of ongoing maintenance needs.

Contribute to economic sustainability

Development of the corridor should be done in a cost-effective manner and should consider the short- and long-term costs of construction, maintenance, and operation. Development should support current and future plans for economic and neighborhood development.

Connect Totem Lake

Because of the corridor's proximity to the Totem Lake Urban Center⁵, it has the potential to help connect Totem Lake to the rest of the city and the region.

Protect neighborhood feel and atmosphere

Development of the corridor should allow for access across and along the corridor and not create barriers within or between neighborhoods. Residential neighborhoods should be protected from any excessive noise and safety impacts caused by corridor uses. Development of any trailheads, transit stations and/or parking locations should consider and minimize impacts to neighborhoods. The corridor is adjacent to several parks, schools and other amenities. These facilities should be protected appropriately as the corridor is developed.

Plan for a multi-use facility

In the long term, transit, pedestrians and cyclists should be able to simultaneously travel safely and efficiently in the corridor. Planning or implementing one transportation mode must not foreclose future corridor use by another mode. Additionally, underground utilities that currently use and will continue to use the corridor⁶ must be considered. Freight operations may be considered along the corridor, but there does not appear to be much commercial interest in freight rail service within Kirkland.

The existing corridor contains many drainage facilities that require regular maintenance.



Source: City of Kirkland

The Burke-Gilman trail in Seattle is on an abandoned railroad right-of-way.



Source: King County

This area in the Houghton neighborhood contains wetlands.



Source: City of Kirkland

A shared rail and trail facility



Source: Marin County Bicycle Coalition

Serve the transportation needs of pedestrians and bicyclists

A bicycle and pedestrian transportation facility should allow all-weather, day and night use. It should be sized to allow simultaneous safe passage for both pedestrians and bicyclists of all skill levels. Its development should include protection of existing connections and include new connections to the City's streets and trails. The Active Transportation Plan⁷ has a list of such connections.

Design Transit to efficiently move people

Successful transit systems must have certain characteristics. Service should be frequent, available most of the day, operate between desirable destinations, be easily accessible by potential riders and offer reasonable travel speeds. The best choice of transit technology may vary, with one system best in the shorter term and another better in the longer term. The viability of transit in the corridor should be compared to other options.⁸

Plan any transit use in close consultation with the City of Kirkland.

Locating transit stations and associated parking and feeder bus connections has major short- and long-term impacts on the surrounding neighborhoods and on the transportation network. A process to determine station locations should include extensive work with neighborhood groups, appropriate Boards and Commissions, and the City Council.

Consider grade-crossing delay and safety

Crossings must provide a reasonable level of safety and convenience for both users of the corridor and for street traffic. Design of the corridor should consider the potential time delays and safety concerns for all users of the corridor and facilities that intersect it.

Disclose and mitigate environmental impacts

Develop the corridor in a way that meets the City's goals for environmental sustainability. Prior to any development of the corridor, a complete environmental review should be conducted to identify and disclose impacts and to propose mitigations for those impacts. Noise, air quality, surface water and sensitive areas are topics that typically require analysis in an environmental review.

Conclusions

By its nature, an interest statement does not establish specific positions on issues. Instead it describes interests, which could be met in a variety of ways. The purpose of these conclusions is to demonstrate how the interests described above could be met, to varying degrees, by a range of development options.

Ultimately, the City's interests would be met by implementing a welcoming, transportation-oriented facility for pedestrians and bicyclists, coupled with a high-capacity transit system that connects Kirkland to the region.

These photos illustrate different types of transit. How they might help meet Kirkland's interests on the corridor would depend on a number of factors.

Heavy rail: Sound Transit Sounder



Source: Railpictures.net Image © PNWRailfan

Electric Light Rail: Sound Transit Link



Source: lisatown.com

Diesel multiple unit: DMU in service in Australia



Source: thetransportpolitic.com

Bus Rapid Transit: Community Transit Swift



Source: blogs.seattleweekly.com

The main focus for development of the corridor in the short term should be on a trail. A paved, accessible, bicycle and pedestrian trail would be far less expensive than a high-capacity rail or bus system and would require a less extensive planning process than would a transit option. However, it is important that trail planning be done with rail compatibility --that would meet Kirkland's interests-- as the long-term goal.

Due to its poor physical condition, the current infrastructure in the corridor is not capable of supporting rail traffic that would offer a viable transportation option. If rail were to be located on the corridor, a safe, fully-featured, high-capacity rail system – similar to Link Light Rail—is perhaps the ideal option. A high-capacity rail system would require a great deal of careful planning to meet Kirkland's interests.

Because of its high cost and Sound Transit timing, it is not likely that regional rail transit would be in operation before 2030. Moreover, the Eastside Rail Corridor may not be the best alignment for such a route. In the shorter term, there may be less expensive corridor transit options that could be developed, such as bus rapid transit linking the South Kirkland Park & Ride and Totem Lake.

While freight operations may be part of a future rail corridor, there does not appear to be much current commercial interest in freight rail service within the city. It is difficult to conceive of freight rail operations that would meet many of Kirkland's interests.

The Eastside Rail Corridor is a transportation facility that represents enormous opportunity for the City of Kirkland and the region. Kirkland is fortunate to have such a facility within its boundaries and should strive to see that its interests are met during development of the corridor.

City of Kirkland Transportation Commission

The City of Kirkland Transportation Commission is made up of seven members appointed by the City Council to four-year terms. The Commission meets every month to make recommendations on transportation policy to the City Council. Visit the Commission webpage where you can join the Transportation Commission List-Serve and automatically receive e-mail updates on the Commission's activities.

Commission members:
 Donald Samdahl, Chair
 Joel Pfundt, Vice Chair
 Morgan Hopper
 Tom Neir
 Thomas Pendergrass
 Sandeep Singhal
 Michael Snow
 Carl Wilson

Summary of interests

- **Serve transportation needs of Kirkland**
- **Keep the corridor in public ownership**
- **Actively use the corridor in the near future**
- **Maintain the corridor in good condition**
- **Contribute to economic sustainability**
- **Connect Totem Lake**
- **Protect neighborhood feel and atmosphere**
- **Plan for a multi-use facility**
- **Serve the transportation needs of pedestrians and bicyclists**
- **Design transit service to efficiently move people**
- **Plan any transit use in close consultation with the City of Kirkland**
- **Consider grade crossing delay and safety**
- **Disclose and mitigate environmental impacts**

¹ The Cross Kirkland Trail was originally envisioned as a trail that would operate beside what was at the time an active railroad corridor.

² 2009 Final PSRC and Sound Transit BNSF Eastside Commuter Rail Feasibility Study, 2009 Puget Sound Regional Council <http://www.psrc.org/transportation/bnsf>

³ City of Kirkland Council Goals. <http://www.ci.kirkland.wa.us/Assets/City+Council+Goals.pdf>

⁴ BNSF Corridor Preservation Study, Final Report May, 2007 Puget Sound Regional Council. Page 7. http://www.psrc.org/assets/3176/_07-20_BNSFfinalreport.pdf

⁵ In cooperation with member cities, Puget Sound Regional Council has designated a number of Urban Centers where regional growth is to be targeted. Totem Lake is the only Urban Center in Kirkland. Downtown Bellevue, downtown Redmond and Overlake are examples of other nearby Urban Centers.

⁶ Puget Sound Energy and Cascade Water Alliance are examples of current and potential users respectively.

⁷ *More People, More Places, More Often, an Active Transportation Plan* City of Kirkland, March 2009. Page 100. http://www.ci.kirkland.wa.us/depart/Public_Works/Transportation_Streets/Active_Transportation_Plan.htm

⁸ Ridership on existing King County Metro routes could be a reasonable benchmark. The proposed Bus Rapid Transit (BRT) System on I-405 could also be compared.