

RESOLUTION R-5487

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING A MEMORANDUM OF UNDERSTANDING WITH KING COUNTY REGARDING USE OF THE EASTRAIL CORRIDOR TO ACCESS COMMERCIAL PROPERTY IN KIRKLAND AND CONSTRUCTION OF A NEW EASTRAIL WILLOWS ROAD NE INTERIM TRAIL CONNECTION AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID MEMORANDUM ON BEHALF OF THE CITY OF KIRKLAND.

1           WHEREAS, the City of Kirkland ("the City") wishes to enter  
2 into a 20- to 30-year renewable use agreement with King County  
3 ("the County") (collectively, "the Parties") across a portion of the  
4 Eastrail Corridor at the extension of 134<sup>th</sup> Court NE located within  
5 the City; and

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7           WHEREAS, prior to entering into such use agreement the  
8 City and the County need to identify certain rights and obligations  
9 by way of a Memorandum of Understanding; and

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11           WHEREAS, both the County and the City are, among other  
12 jurisdictions, owner jurisdictions of portions of the Eastrail  
13 Corridor; and

14  
15           WHEREAS, subject to easements by other entities, the City  
16 owns portions of the Eastrail Corridor located within the City limits,  
17 known as the Cross Kirkland Corridor ("the CKC"), and the County  
18 owns portions of the Eastrail Corridor that are located both outside  
19 of and within the City limits of Kirkland; and

20  
21           WHEREAS, the October 2013 "Recommendations for the  
22 Eastside Rail Corridor" (since renamed the Eastrail) adopted by the  
23 Eastrail Regional Advisory Council highlight that the Eastrail should be a  
24 multi-use corridor that supports mobility and transportation  
25 connections, economic opportunities, cultural opportunities, natural  
26 areas, scenic vistas, historic legacy, public health, public safety, equity  
27 and sustainability; and

28  
29           WHEREAS, the May 2019 "Completing the Eastrail" Funding  
30 Commission Report reiterates that the historic railroad line, will be "more  
31 than a trail" and will be a "multi-use corridor enhancing transportation  
32 for the region and supporting utility infrastructure" and "a centerpiece

33 for urban and economic development, offering substantial advantages  
34 for local businesses competing to recruit and retain top talent"; and  
35

36 WHEREAS, a multi-decade business owner in the City, Lee  
37 Johnson Chevrolet, which owns and operates auto dealerships in  
38 the City and the County, and whose different lines of auto sales  
39 provide substantial sales tax to the City and the County, intends  
40 to sell its current auto dealership property near the proposed  
41 Sound Transit I-405 and NE 85<sup>th</sup> Street Bus Rapid Transit ("BRT")  
42 station for redevelopment that will maximize the local and regional  
43 benefit of the new BRT station use and potentially provide  
44 thousands of jobs for the region located close to high capacity  
45 transit service; and  
46

47 WHEREAS, Lee Johnson Chevrolet ("the Developer") has  
48 purchased parcels of real property in the Totem Lake area of the  
49 City to retain the auto dealership business in the City and the  
50 County ("the Site"); and  
51

52 WHEREAS, the Site lies adjacent to a portion of the  
53 County's Eastrail Corridor ownership and requires access across  
54 the Eastrail Corridor at 134<sup>th</sup> Court NE in order for business to be  
55 conducted on the Site; and  
56

57 WHEREAS, the City wishes to enter into a 20 to 30-year  
58 renewable use agreement with the County for the City to create,  
59 use and maintain a new public roadway crossing at 134<sup>th</sup> Court  
60 NE, crossing a County-owned segment of the Eastrail Corridor and  
61 providing access to the Site, such that the Site can be accessed in  
62 a manner that meets the requirements to protect the public  
63 health, safety and welfare, including facilitating police and fire  
64 emergency response times; and  
65

66 WHEREAS, The City and County agree that they have  
67 shared goals to extend a safe interim trail from the CKC east along  
68 the Eastrail to the north side of the Willows Road NE crossing of  
69 the Eastrail Corridor as soon as possible; and  
70

71 WHEREAS, as compensation for authorization of the new  
72 public roadway crossing, and to facilitate the interim trail  
73 extension, the City shall reimburse King County up to \$600,000  
74 for actual costs associated with rail removal and construction on  
75 the interim, gravel trail on the Eastrail as well as construct and

76 operate interim trail crossings of the Eastrail Corridor at 132<sup>nd</sup>  
77 Place NE and Willows Road NE; and

78  
79 WHEREAS, the Parties have been negotiating terms and  
80 conditions that shall be related to the City’s use of the Eastrail  
81 Corridor at 134<sup>th</sup> Court NE and have reduced those terms and  
82 conditions into a Memorandum of Understanding to be signed by  
83 the City and the County. A copy of the Memorandum of  
84 Understanding is attached hereto as **Exhibit A**.

85  
86 NOW, THEREFORE, be it resolved by the City Council of the  
87 City of Kirkland as follows:  
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89 Section 1. The City Manager is hereby authorized and  
90 directed to execute on behalf of the City a Memorandum of  
91 Understanding substantially similar to that attached as **Exhibit A**,  
92 which is entitled “Memorandum of Understanding between the  
93 City of Kirkland and King County Regarding use of The Eastrail  
94 Corridor to Access a Commercial Property in the City of Kirkland  
95 And Construction of new Trail Between 132<sup>nd</sup> Place NE and 139<sup>th</sup>  
96 Avenue NE/Willows Road.”  
97

98 Passed by majority vote of the Kirkland City Council in open  
99 meeting this \_\_\_\_\_ day of July 2021.

100 Signed in authentication thereof this \_\_\_\_\_ day of July 2021.  
101

\_\_\_\_\_  
Penny Sweet, Mayor

Attest:

\_\_\_\_\_  
Kathi Anderson, City Clerk

**Memorandum of Understanding between the City of Kirkland and King County  
Regarding use of The Eastrail Corridor to Access a Commercial Property  
in the City of Kirkland And Construction of new Trail Between 132<sup>nd</sup> Place NE  
and 139<sup>th</sup> Avenue NE/Willows Road**

This agreement by and between the City of Kirkland (“the City”) and King County (“the County”) (collectively, “the Parties”) is entered into for the purpose of providing the City with a 20- to 30-year renewable use agreement across a portion of the Eastrail Corridor at the extension of 134<sup>th</sup> Court NE located within the City and addressing related matters. This agreement shall be referred to herein as the “Memorandum of Understanding” or “Memorandum.”

*Whereas*, both the County and the City are, among other jurisdictions who are not parties to this Memorandum, owner jurisdictions of portions of the Eastrail Corridor; and

*Whereas*, subject to easements by other entities, the City owns portions of the Eastrail Corridor located within the City limits, known as the Cross Kirkland Corridor (“the CKC”); and the County owns portions of the Eastrail Corridor that are located both outside of and within the City limits of Kirkland;

*Whereas*, the October 2013 “Recommendations for the Eastside Rail Corridor” (since renamed the Eastrail) adopted by the Eastrail Regional Advisory Council highlight that the Eastrail should be a multi-use corridor that supports mobility and transportation connections, economic opportunities, cultural opportunities, natural areas, scenic vistas, historic legacy, public health, public safety, equity and sustainability;

*Whereas*, the May, 2019 “Completing the Eastrail” Funding Commission Report reiterates that the historic railroad line, will be “more than a trail” and will be a “multi-use corridor enhancing transportation for the region and supporting utility infrastructure” and “a centerpiece for urban and economic development, offering substantial advantages for local businesses competing to recruit and retain top talent”;

*Whereas*, a multi-decade business owner in the City, Lee Johnson Chevrolet, which owns and operates auto dealerships in the City and the County, and whose different lines of auto sales provide substantial sales tax to the City and the County, is in negotiations with Google, Inc. to sell its current auto dealership property near the proposed Sound Transit I-405 and NE 85<sup>th</sup> Street Bus Rapid Transit station

for redevelopment as Class A technology office space that is a more appropriate land use and will provide thousands of jobs for the region located close to high capacity transit service;

*Whereas*, Lee Johnson Chevrolet (“the Developer”) has purchased parcels of real property in the Totem Lake area of the City to retain the auto dealership business in the City and the County, including King County Parcel Number 2726059043, located at 12545 13<sup>th</sup> Avenue NE, Kirkland, Washington, 98034 and adjacent King County Parcel Number 2726059101 (which together comprise “the Site”);

*Whereas*, the Site lies adjacent to a portion of the County’s Eastrail Corridor ownership and requires access across the Eastrail Corridor at 134<sup>th</sup> Court NE in order for business to be conducted on the Site;

*Whereas*, the City wishes to enter into a 20- to 30-year renewable use agreement with the County for the City to create, use and maintain a new public roadway crossing (“the new public roadway crossing”) at a new northerly extension of 134<sup>th</sup> Court NE, crossing a County-owned segment of the Eastrail Corridor and providing access to the Site, such that the Site can be accessed in a manner that meets the requirements to protect the public health, safety and welfare, including facilitating police and fire emergency response times;

*Whereas*, the County desires to promote the safety and high-quality experience of trail users and therefore intends to not increase the number of trail crossings in the subject Eastrail Corridor area through this Memorandum and has the legal authority to extinguish existing crossings;

*Whereas*, Tod Johnson of LMJ Enterprises, representing the Developer, and the City received a letter of intent from the King County Department of Natural Resources dated November 27, 2019, describing the potential conditions for approval of such a long-term renewable use agreement that had been discussed by the three parties and this Memorandum is substantially similar to the letter but includes recent changes to reflect (i) emergency response considerations; (ii) that King County has since removed the railroad tracks and ties from the Eastrail Corridor in the vicinity of the Developer’s Site; and (iii) the County has begun construction of an interim trail at this same location;

*Whereas*, the Parties acknowledge that execution of this Memorandum is not a substitute for formal approvals, for example from respective legislative bodies, that may be required to achieve the necessary and desired certainty of commitments to elements included in this Memorandum.

*Now, therefore*, by their signatures below, the City and County hereby agree as follows:

**Roadway Element**

1. King County agrees to enter into a renewable 20- to 30-year use agreement with the City, subject to King County Council approval, for the purpose of construction, use and maintenance by the City of a minor, 2-lane new public roadway crossing at 134<sup>th</sup> Court NE, crossing a County-owned segment of the Eastrail Corridor and providing access to the Site. The new public roadway crossing of the constructed trail will be built at the approximate location identified in Exhibit A to this Memorandum, with said features and related features of the agreement also being illustrated in Exhibit A. The specific location of the public roadway crossing will be detailed in the use agreement.
2. The Parties understand, acknowledge, and agree that the Eastrail Corridor is part of an interstate freight rail corridor that has been "railbanked" subject to interim trail use under the National Trails System Act, also known as the Rails-to-Trails Act (16 U.S.C. §1247(d) and 49 C.F.R. §1152.29). As a result of the Eastrail Corridor's railbanked status, interstate freight rail service may be reactivated over the corridor, which in turn may result in the demolition, destruction, removal, or relocation of any improvements that the City may make to the corridor. The City understands, acknowledges, and agrees that the City shall bear all risk of loss of any and all improvements that City may make to the corridor, and that if interstate freight rail service is reactivated, then the use agreement shall expire and the City may be required to demolish, remove, or relocate the City's improvements at the City's sole cost and expense, or to negotiate with the person or entity that reactivates rail service to arrange for the City's continued use of the corridor.
3. The new public roadway crossing will include a crossing of the Eastrail Corridor consistent with the standards of the American Association of State Highway and Transportation Officials ("AASHTO"), Washington State Department of Transportation ("WSDOT") guidance, and the railbanking obligations imposed through Section 8(d) of the National Trail Systems Act (16 U.S.C. §1247(d) and 49 C.F.R. §1152.29).

4. Once the new public roadway crossing is open, use of the Eastrail Corridor will have priority over use of the roadway, with the roadway being stop controlled at the crossing.

### **Traffic Element**

5. The City will enter into a binding agreement with the Developer that will require the Developer to agree that deliveries and staff will not access the Site from the new public roadway crossing of the Eastrail Corridor, but will instead enter the Site from NE 126<sup>th</sup> Place, as the auto dealership traffic over the Eastrail Corridor is intended to be primarily customer traffic. The City will proactively use its relevant authorities, policies, programs, and/or other capacity to support the closure of the existing crossing of the Eastrail Corridor in the County's ownership located on the alignment of 135<sup>th</sup> Avenue, a private road that is identified as a potential new public roadway in the City's Transportation Master Plan (2015). This closure is to be complete coincident in time with the opening of the new public roadway crossing at 134<sup>th</sup> Court NE. The closure shall be accomplished in accordance with the County's discretionary legal authority to extinguish the crossing of the Eastrail that currently provides access to King County Parcel No. 2726059092.
6. The City will enter into a binding agreement with the Developer that will require the Developer to adhere to the railbanking standards set forth in Section 8(d) of the National Trail Systems Act (16 U.S.C. §1247(d) and 49 C.F.R. §1152.29) in construction and design of the new crossing over the Eastrail Corridor.
7. The City will enter into a binding agreement with the Developer that will require the Developer to agree to enable access connecting the new public roadway crossing over the Eastrail Corridor to the building occupying a parcel adjacent to the Developer's parcel, King County Parcel No. 2726059092 and for the Developer to build a paved connection that allows vehicular access to the public roadway to and from said parcel. The City or Developer will coordinate with the owner of King County Parcel No. 2726059092 to ensure that the proposed new access will accommodate the anticipated long-term access needs of the parcel.
8. The City will partner with the Developer to design the public road connection across the Site to NE 126<sup>th</sup> in order to maintain lower traffic volumes at the new Eastrail Corridor crossing while allowing police and fire vehicles access for emergency response.

9. The City shall provide a draft use agreement for the new public roadway crossing to King County for review.

#### **Mitigation for Trail User Impacts/Willows Road**

10. The City and County agree that they have shared goals to open a safe trail from the CKC to the north side of the Willows Road crossing of the Eastrail Corridor as soon as possible.
11. To that end, the City shall reimburse King County up to \$600,000 for actual costs associated with rail removal and construction on an interim, gravel trail between 132<sup>nd</sup> Place NE and 139<sup>th</sup> Avenue NE/Willows Road, where the Eastrail Corridor trail connects with the City's Willows Road Connector project. The contribution may be provided by the City, by the Developer, or a combination of the City and the Developer. King County will provide the City with documentation demonstrating the amount of the costs and the City will reimburse the County within 60 days.
12. The City will construct and operate interim trail crossings of the Eastrail Corridor at 132<sup>nd</sup> Place NE and Willows Road consistent with applicable City standards and County regional trail standards, to be complete as soon as feasible and no later than 2023.

#### **Timing**

13. It is the Parties' intent to work toward negotiation and preparation of a final agreement diligently and in good faith, and that a final agreement incorporating the terms of the Memorandum be entered into by both Parties by no later than August 1, 2021, with the understanding that King County Council approval, which is required for final acceptance, will adhere to a timeline set by the Council.

#### **Additional Approvals**

14. The Parties will, if necessary, upon execution of this Memorandum timely initiate and complete any additional, formal approval processes needed to achieve the desired certainty of commitments for any element of this Memorandum.



**Additional Provisions:**

15. Retained Responsibility and Authority. Except as expressly provided for herein, the Parties retain the responsibility and authority for managing and maintaining their own respective portions of the Eastrail Corridor.
16. Liability. No liability will arise or be assumed between the Parties as a result of the Memorandum.
17. No Third Party Benefit. The Memorandum and/or agreements, aims and objectives stated herein are not intended to, and do not, create any rights in any named or unnamed third parties.
18. Dispute Resolution. If any dispute arises among the Parties which is not resolved by routine meetings or communications, the Parties agree to seek resolution of such dispute in good faith by meeting, as soon as feasible. If the Parties do not come to an agreement on the dispute, the Parties may agree to pursue mediation through a process to be mutually agreed upon, with the Parties to the dispute sharing equally the costs of mediation and assuming their own costs.
19. Notice. Any notice or communication required or permitted under this Memorandum shall be sufficiently given if delivered in person or by email to the following:  
  
The City – Kurt Triplett, Kirkland City Manager at *ktriplett@kirklandwa.gov*  
The County – Christie True, KC DNRP Director at *christie.true@kingcounty.gov*
20. Governing Law. This Memorandum shall be construed in accordance with the laws of the State of Washington.
21. Assignment. Neither Party may assign or transfer the responsibilities or agreements made herein without the prior written consent of the non-assigning Party, which approval shall not be unreasonably withheld.
22. Amendment. This Memorandum may only be amended or supplemented by agreement of both Parties in writing.

23. Severability. If any provision of this Memorandum is found to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Memorandum is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

IN WITNESS THEREOF, the Parties have executed this Memorandum, effective on the latest date shown below. The signatories below represent and warrant that they possess the authority to execute this Memorandum and bind their respective entities.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_, Washington

**City of Kirkland**

By: \_\_\_\_\_  
Kurt Triplett

Its: \_\_\_\_\_  
City Manager

Dated this \_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_, Washington

**King County**

By: \_\_\_\_\_

Its: \_\_\_\_\_