

**ATTACHMENT 3**

**Sound Transit/King County Agreement**

*Exhibit C to the Sound Transit easement agreement between  
Sound Transit and the Port, which is Exhibit C to Sound Transit's overall  
Purchase and Sale Agreement with the Port*

EXHIBIT C  
ADDITIONAL PROVISIONS

The following additional terms, covenants, conditions and limitations shall be permanently incorporated into the Easement Agreement as to any portion of the Property in which King County acquires the underlying interest in the Property from the Port and shall apply to the development of a Trail by any successor in interest to King County. In such case, in any conflict between the body of the Easement Agreement and this Exhibit C to the Easement Agreement, this Exhibit C to the Easement Agreement shall control; references in the Easement Agreement to the Port enforcing or carrying out the terms of the Multipurpose Easement shall have no effect.

The terms of this Exhibit C are intended to govern the relationship between King County and Sound Transit with regard to dual use of the Property for Trail and Transportation purposes, and with regard to certain County utilities within the Property. It does not otherwise affect the County's reserved rights in the Property or Sound Transit's rights under the Easement Agreement. As to any portion of the Property in which King County does not acquire the underlying interest in the Property, this Exhibit C shall have no effect.

**I. Scope of Trail Use**

A. King County in its discretion may establish a Trail Area of sufficient size to meet the County's Regional Trail Guidelines in any location on the Property. The Trail Area may include Crossing Structures. King County and Sound Transit acknowledge that all or substantial portions of the Trail Area may be thirty (30) feet wide and be located on the rail bed. The Trail Area may be used for public access and an interim or permanent public hard and/or soft-surface regional trail for public pedestrian, bicycle, or other non-motorized uses ("Trail"). The Parties acknowledge that the Trail Area could be wider where additional width is needed to accommodate all necessary slopes for cuts and fills for the Trail; to install abutments, pilings, or other structural elements of trail bridges or tunnels; to allow grade or other physical separation of the Trail and any active rail lines or other uses on the Property; or to install storm water drainage or detention facilities or other facilities required by a permitting agency in support of or as mitigation for the Trail. King County may establish, amend or add to a Trail Area for the purposes of this Easement, subject to the Review Process established for the review of Other Improvements.

B. King County may use the Trail Area for all purposes necessary or incidental to public access and King County's installation, construction, ownership, use, operation, maintenance, inspection, repair, replacement, renovation, improvement, removal and enhancement of a Trail, including, but not limited to, the ability to install, construct, operate, maintain, modify, repair, replace, improve, remove and use the Trail Area for public access and any Trail-related purposes as King County may now or hereafter deem appropriate, including the addition, removal or replacement of Trail improvements at King

County's election, either in whole or in part with either like or different improvements. All Trail-related improvements of any kind that are now or hereafter acquired, constructed or installed by King County at King County's sole cost and expense within the Trail Area, or constructed by Sound Transit for King County pursuant to this Exhibit C shall be and shall at all times remain the property of King County. King County may also use areas outside the Trail Area on the Property, including within a Temporary Construction Easement Area or an Easement Area, for any ingress and egress associated with public access and all other uses associated with a Trail, *provided*, such use within an Easement Area or Temporary Construction Easement Area shall only be with Sound Transit's consent, which consent shall not be unreasonably withheld, conditioned, or delayed if the use would not unreasonably interfere with the construction or operation of a High Capacity Transit Facility.

C. King County may temporarily stage equipment and material on the Property in and around the Trail Area (including within an Easement Area or Temporary Construction Easement Area, with Sound Transit's prior consent, which consent shall not be unreasonably withheld, conditioned, or delayed if the use would not unreasonably interfere with the construction or operation of a High Capacity Transit Facility), as reasonably necessary to construct, operate, maintain, improve or remove the Trail. King County may construct, operate and maintain Trail crossings over, under, or across any railroad tracks or other transportation facilities associated with a Sound Transit Transportation Use on the Property, *provided* that such crossings shall be consistent with applicable law, trail or crossing design standards and shall not unreasonably interfere with any Sound Transit Transportation Uses on the Property, and *provided further* that the King County shall be responsible for performing and paying for Custodial Activities as defined in this Easement Agreement as to any of the crossing improvements, including any railroad tracks or other transportation facilities in the area of the crossing that are not located within Temporary Construction Easement Areas or Easement Areas.

D. Prior to King County establishing, amending or adding to a Trail Area, King County shall provide Sound Transit with (a) a description of the location of the Trail Area and (2) a copy of all plans and specifications for a proposed Trail if any have been prepared. Sound Transit shall review King County's proposed Trail Area as a proposed Other Improvement according to the Review Process except that Sound Transit shall have sixty (60) days to respond. As to any portion of the Property that is not designated as a Planned Easement Area or subject to a Notice of Selected Alignment, Temporary Construction Easement Area or Easement Area and is thus subject to the standards of Section 9B(1) of the Easement Agreement, the proposed Trail Area may not be deemed to impair the ability of Sound Transit to design, construct, use, operate, inspect, maintain or repair High Capacity Transit Facilities in a reasonably practicable manner as that term is used in Section 9 of the Easement Agreement. However, Sound Transit may suggest reasonable changes to the County's proposal that would result in the future ability of Sound Transit and King County to carry out the Transportation and Trail uses in a manner that would reduce the need for Sound Transit to incur costs to relocate a Trail or Trail

Area. King County will reasonably and in good faith consider implementing any such reasonable suggestions.

E. Prior to the commencement of any Trail Development or any other activity related to Trail Development, King County shall provide Sound Transit with (i) a description of the location of the Trail Area, (b) a copy of all plans and specifications for such proposed Trail Development, and (ii) a plan for coordinating the proposed Trail Development with any High Capacity Transit Facility that is existing or under evaluation or proposed within a Planned Easement Area, or area subject to a Notice of Selected Alignment, Temporary Construction Easement Area, or Easement Area. Sound Transit shall review King County's proposal as a proposed Other Improvement according to the Review Process. As to any portion of the Property that is not designated a Planned Easement Area, or subject to a Notice of Selected Alignment, Temporary Construction Easement Area or Easement Area, and is thus subject to the standards of Section 9B (1), the proposed Trail may not be deemed to impair the ability of Sound Transit to design, construct, use, operate, inspect, maintain or repair High Capacity Transit Facilities in a reasonably practicable manner as that term is used in Section 9 of the Easement Agreement. However, Sound Transit may suggest reasonable changes to the County's proposal that would result in the future ability of Sound Transit and King County to carry out the Transportation and Trail uses in a manner that would reduce the need for Sound Transit to incur costs to relocate a Trail or Trail Area. King County will reasonably and in good faith consider implementing any such reasonable suggestions.

F. If King County proposes a Trail Development within a Planned Easement Area the Parties shall, in addition to the requirements set forth in Sections D and E above, cooperate in good faith to mutually agree on the location of the Trail Area and Trail within the Planned Easement Area and consistent with the terms of the Easement Agreement in order to avoid delaying the County's Trail Development until such time as Sound Transit determines to record the Temporary Construction Easement Area and Easement Area.

G. The Parties encourage one another to informally consult and cooperate with one another in developing plans for Transportation Use and Trail facilities as early and often as reasonably possible in order to achieve the dual Transportation Use and Trail uses that are intended under the Easement Agreement at a reasonable cost. In light of the environmental review processes that public entities follow, the Parties may request comment from one another on alternatives under development for or consideration pursuant to such processes. In such case, the responding Party shall reasonably respond as appropriate under the circumstances considering the level of information available at the time. Any such response shall not be considered consent or approval under the terms of the Easement Agreement.

H. In the event Sound Transit provides a Notice of Selected Alignment in an area where Trail Development has not commenced and Sound Transit does not provide

King County with a Notice of Intent to Develop within one year after providing the Notice of Selected Alignment, Sound Transit and King County shall at King County's request consult to determine as precisely as possible the location of the Trail Area consistent with the Easement Agreement and the time at which King County can construct the Trail. To make this determination, Sound Transit and King County shall use currently available plans and information and will make a joint determination within sixty (60) days of King County initiating the process. If King County and Sound Transit are unable to make this joint determination within this sixty (60) day period, either party may initiate Dispute Resolution under Section 8A(3) of the Easement Agreement. In this joint determination process, Sound Transit and King County will consider the probable timeframe in which Sound Transit construction will occur, the likely impacts of Sound Transit construction on development of the Trail in any existing or relocated Trail Area, and whether it is reasonable to construct a temporary Trail within any existing Trail Area for future relocation during Sound Transit construction. If the development of Sound Transit's High Capacity Transit Facility within the area subject to a Notice of Selected Alignment will require Trail Area relocation outside the Property, Sound Transit shall provide the relocated Trail Area for use by King County no later than three (3) years after the Notice of Selected Alignment. The provisions in this Section H are in addition to the provisions of Sections I.D and E, and do not limit the ability of King County to also elect to proceed under Sections I.D and E.

I. King County shall, at its sole cost and expense, comply with all stormwater requirements for Trail Development to the extent any such requirements are applicable to King County's Trail Development

## II. Trail Use and Transportation Use of Property.

King County understands, acknowledges, and agrees that Sound Transit may undertake Transportation Use of the Property consistent with the terms of this Easement Agreement

### A. Trail Area Relocation.

(i) In the event Sound Transit provides a Notice of Intent to Develop a portion of the Property for a Sound Transit Transportation Use in a manner that would unreasonably interfere with King County's then existing Trail or Trail for which Trail Development has commenced on a portion of the Property, then Sound Transit shall relocate the Trail and Trail Area, at Sound Transit's sole cost and expense, in a condition and to another location consistent with King County's Regional Trail Guidelines in effect on the Effective Date, the development standards and conditions of other regional trails within King County, and the Railbanking Obligations, which other location may, to the extent consistent with the Railbanking Obligations be outside of the Property, *provided*, Sound Transit makes a good faith effort to designate a location that is reasonably close to the Property, and *provided further*, that the width and condition of the relocated Trail need not exceed the width and condition of the existing Trail regardless of the Regional Trail

Guidelines or development standards and condition of other regional trails within King County. Such relocation shall include reasonable operational, safety, and/or aesthetic improvements and structures such as bridges, trestles, Crossing Structures, Trail crossings, ingress and egress areas, berms, grade separation, fencing and/or landscaping. If no Trail Development has commenced when Sound Transit provides a Notice of Intent to Develop, then Sound Transit shall establish at its sole cost and expense a Trail Area in another location consistent with King County's Regional Trail Guidelines in effect on the Effective Date, the development standards and conditions of other regional trails within King County, and the Railbanking Obligations, which other location may, to the extent consistent with the Railbanking Obligations be outside of the Property, *provided*, Sound Transit makes a good faith effort to designate a location that is reasonably close to the Property. In addition, the Trail Area location shall be of sufficient width and grade within which King County may develop or construct a trail that is consistent with King County's Regional Trail Guidelines in effect on the Effective Date, the development standards and conditions of other regional trails within King County, and the Railbanking Obligations, and within which may be located reasonable operational, safety, and/or aesthetic improvements and structures such as bridges, trestles, Crossing Structures, Trail crossings, ingress and egress areas, berms, grade separation, fencing and/or landscaping.

(ii) Notwithstanding the provisions of paragraph IIB (i), there may be rare circumstances requiring Sound Transit to relocate a Trail and/or Trail Area, where there is no reasonably practicable alternative for such relocation within the Property or outside the Property consistent with Section IIB(i) of this Exhibit C. In such an unusual case, the relocation may be to standards less than required by Section IIB(i) of this Exhibit C, so long as the Trail results in, and the Trail Area is sufficient for, a minimum ten feet of paved surface with at least one-foot wide shoulders on either side. "Reasonably practicable" as used in this Section IIB(ii) shall mean capable of being implemented in a reliable and effective manner at a cost, including any expenses associated with property acquisition, that is not substantially higher than would typically be expected for similar trail projects in areas of King County or other jurisdictions that have physical characteristics of and a degree of development similar to the area where Trail and/or Trail Area relocation is required.

(iii) In any Notice of Intent to Develop, Sound Transit shall propose the manner in which it will accomplish any relocation of a Trail Area and/or Trail. Sound Transit shall take reasonable steps to avoid disruption of Trail use during construction or other activities on an established Trail, and where disruption is not reasonably avoidable, it shall mitigate such disruption through the provision of detours or other means of bypassing the construction or other activity areas.

(iv) Notwithstanding provisions of this Paragraph B to the contrary, in no event shall Sound Transit be required to provide a relocated Trail Area or Trail in a width that exceeds the width of the Property from which the King County Trail Area or Trail is being displaced.

(v) Notwithstanding provisions of this Paragraph B to the contrary, Sound Transit shall not be responsible for relocating, or the cost of relocating, a Trail or Trail Area that is displaced, closed, removed or destroyed as a result of a reactivation order.

**B.** If a portion of the Property is subject to a Sound Transit Transportation Use when King County commences Trail Development, then King County shall be responsible for installing barriers to separate such portion of the Property from the Trail Area. If Sound Transit has commenced Transportation Use of a portion of the Property that is adjacent to a portion of Trail Area where Trail Development has commenced, then Sound Transit shall be responsible for installing barriers separating such portion of the Property from the Trail Area. King County and Sound Transit shall jointly determine the type and scope of barriers (e.g. jersey barriers, fencing, or grade separation) or other measures reasonably needed to separate the Trail Area from the Transportation Use, which barriers shall at a minimum meet any applicable regulatory standards; *provided*, that after initial barrier installation is completed, King County shall be responsible, at King County's sole cost and expense, to inspect, maintain and replace any barriers or other measures that will separate the Trail Area from the Sound Transit Transportation Use unless such barriers are within an Easement Area, in which case Sound Transit shall be responsible, at Sound Transit's sole cost and expense, to inspect, maintain and replace any barriers or other measures that will separate the Trail Area from the Sound Transit Transportation Use. Before either Sound Transit or King County may take any action that would require a joint determination under this Section II.B, it shall initiate negotiation of such joint determination through written notice to the other party accompanied by a detailed description of the proposed barriers. Thereafter Sound Transit and King County shall negotiate in a good faith and reasonable manner to reach agreement. The joint determination shall be made within sixty (60) days after the initiation of negotiation. If the joint determination is not made within that time, either Sound Transit or King County may start dispute resolution using the process set forth in Section 18A(3) of the Easement Agreement or other mutually acceptable dispute resolution process.

### **III. Custodial Activities.**

#### **A. Custodial Activities and Transportation Use.**

(i) "Custodial Activities" are those activities that a Property owner would reasonably take to manage the Property in order to keep the Property in a physical condition suitable for its use, to maintain the physical integrity of the Property, to prevent health and safety hazards, and to manage public access in a manner appropriate for the Property's use, which may range from allowing public access to prohibiting such access, depending on circumstances. Custodial Activities include both "Routine Maintenance" and "Capital Improvements." "Routine Maintenance" includes, but is not limited to, inspecting the property, litter and garbage pick up, brush and hazardous tree trimming or removal, drainage maintenance or repair, and fencing or signage maintenance: "Capital

Improvements" includes capital investments in the Property that go beyond Routine Maintenance, including, but not limited to, the installation of fences, barriers, or signs, or the repair of a washout on the Property. Custodial Activities do not include any activities related to granting or managing easements, leases, permits, franchises, occupancy agreements, licenses or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Property, which activities shall be the sole responsibility of the County or the then fee owner of the Property .

(ii) A Sound Transit Transportation Use is undertaken when Sound Transit records an Easement Area or Temporary Construction Easement Area pursuant to the provisions of the Easement Agreement; and a Transportation Use is terminated when such use ceases and (a) Sound Transit records a termination of Easement Area or Temporary Construction Easement Area.

#### **B. Performance of Custodial Activities.**

Custodial Activities will be performed and paid for in the following manner depending on the uses present on the Property. The Party obligated to carry out Custodial Activities will conduct the Custodial Activities in a manner that complies with Railbanking Obligations, that complies with this Easement Agreement, and that meets that Party's needs for the use of the Property. Unless otherwise imposed by the terms of this Easement Agreement, as between the County and Sound Transit, the Party with the obligation to carry out Custodial Activities in this Section III.B is not responsible for ensuring that the Property is maintained in a condition that is suitable for the needs of the other Party.

(i) In any segment of the Property where there is no Sound Transit Transportation Use, King County shall be responsible for performing and paying for all Custodial Activities.

(ii) In any segment of the Property where there is Sound Transit Transportation Use, King County shall be responsible for performing and paying for all Custodial Activities on the Property except within a Temporary Construction Easement Area or Easement Area. Sound Transit shall be responsible for performing and paying for all Custodial Activities within a Easement Area or Temporary Construction Easement Area.

#### **C. Custodial Activities Following Termination of Transportation Use.**

If and when Sound Transit Transportation Use is terminated on a segment of the Property, then King County shall resume performing Custodial Activities for such segment.



**D. Railbanking Obligations.**

(i) The Property shall be subject to the Railbanking Obligations so long as it remains in Railbanked status. King County shall comply with and Sound Transit shall not violate the Railbanking Obligations for so long as the Property remains in Railbanked status.

(ii) In the event King County determines that it is no longer reasonably practicable to carry out Railbanking Obligations because of actions taken by Sound Transit or any other entity using or claiming ownership of the Property, due to abandonment outside the Property of a segment of rail line connecting the Property to the national rail system, or due to catastrophic physical damage to the Property that would require exorbitant costs to address, then King County may notify Sound Transit in writing no less than 180 days before the date that it intends to notify the STB that King County will no longer serve as the Interim Trail User for all or a portion of the Property and to request that King County's Railbanking Obligations be extinguished as to the identified portion of the Property pursuant to the Railbanking Legislation. King County shall, if requested by Sound Transit, cooperate to transfer, as to the identified portion of the Property, its Interim Trail User status and the property rights necessary for an Interim Trail User to carry out the Railbanking Obligations to a replacement Interim Trail User. King County will transfer such property rights at no cost to the replacement Interim Trail User so long as the property rights would revert to King County if Railbanking ever terminates and the Property is abandoned.

(iii) If King County conveys the Property or an interest in the Property to another party for the purpose of that party developing and operating a Trail, King County may also transfer its Interim Trail User status to such transferee, *provided*, that such transferee agrees in a recordable instrument to be bound by the terms of this Easement Agreement, including specifically the terms of this Exhibit C.

(iv) The Parties recognize and agree that a portion of the Property between milepost 10.6 and 11.25 ("Wilburton Segment") has not been subject to Interim Trail Use and the Railbanking Obligations, but rather was abandoned with the approval of the STB prior to the Port's acquisition of the Property. The Wilburton Segment is a critical link in the maintenance of the remainder of the Property in compliance with the Railbanking Obligations. Therefore, the Wilburton Segment is subject to the terms of this Easement Agreement as if it was subject to Interim Trail Use and the Railbanking Obligations.

**E. Insurance and Indemnification.**

(i) Sound Transit shall name King County as an additional insured on any insurance policy maintained by Sound Transit related to any Sound Transit Transportation Use.

(ii) If Sound Transit uses the Property for rail-based or fixed guideway Sound Transit Transportation Use, it shall indemnify, hold harmless and defend King County from any and all obligations imposed by Railroad Unemployment Insurance Act (45 U.S.C.A. §§ 351 et seq.), Railroad Retirement Act (45 U.S.C. §231 et seq.), Railway Labor Act (45 U.S.C. Sec. 151 et. seq.), Federal Employers Liability Act (45 U.S.C. Sec 51 et. seq.), common carrier obligations pursuant to (49 U.S.C. Sec. 10101 et. seq.), and any Federal rail safety legislation, that arise from such Sound Transit Transportation Use of the Property.

**F. County Utility Rights.**

(i) There are currently King County Wastewater Facilities located in the Property in the locations set forth on Exhibit C-1, attached hereto and incorporated herein. Those facilities are authorized by a variety of instruments and agreements listed on Exhibit C-2, attached hereto and incorporated herein. King County will continue to have the rights and obligations set forth in such instruments and agreements vis-à-vis Sound Transit even if such rights would otherwise be terminated through the doctrine of merger. In addition, King County shall have the right, and Sound Transit shall not unreasonably interfere with the right to operate, maintain, repair, and replace the existing King County Wastewater Facilities on the Property. This section does not limit the ability of King County to exercise its reserved rights more generally to install new or expanded Wastewater facilities, subject to the Review Process.

(ii) In the event Sound Transit provides a Notice of Selected Alignment and Sound Transit does not provide King County with a Notice of Intent to Develop within one year after providing the Notice of Selected Alignment, then King County shall have the right to submit for review under the Review Process new or expanded Wastewater facilities that will be subject to the standards applicable to any portion of the Property that is designated as a Planned Easement Area under Section 9.B (2).