

**INTERLOCAL AGREEMENT BETWEEN KING COUNTY AND THE
PORT OF SEATTLE REGARDING EASTSIDE RAIL CORRIDOR**

This Agreement is hereby entered into by King County, a home rule charter County and political subdivision of the State of Washington (the "County"), and the Port of Seattle, a municipal corporation of the State of Washington (the "Port").

WHEREAS, the Port and County are entering into a purchase and sale agreement and a donation agreement ("Acquisition Agreements") with the BNSF Railway Co. ("BNSF") to acquire the Eastside Rail Corridor ("Subdivision"), which is a railroad corridor that includes a portion of the Woodinville Subdivision extending north approximately from mile post 5.0 in Renton, Washington to and including the railroad bridge at milepost 38.4 in Snohomish County, Washington, and a portion of the Redmond Spur extending approximately from milepost 0.0 in Woodinville south to milepost 7.3 in Redmond;

WHEREAS, at closing the Port will acquire a portion of the Subdivision subject to continuing freight railroad service (the "Freight Property"), and will acquire a portion of the Subdivision in railbanked status (the "Property"). The Freight Property is located in the Woodinville Subdivision between milepost 23.8 and milepost 38.4 in Snohomish County. The Property is located in the Woodinville Subdivision between milepost 23.8 and approximately mile post 5.0, and within the Redmond Spur between mile post 0.0 and mile post 7.3;

WHEREAS, the County has performed substantial negotiations with BNSF and due diligence regarding the Subdivision, which work is of significant benefit to the Port for its acquisition of the Subdivision;

WHEREAS, the Parties desire to convert the Property to public uses, including trail uses, following the acquisition of the Subdivision by the Port pursuant to and in accordance with 49 C.F.R. 1152.29 and Section 8(d) of the National Trails System Act (also known as the "Rails-to-Trails Act"), 16 U.S.C. 1247(d) (collectively, and as any of the foregoing may hereafter be amended or interpreted by binding judicial or administrative authority, the "Railbanking Legislation");

WHEREAS, the Port desires the County to be the Interim Trail User for the Property because the County has substantial expertise and experience in acquiring, developing, maintaining and operating public trails, and the County is willing to assume this responsibility so long as it has sufficient rights to the Property to serve as the Interim Trail User and develop, maintain and operate a public trail thereon;

WHEREAS, the Parties intend that the Property will be put to use for regional recreational trail and for other public transportation use, including but not limited to rail or other transportation purposes other than interstate freight service ("Transportation Use"), and that the intended trail use will not prevent Transportation Use on the Property, but rather will be designed and developed to accommodate Transportation Use on the Property;

WHEREAS, the Parties acknowledge and agree that any railbanking, trail use or other public purpose proposed for the Property will be subject to the authorization and jurisdiction of the Surface Transportation Board ("STB" or the "Board"). STB authorization for the intended railbanking will be obtained upon the issuance of a Notice of Interim Trail Use ("NITU") in accordance with the Board's applicable rules and procedures;

WHEREAS, to facilitate the role of the County as the Interim Trail User, the County is a party to the Acquisition Agreements for the limited purpose of securing its rights to the Property by contributing to the purchase price, acquiring a Public Multipurpose Easement (defined below) from the Port on the Property at closing, and obtaining the same rights and obligations under the Acquisition Agreements with BNSF related to the inspections, title, representations, warranties, condition of property, environmental matters, contingencies, and remedies with regard to the Public Multipurpose Easement on the Property as the County would have were it to obtain the Easement directly from BNSF under the Agreements;

WHEREAS, the Parties agree that it may be in the public interest for the County to acquire directly from BNSF certain segments of the Property at closing through a partial assignment to the County of the Port's rights and obligations in the Acquisition Agreements with BNSF;

WHEREAS, the Parties agree that if after closing the Port in good faith determines to transfer any or all of the Subdivision, that the County and other appropriate public agencies in the state should have the first opportunity to acquire such property;

WHEREAS, the Parties agree that acquisition of the Property is of substantial benefit to the region, that the Port and the County will jointly carry out a formal, multi-agency process ("Regional Process") to plan and recommend appropriate uses of the Property, and that the existing rails will be kept in place while the Regional Process considers the appropriate uses of the Property; and

WHEREAS, the parties are each authorized to enter into this Agreement pursuant to RCW 39.34 (the Interlocal Cooperation Act), RCW 39.33 (Intergovernmental Disposition of Property) and Article 11 of the Washington State Constitution.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by the parties as follows:

1. Purpose of the Agreement and relationship to Acquisition Agreements.

1.1 The purpose of this Agreement is to facilitate the acquisition, planning, development, maintenance and operation of the Subdivision for the benefit of the public, and to coordinate between the Port and the County implementation of the Acquisition Agreements.

1.2 Unless otherwise indicated, all terms used herein are defined as in the Acquisition Agreements.

2. King County and Port to Provide Negotiation and Due Diligence Materials.

2.1 The County will promptly provide to the Port copies of the following materials that have resulted from the County's significant negotiation and due diligence activities:

2.1.1 Preliminary title commitments;

2.1.2 The County's reviews of the preliminary title commitments to the extent such reviews are completed;

2.1.3 Maps and documents prepared by Pacific Northwest Title;

2.1.4 One set of GIS aerial photographs of the Subdivision prepared by the County;

2.1.5 Track maps provided from BNSF to the County;

2.1.6 One set of value section maps provided from BNSF to the County;

2.1.7 All written materials provided to the County by RL Banks and Associates;

2.1.8 The completed appraisal of the Subdivision prepared for the County by Allen Brackett Shedd Real Estate Appraisers; and

2.1.9 The completed Screening Level Environmental Review of the Subdivision prepared for the County by Camp Dresser & McKee, Inc. ("CDM"), the associated materials provided with the Review, and any follow-up materials provided by CDM.

2.2 All materials will be provided by the County in AS IS condition, with no representation or warranty as to the accuracy or completeness of the contents of the materials.

2.3 The Port will pay the County \$500,000 for these materials at Closing.

2.4 Upon request of the County, Port will promptly provide to the County copies of materials in its possession that are comparable in nature and subject matter to the materials to be provided by the County under Section 2.1 of this Agreement and Port will receive from County reasonable compensation for such materials to be mutually agreed to by Port and County. All such materials will be provided by the Port in AS IS condition, with no representation or warranty as to the accuracy or completeness of the contents of the materials.

2.5 Under this Section 2, neither Party shall be obligated to provide any materials to the other that are attorney-client or attorney work product materials.

3. Obligations of the Port and the County relating to the Acquisition Agreements.

3.1 The County shall be the Interim Trail User under 49 C.F.R. 1152.29 and 16 U.S.C. 1247(d) for the Property, and in doing so shall assume the following obligations regarding the Property in the manner required by the Statement of Willingness to Assume Financial

Responsibility required as a condition precedent to the issuance of a NITU (the "SWAFR") in accordance with the Railbanking Legislation: (i) all responsibility for the management of the Property; (ii) all responsibility for all legal liabilities arising out of or relating to the transfer, use, possession, management, operation or control of the Property; and (iii) all other obligations arising under the NITU, the SWAFR, and/or the Railbanking Legislation as it applies to the Property (together "Railbanking Obligations").

3.2 Consistent with Section 8.1 of the Acquisition Agreements, BNSF will file a request with the STB for authorization to abandon the Property, and the County shall timely take the steps necessary to apply to the STB to become the Interim Trail User for the Property and to receive the reactivation rights at Closing, including the SWAFR, and shall at Closing and after STB approval execute a Trail Use Agreement with BNSF that includes transfer to the County of the reactivation rights for the Property.

3.3 Consistent with Section 9.2 of the Acquisition Agreements, the Port shall at Closing grant the County a Public Multipurpose Easement over the Property ("Easement") in substantially the form attached to hereto and incorporated herein as Exhibit A. The terms of the Easement shall be enforceable as a matter of contract under this Agreement, and as binding easement obligations running with the land.

3.4 Consistent with Section 2 of the Acquisition Agreements the County shall pay the Port \$1,903,000 at Closing for the Easement.

3.5 The County and Port shall participate in the implementation of the Acquisition Agreements according to their respective interests therein and in cooperation with one another. Each Party shall, upon request, share with the other, all materials concerning the Property provided to it by BNSF. Such materials will be provided in AS IS condition, with no representation or warranty as to the accuracy or completeness of the contents of the materials. Each Party shall have the right to participate in all discussions and negotiations with BNSF concerning or affecting the Property.

3.6 With regard to Section 4.3 of the Acquisition Agreements concerning the Title/Survey Inspection for the Property, the Port, with the agreement of the County, shall give timely joint notice of any objections to title, which notice shall include any objections raised by either Party.

3.7 With regard to Section 10.1 of the Acquisition Agreements concerning Port or County's Default, in the event of a material default where BNSF elects to terminate the Acquisition Agreements and retain \$5,000,000 (five million dollars) of Earnest Money, Port shall be responsible for such damages if it causes such Breach, County shall be responsible for such damages if it causes such breach, and if both Port and County cause such breach, each shall be responsible for damages based on each Party's relative contribution to such breach.

3.8 With regard to Section 10.2 of the Acquisition Agreements concerning BNSF's default, in the event of a material default by BNSF the Port and the County will cooperate in good faith to make a joint determination and provide notice to BNSF as to their remedy election.

If both Port and County desire to obtain specific performance of BNSF's obligations under the Acquisition Agreements, then the Parties shall together elect to obtain specific performance under Section 10.2 of the Acquisition Agreements, and each Party shall bear its own expenses to pursue such remedy. If Port desires to obtain specific performance of BNSF's obligations under the Acquisition Agreements and the County does not, then the Parties shall together elect to obtain specific performance under Section 10.2 of the Acquisition Agreements and the County shall if requested in writing by the Port participate in and support any effort to obtain specific performance, provided the Port shall pay and/or reimburse all costs and liabilities, including legal fees and expert fees, of such effort or that may result from such effort, both on behalf of itself and the County. If County desires to obtain specific performance of BNSF's obligations under the Acquisition Agreements and the Port does not, then the Parties shall together elect to terminate the Acquisition Agreements under Section 10.2 of the Acquisition Agreements.

3.9 The County shall have the right to enforce directly against BNSF the terms of the Acquisition Agreements for the Property, including without limitation issues that relate to title, condition of the property, and environmental matters. The Port may also seek to enforce the terms of the Acquisition Agreements for the Property. To the extent that both Parties seek to enforce those terms, the Port and the County shall cooperate with one another to do so, and with regard to the liability of the Port and the County on one hand and BNSF on the other hand, the Port and County will allocate liability between themselves pursuant to this Agreement and the Easement.

4. Rights and Obligations of the Port and the County Regarding the Property; Planning Period.

4.1. The rights and obligations of the Port and the County regarding the Property are set forth in detail in the Easement.

4.2 Planning Period.

The rights and obligations of the Parties in the Easement shall be supplemented by this Agreement as to the limited period of time between the execution of this Agreement and the joint determination of the Parties under Section 2.1.1 of the Easement. This period of time shall be referred to as the Planning Period.

4.2.1 Prior to Closing the Port and the County will jointly decide what capital improvements, such as fencing, barriers or signage, if any, are initially needed to address safety concerns on the Property. After Closing such capital improvements shall be carried out as set forth in Section 3.2.1 of the Easement.

4.2.2 During the Planning Period the Port and the County will not remove any existing rails on the Property.

4.2.3 During the Planning Period the County and Port may conduct surveys, mapping, geotechnical, environmental investigations or other similar activities ("Planning Activities") on any portion of the Property not subject to Transportation Use associated with the Regional Process, provided the Port shall provide the County written notice of any invasive

activities, and thereafter the Port and the County will coordinate the conduct of such activities. The County shall have the right to perform Planning Activities for any portion of the Property that is subject to Transportation Use during the Planning Period in coordination with the Transportation User.

5. Indemnification, Insurance and Hazardous Substances Liability.

Indemnification, insurance and hazardous substances liability issues related to the Property are as set forth in the Easement.

6. King County Right to Partial Assignment of Acquisition Agreements.

6.1 On or before 5:00 pm on July 1, 2008, Port may, subject to King County Council approval, assign to County all of its rights under the Acquisition Agreements to acquire the segment of the Property on the Woodinville Subdivision between approximately mile post 5.0 in Renton and mile post 11.8 in Bellevue at a point just north of the Wilburton Trestle, the Redmond Spur, or both, such that at closing the County would acquire ownership of such segments by paying to the Port a per-segment price to be determined by the appraisal by appraiser Murray Brackett of Allen Brackett Shedd Real Estate Appraisers referenced in Section 2.1.8 of this Agreement.

6.2 If the Port assigns to the County the right to purchase one or more segments of the Subdivision, then upon such assignment County shall assume all the rights and obligations of the Port vis-a-vis BNSF under the terms of the Acquisition Agreements as to such segments, and the provisions of this Agreement relating to the grant by the Port of the Easement shall not apply to any such segments.

7. Future Disposition of Subdivision.

7.1 King County Right of First Opportunity to Acquire.

After Closing, should the Port in good faith determine to offer or agree to transfer ownership of any or all of the Subdivision to any entity, the Port shall provide the County with one-hundred-twenty days notice of such determination and offer the County the right to purchase such property at an amount as determined by the appraisal prepared by appraiser Murray Brackett of Allen Brackett Shedd Real Estate Appraisers referenced in Section 2.1.8 of this Agreement, plus compounded annual interest from the date the Port acquired the Subdivision from BNSF at a rate equal to three percent per annum (the "Price"). If the County does not exercise the right to purchase such property within that period, the right to purchase such property in an amount no greater than the Price may be exercised within one hundred twenty days thereafter by any other public agency in the State authorized to provide transit, rail services or public trails. If no such agency exercises the right to purchase such property within that period, all rights of the County under this section as to that particular portion of the Subdivision shall immediately terminate, and the Port may transfer that particular portion of the Subdivision to any entity and on any terms it deems appropriate.

7.2 Railbanking Freight Property.

After Closing, should any entity seek to abandon or discontinue the obligations to provide freight common carrier service for any or all of the Freight Property, then Port and County shall cooperate to allow the County or another appropriate entity to seek a NITU or CITU in order to railbank such Property.

7.3 The rights and obligations in this Section 7 shall continue in full force and effect so long as the Port continues to own all or a portion of the Subdivision.

8. Regional Planning Process for BNSF Corridor.

The Port and the County will cooperate in good faith with one another to jointly carry out a formal, multi-agency process to plan and recommend appropriate uses of the Property.

9. Agreement Contingency.

This Agreement is contingent on Closing as required by the Acquisition Agreements. If the Acquisition Agreements are terminated without the Closing having occurred, this Agreement will terminate, except that it will continue in full force and effect as to any obligations or disputes that arose under the Acquisition Agreements or under this Agreement prior to or as part of such termination.

10. Duration.

This Agreement shall continue in effect so long as the Port owns all or a portion of the Property and the County is the Interim Trail User and holder of the Easement for all or a portion of the Property. If this Agreement expires under this Section 10, it will only be partially terminated. In such case, the Agreement will continue in full force and effect as to any obligations or disputes that arose prior to such expiration and it will continue in full force and effect as to the terms of Section 7.

11. Administration and Identification of Contacts.

This Agreement shall be administered by _____ and _____, which shall be contacted as follows:

County:

Port:

12. Dispute Resolution.

12.1 Any claim, dispute or other matter in question arising out of or related to this Agreement, including any inability of the Parties to make joint determinations as called for by this Agreement ("Disputes") shall be exclusively subject to the following alternative dispute resolution procedure as a condition precedent to the institution of legal or equitable proceedings by either party. This requirement cannot be waived except by an explicit written waiver signed by the Parties.

12.2 The Parties shall negotiate in good faith and use their best efforts to resolve any Disputes that may develop under this Agreement. The Port's Chief Executive Officer (or his/her designee) and the King County Executive (or his/her designee) along with any staff or technical persons any of the Parties desire, shall meet within seven (7) days after written request from either party and attempt to resolve a Dispute. The Parties may agree to extend the time provided for in this Section for an additional seven (7) days.

12.3 If a Dispute is not resolved under the procedure set forth in Section 12.2, or within such additional time as the Parties mutually agree, then the Parties shall endeavor to resolve a Dispute by mediation with a mediator agreed to by the Parties. A Party shall submit a request for mediation in writing to the other Party. Mediation shall proceed in advance of legal or equitable proceedings. Any contractual or statutory deadlines as between the Parties, including without limitation statutes of limitation, shall be tolled pending mediation for a period of 60 (sixty) days from the date of the mediation request, unless tolled for a longer period by agreement of the parties. Final authority for settlement may be subject to the approval of the Parties respective legislative bodies.

12.4 The Parties shall not commence litigation on a Dispute unless the Dispute has been properly raised and considered in the above mediation procedure. The Parties shall share equally on the costs of the mediation. Any mediation under this Agreement shall be held in King County, Washington. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

12.5 If Port or County reasonably determine that circumstances require immediate action to prevent or mitigate significant damage to or loss of the Property, then such Party may pursue any immediate remedy available at law or in equity without having to follow these alternative dispute resolution procedures in this Section, and then pursue such alternative dispute resolution procedures.

12.6 This Section 12 shall not apply to any dispute between the Parties that also relates to a dispute with BNSF.

13. General Terms and Conditions.

13.1 Headings. The headings in this Easement are for convenience only and shall not be deemed to expand, limit, or otherwise affect the substantive terms of this Agreement.

13.2 Neutral Authorship. Each party has been represented by counsel in connection with the negotiation, execution and delivery of this Agreement. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same will apply in connection with the construction or interpretation of any of the provisions of this Agreement.

13.3 Records, Audits, and Inspections. During this Term of this Agreement, each party's books, records and other materials related to any matters covered by this Agreement and not otherwise privileged shall be subject to inspection, review, and/or audit by the other party at the inspecting party's sole expense. Such books, records and other materials shall be made available for inspection during regular business hours within a reasonable time of the request.

13.4 Assignment. Neither party may assign its rights under this Agreement or any interest therein without the other party's prior written approval.

13.5 Governing Law; Jurisdiction and Venue; Attorneys' Fees. The laws of the State of Washington shall govern the interpretation and enforcement of this Agreement. The parties agree that the Superior Court in King County, Washington, shall be the sole and exclusive venue for any action or legal proceeding for an alleged breach of any of the terms and conditions set forth herein, or to enforce, protect, determine or establish any term, covenant or provision of this Easement or the rights hereunder of either party; and the parties hereby agree to submit to the personal jurisdiction of said court. If either party brings such an action or legal proceeding, the prevailing party shall be entitled to recover from the non-prevailing party, as part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and costs, expert witness fees and court costs, including those incurred upon appeal, as may be fixed by the court.

13.6 Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable unless striking such provision materially alters the intention of the parties. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provisions it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

13.7 Non-Waiver. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right subsequently to enforce and compel strict compliance with every provision of this Agreement.

13.8 Entire Agreement; Relation to Easement and Acquisition Agreements. This Agreement, the Acquisition Agreements and the Easement set forth the entire agreement between the Parties with respect to the subject matter hereof, and are intended by the Parties to be read in harmony with one another. There are no understandings or agreements between the parties respecting the subject matter hereof, written or oral, other than as set forth in those documents. If, however, there is any conflict between this Agreement and the Easement, the Easement shall

control. And if there is any conflict between this Agreement and the Acquisition Agreements, this Agreement shall control. This Agreement may be amended by the mutual written agreement of the Parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

KING COUNTY

Ron Sims
King County Executive

Approved as to Form:

Dated

By: _____
Senior Deputy Prosecuting Attorney

Dated

PORT OF SEATTLE

Tay Yoshitani
Port of Seattle Chief Executive Officer

Approved as to Form:

Dated

By: _____
Port Counsel

Dated